Assembly and Executive Review Committee

Review of D'Hondt, Community Designation and Provisions for Opposition

Together with the Minutes of Proceedings of the Committee Relating to the Report and the Minutes of Evidence

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REPORT EMBARGOED UNTIL COMMENCEMENT OF DEBATE IN PLENARY

Powers and Membership

Powers

The Assembly and Executive Review Committee is a Standing Committee established in accordance with Section 29A and 29B of the Northern Ireland Act 1998 and Standing Order 59 which states:

"(1) There shall be a standing committee of the Assembly to be known as the Assembly and Executive Review Committee.

(2) The committee may -

(a) exercise the power in section 44(1) of the Northern Ireland Act 1998;

(b) report from time to time to the Assembly and the Executive Committee.

(3) The committee shall consider -

(a) such matters relating to the operation of the provisions of Parts 3 and 4 of the Northern Ireland Act 1998 as enable it to make the report referred to in section 29A(3) of that Act; and

(b) such other matters relating to the functioning of the Assembly or the Executive Committee as may be referred to it by the Assembly."

Membership

The Committee has eleven members including a Chairperson and Deputy Chairperson with a quorum of five. The membership of the Committee is as follows:

Stephen Moutray (Chairperson)
Pat Sheehan (Deputy Chairperson)
Roy Beggs
Gregory Campbell
Stewart Dickson
Paul Givan
Simon Hamilton
Raymond McCartney
Conall McDevitt
Seán Rogers [1 2 3]
Caitríona Ruane [4 5]

1 With effect from 26 September 2011 Mrs Sandra Overend replaced Mr Mike Nesbitt
2. With effect from 23 April 2011 Mr John McCallister replaced Mrs Sandra Overend
3. With effect from 04 March 2013 Mr Seán Rogers was appointed as a Member to fill the vacancy created when Mr John McCallister left the Committee.
4. With effect from 12 September 2011 Mr Pat Doherty replaced Mr Paul Maskey
5. With effect from 10 September 2012 Ms Caitríona Ruane was appointed as a Member to fill the vacancy created when Pat Doherty resigned from the Assembly.

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Executive Summary

1. The Assembly and Executive Review Committee is a Standing Committee of the Northern Ireland Assembly that was established to:

   - make a report to the Secretary of State, the Assembly and the Executive Committee, by no later than 1 May 2015, on the operation of Parts III and IV of the Northern Ireland Act 1998; and
   - consider such other matters relating to the functioning of the Assembly or the Executive as may be referred to it by the Assembly.

2. The Committee agreed the Terms of Reference for its Review of D'Hondt, Community Designation and Provisions for Opposition, a Stakeholder 'Call for Evidence' Paper and a stakeholder list that included all Political Parties registered in NI.

3. The Committee received and considered 22 Stakeholder responses to the Review. The Committee received oral evidence from Professor Derek Birrell, University of Ulster, Professor Yvonne Galligan, Queen's University Belfast, Professor Christopher McCrudden, University of Oxford, Professor Brendan O'Leary, University of Pennsylvania, Professor Rick Wilford, Queen's University Belfast, and Dr Robin Wilson and Ms Eileen Cairnduff from Platform for Change. The Committee also visited the Scottish Parliament and met representatives of the Scottish Parliamentary Corporate Body and the Parliamentary Bureau, in order to inform the Review.

4. The Committee commissioned and considered two Assembly Research Papers in order to inform Members' discussions and views on the issues arising from this Review.

5. The Review took evidence on **D'Hondt** in relation to:

   - Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons.

   The Review took evidence on **Community Designation** in relation to:

   - Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly.

   The Review took evidence on **Provisions for Opposition** in relation to:

   - Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity.

   In particular, the Committee took evidence on whether:

   - Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties;
   - Arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition; and;
   - Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.

The Committee concluded that:

6. **There was no consensus on ceasing to use/replacing the current D'Hondt system as the mechanism for allocating Ministerial positions or Committee Chairperson/Deputy Chairperson.**

7. **The Committee concluded that there is no consensus at present to move to a formal Government and Opposition model, such as exists in Westminster. It also concluded that there is no consensus to move from the current opt-out model, whereby Parties can exercise their right to opt-out of taking up their Ministerial post or withdraw from the Executive, based on existing Assembly provisions.**

8. **The Committee concluded that financial support for political parties should continue to be allocated on a broadly proportional basis and did not consider that additional resources should be allocated to non-Executive/opposition Parties.**

9. **The Committee concluded that Parties that exercise their right not to take their Executive entitlement would have "informal" recognition of non-Executive/opposition status on a proportional basis by:**

   - **Additional speaking rights;**
   - **recognition of status by order of speaking; and**
   - **allocation of time for additional non-Executive business – the use of the allocation to be determined by non-Executive Party/opposition.**

   The representatives of Sinn Féin stated that they were unable to support this conclusion.

10. **The Committee concluded that Parties that have failed to meet the Executive threshold for d'Hondt but have reached a suitable threshold should attract appropriate recognition in terms of speaking rights, status by order of speaking and allocation of time for non-Executive business in proportion to their Party strength.**

11. **The Committee recognised that there may be some value in Technical Groups and recommended that this facility for smaller Parties of the Assembly be reviewed.**

12. **The Committee concluded that the Parties of the incoming Executive should aim to agree a Heads of Agreement of a Programme for Government in advance of the formation of the Executive, with a full draft Programme for Government published in accordance with current procedures.**

13. **The Committee concluded that there was no consensus for replacement of community designation by, for example, a weighted-majority vote in the Assembly of 65%.**

14. **Following the evidence that was presented to the Committee regarding Petitions of Concern, the Committee concluded that further detailed work in relation to Petitions of Concern needs to be carried out.**

Introduction

Background to the Review

15. In June 2011, the Committee Chairperson wrote to the Leaders of the Parties in the Northern Ireland Assembly, requesting information on which issues their Party would like to see prioritised by the Assembly and Executive Review Committee. At that time, the Committee was undertaking a 'Review of the Number of Members of the Northern Ireland Legislative Assembly and of the Reduction in the Number of Departments'. Following the completion of this Review in November 2012, the Committee agreed that its **next priorities for Review were the issues of D'Hondt, Community Designation and Provisions for Opposition.**

16. The terms of reference for this Review and the Committee's approach to the Review are set out in the next section of this Report (paragraphs 50 to 64).

17. In August 2012, the then **Secretary of State for Northern Ireland** launched a consultation entitled, **'Consultation on measures to improve the operation of the Northern Ireland Assembly'**, one of the key areas of which was "Government and Opposition". The consultation highlighted that the Northern Ireland Executive currently operates as a five-party coalition, as this has been important in ensuring that all parts of the community are adequately represented in government. The Secretary of State pointed out that the present structure of government is derived from the Belfast/Good Friday Agreement and legislated for in the Northern Ireland Act 1998 and the St Andrews Agreement, which recognised that inclusive power-sharing is essential in Northern Ireland.

18. The Secretary of State's consultation paper went on to say that *"there are obvious flaws in a system where there is no effective alternative government"* and highlights that the UK Government has *"regularly expressed a wish at some stage to see a move to a more normal system that allows for inclusive government but also opposition in the Assembly."* The consultation paper stressed that moves to a recognised opposition must be consistent with the principles of inclusivity and power-sharing that are central to the 1998 Act.

19. The consultation closed on 23 October 2012. On 11th February 2013, the Secretary of State published the consultation responses, along with draft legislation to make provision on the following issues: donations and loans for political purposes; dual mandates; electoral registration and administration; appointment and tenure of the NI Justice Minister. The **'Publication of Draft Legislation Northern Ireland (Miscellaneous Provisions)'** (Cm 8563) is available online (http://www.nio.gov.uk/getattachment/Publications/Publication-of-Draft-Legislation/27250-Cm-8563-v4.pdf.aspx).

20. The introduction to the draft legislation refers to "Government and Opposition" and states:

> *While the Government would welcome moves towards a system of government and opposition, we remain clear that such changes could only come about with the agreement of parties in the Assembly. In addition, such moves must be consistent with the principles of inclusivity and of power-sharing that are central to the Belfast Agreement. We do not believe that there is sufficient consensus for statutory change at present which is why the draft Bill includes no provision on this issue.*
>
> *However, the consultation document also drew attention to the possibility of procedural change within the Assembly aimed at providing for a more effective opposition. The Government notes that the Assembly and Executive Review Committee is examining these questions, amongst other institutional issues. The Assembly Research and Information Service produced a Briefing Paper entitled 'Opposition, Community Designation and d'Hondt' in November 2012. Procedural developments are of course matters for the Assembly itself and not for the Government to seek to impose.*

21. **The Northern Ireland Affairs Committee** published a Report on the draft Northern Ireland (Miscellaneous Provisions Bill) on 20th March 2013. In relation to Government and Opposition, it states:

> *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.*

22. **The Northern Ireland (Miscellaneous Provisions) Bill** had its First Reading in the House of Commons on 9th May 2013 and was published on 10th May. The Bill does not include any provisions relating to opposition. The Government response to the Northern Ireland Affairs Committee's pre-legislative scrutiny report on the draft NI Bill states, in relation to Recommendation 24 on Government and Opposition:

> *The Government notes the Committee's comments. We recognise that the system of Government and Opposition as traditionally understood may promote a more effective and innovative system at Stormont, and hope that the Northern Ireland parties will continue to consider potential methods which might further improve the operation of the institutions. It is clear that sufficient consensus does not exist amongst the parties at present for the Government to legislate on this matter. We will, of course, work with the parties should they agree any changes to the institutions along these lines which would require Westminster legislation in the future.*

23. **The following sections provide an overview of the issues that the Committee has identified as key to this Review. For further detail, please refer to the Assembly Research and Information Service paper 'Opposition, Community Designation and d'Hondt' in Appendix 6 of this report (commencing page 387).**

D'Hondt

24. Uniquely within the UK and Ireland, and as part of the consociational institutional framework established by the Northern Ireland Act 1998, political Parties are entitled to seats in the Northern Ireland Executive based on their level of representation in the Northern Ireland Assembly. The process used to allocate Ministerial offices, and thereby fill seats in the Executive, is called the d'Hondt mechanism and is outlined in section 18 of the Northern Ireland Act 1998 (the 1998 Act). Through the use of d'Hondt, membership of the Executive is automatically determined based on electoral strength, rather than negotiations between Parties following an election.

25. However, there is nothing that requires Parties to take a seat in the Executive — they can refuse and the seat will be offered to the next eligible Party. In effect, there is no legislative barrier to Parties not taking their allocated seat following an election or withdrawing from the Executive if they wish. The question then arises as to what extent will those Parties be afforded the role and resources allocated in other legislatures to non-Executive/Opposition Parties.

26. The positions of Chairpersons and Deputy Chairpersons of Committees in the Northern Ireland Assembly are also allocated using the d'Hondt formula. This is provided for under Assembly Standing Orders, as required under section 29 of the 1998 Act. Again, should an eligible Party choose not to take the position to which it is entitled, the position would be offered to the next eligible party.[1]

1 This occurred on 24 January 2000, resulting in the PUP being offered and accepting the post of Deputy Chairperson of the Audit Committee.

27. Amendments to section 18 and/or section 29 of the 1998 Act could only be made by legislation passed by the UK Parliament.

28. The Assembly Research paper 'Opposition, Community Designation and D'Hondt' refers briefly to the Sainte-Laguë allocation mechanism. This is another divisor method that has been found to produce more advantageous results for smaller parties, both in terms of allocations (the number of seats) and in terms of sequencing, so that smaller parties can get a higher "pick" in the allocation of Ministerial portfolios or Committee Chairs.

Community Designation

29. The 1998 Act and Assembly Standing Orders make provision for Members of the Assembly to designate themselves as "Nationalist", "Unionist" or "Other" at the first meeting of the Assembly after an election.

30. The 1998 Act details a number of key decisions in the Assembly for which cross community support is required. To obtain this cross community support under the 1998 Act, there must either be the support of a majority of the members voting, including a majority of the designated Nationalists and designated Unionists voting, or the support of 60% of the members voting including 40% of the designated Nationalists voting and 40% of the designated Unionists voting. Votes for which cross-community support is required are detailed in the Assembly Research and Information Service paper 'Opposition, Community Designation and D'Hondt', section 4.

31. If 30 or more Members petition the Assembly expressing their concern about a matter that is to be voted on by the Assembly, the vote on that matter will require cross-community support.

32. A system of community designation is also used in Belgium, where there is an "alarm bell" procedure, used when one of the language groups believes that the provisions of a Bill are likely to be seriously detrimental to relations between the two language communities. In the Belgian system, the threshold appears to be set higher and applies only to legislation, rather than ordinary motions (see the Assembly Research and Information Service paper 'Opposition, Community Designation and D'Hondt', section 4).

Provisions for Opposition

33. In the traditional Westminster model, the Party with the most non-Government Members in Parliament becomes the Official Opposition and its leader becomes the Leader of the Opposition. In broad terms, the role of the Opposition, as its name suggests, is to oppose the Government and form an "alternative government" if the existing Government loses the confidence of the House. This is the model most often cited when highlighting the perceived lack of an Opposition within the Assembly. However, the Scottish Parliament and National Assembly for Wales more commonly refer to non-Executive or non-Government Parties, and there is no recognition of an Official Opposition in those legislatures, although there is proportionate provision for non-Government Parties in relation to parliamentary time and funding to carry out their functions.

34. The Assembly and Executive Review Committee has agreed, as part of the Terms of Reference of this Review, that any consideration of the recognition of an Opposition in the Northern Ireland Assembly must recognise the consociational framework and the principles of inclusivity and power-sharing that underpin the workings of the Assembly and the Executive.

35. The Northern Ireland Act 1998, which sets out how the Assembly and Executive would operate, makes no reference to an Opposition.

36. Under the 1998 Act, Parties that have not reached a certain threshold in terms of elected Members do not have the opportunity to select a Ministerial office under the d'Hondt system.

As highlighted earlier, there is nothing that requires Parties to take a Ministerial office and, thereby, a seat in the Executive — they can refuse and the seat will be offered to the next eligible Party. In effect, there is no legislative barrier to Parties opting out of the Executive if they wish.

Factors related to Provisions for Opposition:

37. It is usual practice that non-Executive or non-Government Parties are granted certain rights within a legislature to assist them in holding the Government/Executive to account. If there were agreement to formally recognise non-Executive Parties/Opposition within the Assembly, some or all of the following would need to be taken into account:

Financial Assistance

38. In most jurisdictions, Political Parties with non-Executive or non-Government roles are usually allocated additional financial resources to assist in their Parliamentary/Assembly duties. All Political Parties represented in the Northern Ireland Assembly already receive funding under the Financial Assistance to Political Parties (FAPP) scheme, irrespective of whether they have a seat in the Executive. In the context of a move to formally recognise non-Executive Parties/ Opposition, consideration may need to be given to reviewing the scheme to ensure that non-Executive Parties are appropriately funded.

39. Should the Assembly wish to provide allowances or additional salaries to individual Members of the Assembly in key positions in non-Executive Parties/Opposition, this would not require legislation, if the Independent Financial Review Panel (IFRP), which was set up following the passing of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011, were to issue a Determination providing for this. This would be a matter for IFRP.

40. The specific financial arrangements in place for the Opposition or non-Executive Parties in the House of Commons, the Scottish Parliament, the National Assembly for Wales and Dáil Éireann are outlined in the Assembly Research and Information Service paper 'Opposition, Community Designation and D'Hondt', section 3.

Committee Chairpersons

41. It has been suggested by various stakeholders that the Committee structure in the Northern Ireland Assembly performs an important scrutiny role that is perhaps lacking in more traditional Government-Opposition models. The Chairpersons and Deputy Chairpersons of Committees in the Northern Ireland Assembly are currently allocated via the d'Hondt method, as is the case in the Scottish Parliament for convenors (Chairpersons). In the House of Commons, the Government is allocated the majority of Chairpersonships. Nevertheless, in the context of a move to formally recognise Opposition in the Northern Ireland Assembly, some have argued that the Opposition Parties/Non-Executive Parties should be offered the Chairpersonship or Deputy Chairpersonship of more Committees, rather than the allocation of these Chairpersonships continuing to be made on a proportional basis to party strength.

42. The 1998 Act prevents Statutory or Departmental Committees being Chaired or Deputy Chaired by Ministers or junior Ministers. Furthermore, arrangements for the allocation of Chairpersons and Deputy Chairpersons for these Committees provide that Parties shall "prefer" to select other Committees than those for which the Party holds Ministerial Office.

43. The arrangements in place in relation to the composition of Committees in the House of Commons, the Scottish Parliament, the National Assembly for Wales and Dáil Éireann are outlined in the Research paper 'Opposition, Community Designation and D'Hondt', section 3.

Parliamentary/Assembly Time

44. A key consideration with respect to the formal recognition of Opposition/Non-Executive Parties would be the guarantee of time to raise and debate non-Executive business — including priority speaking rights in response to Ministerial Statements and in Question Time.

45. The House of Commons, Scottish Parliament and National Assembly for Wales guarantee time for non-Government business (see Research paper 'Opposition, Community Designation and D'Hondt', section 3).

46. In the Northern Ireland Assembly, there are a series of specific arrangements in place that allocate speaking rights and Assembly time based on proportionality. Details of these arrangements are outlined in the 'Call for Evidence' paper (Appendix 3, paragraphs 3.31 to 3.38).

Other Measures to Strengthen Accountability

47. In addition to the provision of resources for 'Opposition Parties/Non-Executive Parties, which may, in itself, strengthen accountability within the institutions of Government, the Assembly and Executive Review Committee has raised the issue of what other specific measures could strengthen accountability within the institutions.

48. For example, the Assembly Research paper Opposition, Community Designation and D'Hondt' highlights the fact that Westminster, Dáil Éireann, the Scottish Parliament and the Welsh Assembly all provide for a vote of no confidence in the current Government. In Scotland, if such a motion is passed, all Members of the Executive must resign. This does not automatically result in a general election, but will do so if a new First Minister is not nominated within 28 days. There is no provision in the Northern Ireland Assembly for a vote of no confidence in the Executive.

49. As well as provision for a vote of no confidence in the Government, the Belgian Parliament has an instrument called an interpellation, which is a question for explanation from an MP and aimed at a Government Minister. The Minister's response is followed by a vote, which can either be on a motion of no confidence in the Government or, more probably, on a "simple motion" agreeing that normal activities be continued. The latter is an implicit vote of confidence. This mechanism can be used in plenary sessions of the Parliament or, more commonly, in the parliamentary commissions. It is used for serious and important matters, mainly by the Opposition.

The Committee's Approach to the Review

50. In June 2011, the Committee Chairperson issued a letter to Political Parties and the independent Members of the Assembly requesting their immediate priorities for the Committee's next review of the provisions of Parts III and IV of the Northern Ireland Act.

51. Following the completion of the Committee's 'Review of the Number of Members of the Northern Ireland Legislative Assembly and of the Reduction in the Number of Departments' in November 2012, the Committee agreed that its next priorities for Review were the issues of D'Hondt, Community Designation and Provisions for Opposition.

52. At the Committee meeting of 12th February 2013, the Committee agreed the Terms of Reference for the Review, a timeline for the Review, a Stakeholder 'Call for Evidence' paper and a list of key stakeholders to which the Committee would write to request written evidence (see Appendix 3).

53. In addition to requesting written evidence from key stakeholders, the Committee agreed to use a signposting advertisement in the three daily newspapers on 18th February 2013 in order to attract a wider public sector and public response to its 'Call for Evidence'. This directed interested parties to a dedicated webpage on the Committee's website, which gave the Terms of Reference for the Review and the 'Call for Evidence' paper. Any organisation/ individual was, therefore, able to refer to these documents and respond to the Review.

54. The **Terms of Reference for the Review** are as follows:

> *The Assembly and Executive Review Committee will review d'Hondt, community designation, and the provisions for Opposition Parties/Non-Executive Parties in the Northern Ireland Assembly to assist them in holding the Executive to account, guaranteeing safeguards and protections to ensure that the institutions operate on an inclusive and power-sharing basis. The Review will not only address each area separately but examine the interrelationship between the three areas in the context of any proposed changes.*

55. In drafting the Terms of Reference for the Review, the Committee felt it was important to emphasise the *"safeguards and protections"* that *"ensure that the institutions operate on an inclusive and power-sharing basis."* This was included to reflect the unique system that exists in Northern Ireland, in which the principles of inclusion and proportionality run though all aspects. This, of course, makes comparison with other systems challenging, and also means that whatever changes are made would need to take account of this overall framework.

56. The Committee agreed to conduct the overall Review in three key phases:

Phase 1 – Review Evidence Gathering

- The Review took evidence on D'Hondt in relation to:
  - Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons.
- The Review took evidence on Community Designation in relation to:
  - Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly.
- The Review took evidence on Provisions for Opposition in relation to:
  - Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity.
- In particular, the Committee took evidence on whether:

- Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties;
- Arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition; and;
- Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.

Phase 2 – Consideration and Report

57. The Committee will consider all evidence received in relation to d'Hondt, community designation, and provisions for Opposition and report and make recommendations to the Assembly on these matters by June 2013.

58. The Committee received and considered 22 Stakeholder responses (see Appendix 4), to the Committee's 'Call for Evidence' Paper.

59. The Committee also received correspondence from the Committee on Procedures dated 22nd April 2013 (see Appendix 5), which was considered at the Committee's meeting of 23rd April 2013. This related to Petitions of Concern and the Committee agreed that it was relevant to its work and that it would be appropriate to consider the issue as part of its current Review.

60. The Committee considered oral evidence on the key issues raised in the Review from Professor Rick Wilford, Queen's University Belfast on 26th February 2013, Professor Christopher McCrudden, University of Oxford and Professor Brendan O'Leary, University of Pennsylvania on 5th March 2013, Professor Derek Birrell, University of Ulster on 19th March 2013, Professor Yvonne Galligan, Queen's University Belfast on 23rd April 2013 and Dr Robin Wilson and Ms Eileen Cairnduff from Platform for Change on 7th May 2013. The Minutes of Evidence (Hansards) for this oral evidence session and all Committee sessions pertaining to the consideration of this Report of the Committee's Review are at Appendix 2.

61. Representatives from the Committee also visited the Scottish Parliament on 17th April 2013, where they met representatives of the Scottish Parliamentary Corporate Body and the Parliamentary Bureau, in order to inform the Review.

62. The Committee considered all evidence received on this Review at its meetings during May and June 2013. All Minutes of Proceedings relevant to the Committee's Review are included at Appendix 1.

63. At the Committee meeting of 29th January 2013, the Committee considered the Financial Assistance for Political Parties Scheme 2007, as well as a table that set out the 2012-13 payments to Assembly Parties under this scheme. A copy of the scheme and the table are included at Appendix 5.

64. As part of the Committee consideration, at the Committee meeting of 15th January 2013, the Assembly Research and Information Service (RaISe) presented a specific research paper to inform the Review. Following the correspondence from the Committee on Procedures, an additional briefing paper was provided to the Committee on 7th May 2013, providing information on Petitions of Concern. The Research Briefing Papers are set out in full in Appendix 6 (and can also be found at: http://www.niassembly.gov.uk/Assembly-Business/Research-and-Information-Service-RaISe/Publications-2012/).

- Opposition, Community Designation and d'Hondt
- Additional information on Petitions of Concern

Committee Consideration

Key Points of Stakeholder Submissions and Committee Deliberations

65. A table of key points of stakeholder submissions and full copies of stakeholder submissions can be found at Appendix 4 of this Report.

66. **The following section of this Report highlights key points in stakeholder submissions and, in particular, the position of the Political Parties represented on the Committee.**

67. **The specific questions asked of stakeholders by the Committee under the issue of D'Hondt were:**

- In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?
- In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

68. Opinion was split regarding d'Hondt, with no consensus emerging regarding whether it should be retained or replaced for both Ministerial posts and Committee Chairpersonships and Deputy Chairpersonships.

69. The SDLP, Sinn Féin and various academics were in favour of the **retention of d'Hondt**.

70. **Sinn Féin's** written submission states:

> *Sinn Féin support the continued use of the d'Hondt system to fairly allocate chairs/vice chairs and membership of committees and to elect Ministers on the basis of party strength.*

71. The **SDLP**'s written submission states:

> *The SDLP supports … the right of parties to their d'Hondt entitlement…*

72. In their joint memorandum to the Committee, **Professors Chris McCrudden, University of Oxford; John McGarry, Queen's University, Canada; Brendan O'Leary, University of Pennsylvania; and Alex Schwartz, Alex Queen's University, Canada**, stated:

> *The use of the d'Hondt system for executive formation in Northern Ireland should be preserved.*
>
> *The executive is fairly composed of those parties with a sufficient mandate, and the decision to take up executive portfolios is voluntary, though that is sometimes forgotten.*

73. The **DUP** and **UUP** both acknowledged during Committee discussions that they felt that d'Hondt may pertain in the short-term, and perhaps medium-term.

74. The **UUP's** written submission states:

> *A decision on d'Hondt or a replacement is dependent on other factors, such as the introduction of an official opposition.*

75. The Alliance Party, the Green Party, TUV, UKIP and the Labour Party in Northern Ireland, along with the Independent Members Mr John McCallister and Mr Basil McCrea, as well as other stakeholders, argued **against the retention of d'Hondt**.

76. The **Alliance Party**, in its written submission, proposed:

Alliance does not support the use of d'Hondt in the current format for the allocation of Ministerial Offices and/or Committee Chairs. …

In the current context of mandatory coalition a system such as St Lague rather than d'Hondt would be a more proportional and fair method of proportional allocation….

77. Support for a change to Sainte-Laguë was also expressed by Dr Loizides and Professor Wilford, while the de Borda Institute argued that d'Hondt should be replaced by the matrix vote. Professors McCrudden et al argued against the use of Sainte-Laguë as a replacement for d'Hondt.

78. The **Alliance Party**, the **Green Party**, the **SDLP** and Professor Wilford all suggested that a **Programme for Government** could be agreed in the post-election period, prior to the formation of the Executive. **Professor Rick Wilford, Queen's University Belfast**, in his written submission stated:

… In the best of all possible worlds or, perhaps as an exercise in 'wishful thinking' such negotiations could occur in a pre-election period … They could, however, occur in the post-election context, enabling parties to agree a PfG prior to the formal act of nominating the Executive.

79. The **DUP's** written submission also refers to this issue, stating:

It has also been suggested that a Programme for Government be agreed before the Executive is established. While this idea has merit in principle, we should be conscious of the limited time afforded by statute to establish the Executive and the challenges of obtaining agreement by five Parties. … high level agreement should be sought on a Programme for Government, however it would be absurd to make agreement a pre-requisite to the formation of an Administration.

80. **The specific questions asked of stakeholders by the Committee under the issue of Community Designation were:**

- Do you believe that community designation as it currently operates should be retained? If yes, why?
- If you believe that changes should be made, what changes do you propose? In particular:
  - Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?
  - Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?

81. Again, there was no consensus on whether community designation should be retained. **Support for the retention of community designation** came from the SDLP and Sinn Féin, as well as some of the academics who responded to the Call for Evidence.

82. The **SDLP**, in its written submission, stated:

The SDLP supports the retention of community designation…

83. A qualified level of support for its retention came from the **UK Independence Party (UKIP)**, which, in its written submission, proposed:

Community designation should only be applied in the broadest possible terms – unionist, nationalist and other – so that any voluntary coalition should be cross-community – that is the coalition should include one nationalist party if the other party is unionist. Other parties may be included in a multi-party coalition though an all-party mandatory coalition should be abandoned.

84. Most of those who **do not support the retention of community designation** proposed that it be replaced with a **weighted-majority system**, which they argue would de facto ensure cross-community support for key decisions. Again, the DUP and UUP proposed this with a view to the short- to medium-term, with the **DUP's** written submission proposing:

> *… in the long-term, the best means of governing Northern Ireland would involve a voluntary coalition Executive and weighted majority voting of around 65 in the Assembly, resulting in an end to community designation.*

85. A weighted majority system was also proposed by the Alliance Party, the DUP, TUV, Professor Cochrane, and the Centre for Opposition Studies. While most respondents suggested a threshold of around 65%, the **Traditional Unionist Voice (TUV)** suggested:

> *the Government should be able to demonstrate that it has cross-community support by obtaining a weighted majority of 60 to approve its Programme for Government.*

86. A requirement for a **super-majority** of 75% was suggested by the Labour Party in Northern Ireland and Platform for Change. The **Platform for Change** written submission stated:

> *A more effective mechanism for minority protection would be, as already mentioned, the enactment of a Northern Ireland Bill of Rights, which would replace the 'petition of concern'.*
>
> *Alternative or additional protection could be provided by a requirement for a super-majority vote in the assembly. This, however, should be confined to issues of strategic significance, so that the procedure could not be abused in an opportunistic manner as indicated.*

87. Some concerns were raised regarding the use of the **Petitions of Concern** mechanism. The **UUP's** written submission states:

> *The Petition of Concern mechanism is being used on an increasingly frequent basis and we would welcome a review of the occasions it has been used and the reasons why, with particular reference to the original intent of providing this mechanism.*

88. Similar concerns were expressed by the Alliance Party, the Green Party, TUV, Mr John McCallister and Mr Basil McCrea, several academics, the Centre for Opposition Studies and Platform for Change.

89. The **Alliance Party**, in its written submission, proposed:

> *Alliance would welcome a method of defining those issues on which a Petition of Concern can be used, as a way of ensuring this mechanism is not open to misuse.*

90. The **Green Party's (GPNI)** written submission states:

> *In the event that a weighted majority is not adopted, the Green Party believes that there ought to be changes to the rules governing petitions of concern to ensure that the use of petition of concern is restricted to key cross community decisions.*

91. **Mr John McCallister and Mr Basil McCrea**, **then Independent Members** stated in their written submission:

> *The Petition of Concern mechanism has outlived its usefulness and has also been consistently misused in a manner undermining progress towards a mature parliamentary culture.*

92. **Professors McCrudden et al** stated in their written submission:

> *… we would encourage the Assembly to consider ways in which it might give its Presiding Officer in conjunction with a suitably composed committee of the Assembly means to inhibit what we might call pseudo-petitions of concern.*

93. **The specific questions asked of stakeholders by the Committee under the issue of Provisions for Opposition were:**

- Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?
- What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?
- What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?
- How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?
- What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?
- If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?
- Do the current arrangements provide adequate time and speaking rights for Opposition Parties/Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

94. There was a wide range of responses in relation to provisions for opposition. The majority of respondents were in favour of some kind of opposition system, although some respondents pointed out that provision already exists for Parties to choose not to participate in the Executive.

95. **Sinn Féin's** written submission stated:

> *Sinn Féin support a party's right to decline their membership of the Executive and are content that an opposition platform is already automatically available to those who wish to 'opt-out' of the Executive.*

96. The **DUP's** written submission stated:

> *One of the flaws of the present system of government is the lack of a formal Opposition. … There is however no obligation on a Party to take up its place in the Executive - any party is entitled to forgo this and form an Opposition.*

97. The **SDLP**, in its written submission, stated:

> *…the SDLP concludes that an opposition option should be built into the structures of the Assembly in a future mandate. It would not be 'mandatory'; that an opposition is formed. Parties would be guaranteed their d'Hondt entitlement under powersharing arrangements if a party chooses to claim that entitlement. FM/ DFM would be elected by cross community vote to ensure a government of the political traditions.*
>
> *The SDLP believes that any future powersharing coalition who form a Northern Ireland Executive under the non-compulsory arrangements outlined above should be required by legislation to publish a Programme for Government prior to formation.*

98. The **Alliance Party**, in its written submission, explicitly supported the introduction of provisions for opposition Parties:

In either situation we would support … access to additional resources – this would need to be proportional in relation to the scale of the party or parties in opposition.

In either situation we would support more formalised speaking and questioning rights…– this would need to be proportional in relation to the scale of the party or parties in opposition.

The recognition of opposition and additional speaking privileges should not be restricted only to the largest Party not in the Executive but to all who are in that context, relative to size.

99. The **UUP's** written submission expressed support for the introduction of provisions for opposition Parties, focusing on speaking rights and Committee Chairpersonships:

the best form of government is one which is held to account by a formal and officially recognised Opposition, offering real choice to the voter.

The nature of an Opposition (single or multi party) should be a matter for negotiation. … it is unhelpful to discuss Opposition in terms of finance. Rather, it is a question of what resources, functions and provisions are necessary to empower and make effective an Opposition.

We believe focus should be put on issues such as Speaking Rights, Supply Days, and ring-fenced access to research and library resource.

The formula for allocating Chairs etc should be consistent with any agreement of Speaking Rights and the other issues mentioned previously.

100. The **Alliance Party** also proposed a change to how Committee Chairpersonships are allocated:

With regard to the selection of Committee Chairpersons and Deputy Chairpersons we would prefer the introduction of a Single Transferable Vote (STV) election among Assembly Members.

101. All of the other political Parties and Independent Members that responded to the Call for Evidence expressed support for the introduction of provisions for non-Executive/opposition Parties, although the details varied somewhat.

102. The **Green Party's (GPNI)** written submission states:

The Green Party supports the establishment of an official opposition in the NI Assembly and believes that this would enhance the accountability and effectiveness of the Assembly.

The Green Party supports the provision of additional financial assistance to opposition/Non-Executive parties.

The Green Party supports the guarantee that opposition parties should be granted additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.

103. The **Traditional Unionist Voice (TUV)** written submission states:

The 1998 Act needs to be radically amended so that after each election those parties who can agree a programme for government and command the requisite majority in the Assembly, form the government, and those who cannot fulfil the vital role of Opposition.

Financial assistance should be allocated to Opposition parties in proportion to how many elected MLAs they have.

TUV believes that it is essential that, in keeping with standard practice elsewhere, the Chair of the Public Accounts Committee should be filled by an MLA from outside the government parties.

it is essential that non-executive parties are guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.

104. The **UK Independence Party (UKIP)**, in its written submission, proposed:

It would be sufficient that any government coalition would have to include at least one broadly unionist party and one broadly nationalist party.

… since they would hold all committee chair and deputy chair positions, the secretariat of the committees should be at [opposition parties'] disposal…

Second, the amount of opposition support money each non-government party would receive should be related to the number of First preference votes they received in the preceding Assembly election…

Committee Chairs and deputy Chairs should be allocated to non-government parties who do not hold Ministerial office.

Opposition speaking time should be built into all debates on government measures according to the size of the opposition party.

105. **Mr John McCallister and Mr Basil McCrea**, **then Independent Members** in their written submission, stated:

The introduction of provisions to formally recognise Opposition - within the context of power-sharing and inclusivity - is essential if authentic democratic, parliamentary accountability is to emerge in Northern Ireland.

…it would be appropriate to designate - as in the South African model - the leader of the largest non-Executive party as 'Leader of the Opposition', with relevant parliamentary rights.

In both Scotland and Wales, the number of Members within Opposition Parties chiefly … determines the financial assistance received. Northern Ireland should follow this approach.

It would be appropriate to ensure that a not insignificant proportion (perhaps 50) of Chairs were Members of Opposition Parties, with Deputies from Executive Parties and vice-versa. This provision would operate alongside removing the d'Hondt mechanism for such appointments, while requiring a weighted majority vote in the Assembly.

The Westminster model of allotting a number of days each session to the Opposition and providing for a role for the Leader of the Opposition at PMQs would be appropriate.

106. Among the academics who responded to the Call for Evidence, opinion was more evenly split, with several highlighting the existing provision for Parties to choose not to take their Executive seat(s), and others expressing support for a more established form of opposition.

107. Several of the academics – Professors McCrudden et al, Professor Galligan and Dr O'Malley – felt that a compromise would be to increase the research capability of all MLAs, to enhance scrutiny while maintaining the principle of proportionality.

108. A further point that came out in several of the responses was that, even if the d'Hondt system is maintained for the allocation of Committee Chairpersons/Deputy Chairpersons, an exception should be made for the Public Accounts Committee — and possibly the Committee for Standards and Privileges — as convention in other legislatures is that those posts are held by Members of non-Executive Parties.

109. An issue that arose during the Committee evidence sessions was the question of whether, if provisions were introduced for non-Executive/opposition parties, they should be provided to all non-Executive parties, or only those whose number of Members was above a certain threshold.

110. **Professor Derek Birrell, University of Ulster**, stated in his written submission:

> *System could simply be incongruous if there are different levels of opposition, the majority party in Executive able to disagree with minority party (parties) plus a second level of opposition between government and non-government parties.*
>
> *The chair and deputy chair of the Public Accounts Committee by convention where there is a government and opposition model should always be from opposition parties.*

During the 19th March 2013 evidence session, Professor Birrell stated, *"Even with official Opposition parties, the Assembly may still be operating on the basis of double opposition because Minister and parties in the Executive are free to publicly oppose each other."*

111. **Professor Feargal Cochrane, University of Kent,** stated in his written submission:

> *I would tend to agree with the statement that the accountability and effectiveness of the Assembly and Executive could be improved through provisions to formally recognise an Opposition.*
>
> *If it is adequately incentivised and financed (while avoiding the risks over over-incentivisation that may create an 'opposition-ghetto') moving to a formal Opposition could conceivably make a significant improvement to the quality of governance within the devolved institutions*
>
> *Given the previously highlighted concern about the risks of over-incentivisation of potential opposition parties, I am not convinced that the existing arrangements for the allocation of Chairs and Deputy Chairs need to be changed to take account of formal opposition.*
>
> *An obvious way forward again would be a minimum threshold requirement, or perhaps a series of thresholds.*

112. **Professor Yvonne Galligan, Queen's University Belfast,** in her written submission stated:

> *Under formal opposition arrangements, the non-Executive parties could not expect to hold any more chair and deputy chair positions than the current distribution.*
>
> *If there was consensus on introducing a formal opposition, then this move would require appropriate funding…*
>
> *Should an opposition emerge, either by design or default, then the allocation of committee chairs and deputy chairs would have to take this development into account. The d'Hondt system could still work in this scenario…*
>
> *The Public Accounts Committee is one where convention followed elsewhere dictates that the chair and deputy chair positions are held by representatives from non-governing parties.*
>
> *It is reasonable to expect an opposition comprising non-executive parties and party groups to be given additional time to raise and debate non-Executive business.*
>
> *Another pragmatic way forward would be to enhance the research capacities of all MLAs so that they can build on their policy expertise in specific areas, and contribute to legislation as well as carrying out their constituency representative functions.*

During the 23rd April 2013 evidence session, Professor Galligan suggested, in relation to Petitions of Concern, that one initiative could be to "*clarify the circumstances in which a petition of concern could be invoked, possibly confining it to legislation only*."

113. In their joint memorandum to the Committee, **Professors Chris McCrudden, University of Oxford; John McGarry, Queen's University, Canada; Brendan O'Leary, University of Pennsylvania; and Alex Schwartz, Alex Queen's University, Canada**, stated:

> *the d'Hondt system does not oblige an all-party, comprehensive, or "grand coalition." Any party is free to choose to go into opposition. The fact that there are five parties in the current executive is a choice, not one that is forced by the rules.*
>
> *We suggest, in short, that non-executive parties in opposition should have no more call on public resources than a consistent proportionality rule would suggest…*
>
> *… time for non-executive business should be proportionally linked to the size of non-executive parties, but no more.*

During the 5th March 2013 evidence session, Professor O'Leary stated, "*we are generally in favour of enhancing resources to all MLAs to enhance their policy, scrutiny, administrative and monitoring capabilities*." Professor McCrudden stated, *"breaching the principle of proportionality by giving some groups of MLAs more resources than apply to the run of the mill would be a worrying trend."*

Professor McCrudden also stated, *"there is a danger in picking and choosing bits of another system and assuming that they will have the same effects when transferred to your system. … The system is an organic whole and operates in a particular way."*

114. **Dr Eoin O'Malley, Dublin City University**, stated in his written submission:

> *A better way to provide the Assembly with better resources to observe and interrogate executive proposals and to make alternative proposals would to be provide direct support in the areas that one would expect them to want support if they were acting as if they were an opposition. That is to provide policy making capacity and support for legislative proposals. The most logical way to do this would be to enhance the research service provided to MLAs and to committees.*

115. **Professor Rick Wilford, Queen's University Belfast**, in his written submission stated:

> *Executive parties can and do adopt an oppositional role in the current Assembly…*
>
> *should there be a minimum number of MLAs (from one or more parties) below which they would be denied the formal Opposition role?*
>
> *provision for an Opposition would enhance Executive accountability and in theory at least enable a party or coalition of parties to develop an alternative programme for government in order to widen its electoral base.*
>
> *additional financial assistance: this would be justifiable and in all likelihood, relatively inexpensive, especially were there to be a reduction in both the total number of MLAs and of Executive departments.*
>
> *I am disposed to retain the proportional allocation of Chairs/Deputy Chairs via either d'Hondt or St Lague.*

During the 26th February 2013 evidence session, Professor Wilford emphasised that there should be a "*threshold*" for Parties wishing to receive any benefits provided for opposition parties, as otherwise, "*some individual … could have a perverse incentive to set themselves up as a party … in order to get the benefits of funding, speaking rights, and so forth*."

116. The **Labour Party in NI** stated in its written submission:

> *it is our belief that democracy is being undermined in the Assembly as a direct consequence of the lack of an effective parliamentary opposition. We believe an opposition needs to be*

established urgently if there is to be any chance of democratic accountability in Northern Ireland.

… although our party disagrees with the community designation system, if it were to be retained the largest opposition parties on both the nationalist and unionist side could receive equitable sums of money, irrelevant of party size.

Opposition parties could alternatively receive money relative to the number of MLAs that they have…

Another system could be that only larger opposition parties, numbering between 5-8 MLAs+, could receive financial assistance.

Membership of committees should be completely proportional to party strength in the Assembly but, where possible, chairmanships, and indeed Deputies, should not come from governing parties.

117. The **Centre for Opposition Studies** written submission stated:

We are strongly of the view that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions formally to recognise Opposition, whilst retaining the principles of power-sharing and inclusivity.

… we believe it is a natural and desirable development for opposition parties to be allocated financial resources for their role in scrutinising the executive.

With regard to allocating Committee Chairmanships, the same arguments apply. However, there is at present no clear linkage between allocation of ministerial positions and entitlement to chairmanships- they simply use the same system, separately. It would seem sensible in looking to review the arrangements to consider how more of a linkage might be made, for example by introducing a system where a party that chooses not to take up its ministerial allocations would gain extra entitlement to Chairmanships.

…the expectation should be that representatives of the Official Opposition are given greater privileges in debate and questioning of ministers.

118. The **de Borda Institute** written submission stated:

In any power-sharing administration, there can be and will be constructive opposition, as long as topics are considered as suggested above [see p.5 of submission], in a multi-optional manner.

No especial funding is necessary.

[allocation of Chairs/Deputy Chairs] can be done by a matrix vote.

119. The **Platform for Change** written submission stated:

Were the changes advocated in the two preceding sections to be introduced, those parties not joining an executive after an election would, de facto, become the non-governing parties. Once government formation is transformed and communal designation replaced … the question of an opposition resolves itself.

Parties should be publicly resourced according to their assembly strength.

It is … perfectly correct to retain d'Hondt as a mechanism for distributing assembly committee chairs and vice-chairs.

Time in the assembly should also be allocated in proportion to party strength.

During the 7th May 2013 evidence session, Dr Robin Wilson, the Chair of Platform for Change, stated, *"it seems logical to have an opposition consisting of those parties that elect*

to be non-governing parties after an election." Dr Wilson also suggested that, *"after an Assembly election, there would be negotiations among the parties on a potential Programme for Government."*

120. The Assembly Research Papers commissioned by the Committee under this review are available in full at Appendix 6 of this Report.

Committee Analysis and Conclusions

121. In light of the written and oral evidence received, the Committee considered and discussed the issues of d'Hondt, community designation and provisions for opposition as three separate but interrelated issues. The Committee discussed the various Party positions at its meetings of 4th, 11th and 18th June 2013, in closed session.

122. The Committee noted that it had agreed under its terms of reference for this Review to *"guarantee[ing] safeguards and protections to ensure that the institutions operate on an inclusive and power-sharing basis."*

D'Hondt and Opposition

123. Among the Committee, there was no consensus on ceasing to use/replacing D'Hondt as the mechanism for allocating Ministerial positions or Committee Chairpersons/Deputy Chairpersons.

124. During the 4th June Committee meeting, a **DUP** representative noted, *"… d'Hondt is not entirely satisfactory but it is accurate to say that we have not agreed – as yet, anyway – that another mechanism would be better."* This view was supported by a SDLP representative.

125. At that Committee meeting, the UUP representative suggested that d'Hondt could be *"run concurrently for Ministers and Chairs"*; however, no support was expressed for this proposal from the other Parties. At the Committee meeting of 11th June, the UUP representative reiterated his Party's position on this and added that, *"there are other options that would also reflect the Belfast Agreement."*

126. Four of the five Parties represented on the Committee (**Alliance, DUP, SDLP and UUP**) agreed that a suitable model for opposition/Non-Executive parties in the Assembly would be an **opt-out model**, whereby Parties can exercise their right to opt-out of taking up their Ministerial posts **or** withdraw from the Executive and become a non-Executive/opposition Party. Although a **Sinn Féin** representative stated that the Party *"was not persuaded of the need for an opposition"*, it recognised that Parties can opt-out of the Executive. The Committee therefore focused on building on this consensus and developing options and conclusions in this area.

127. The Committee considered **options to recognise opposition status**. The options listed below were developed based on the current Assembly model, which affords speaking rights, allocation of Committee Chairpersons/Deputy Chairpersons, entitlement to schedule debates and provides resources for political parties on a proportional basis. Within this system there are varying thresholds beneath which some entitlements do not accrue; namely entitlement to schedule motions (on a proportional basis) and opportunity to nominate Committee Chairpersons/Deputy Chairpersons.

- **Option 1: "nominal" recognition of Non-Executive parties/opposition** – Parties exercise their right not to take their Executive entitlement.
  - No additional financial resources provided;
  - Recognition of status by order of speaking;
  - No additional Committee Chairpersons.
- **Option 2: "informal" recognition of non-Executive parties/opposition** – Parties exercise their right not to take their Executive entitlement.
  - No additional financial resources provided;
  - Recognition of status by order of speaking;
  - Allocate time for additional non-Executive business — to be determined by non-Executive parties/opposition;

- No additional Committee Chairpersons.

- **Option 3 – "formal" recognition of Non-Executive parties/opposition** – Parties exercise their right not to take their Executive entitlement.
  - Additional financial resources provided relative to per capita allocation of Executive parties;
  - Additional speaking rights provided;
  - Recognition of status by order of speaking;
  - Allocate time for additional non-Executive business — to be determined by non-Executive parties/opposition;
  - Additional Committee Chairperson - e.g. PAC;
  - May require constitutional and procedural safeguards.
- **Option 4 – "formal" Opposition** – Parties exercise their right not to take their Executive entitlement.
  - Additional financial resources provided relative to per capita allocation of Executive parties;
  - Additional speaking rights provided;
  - Recognition of status by order of speaking;
  - Allocate time for additional non-Executive business — to be determined by non-Executive parties/opposition;
  - Additional Committee Chairpersons;
  - Shadow Executive formed, involving a cross-community requirement;
  - Will require constitutional and procedural safeguards.

128. The Parties of the Committee considered these options, with **Sinn Féin** reiterating at the 4th June meeting that they, *"do not see a need for any sort of formal opposition, or an informal one for that matter"* and stating that, *"The power of Committees to scrutinise legislation and hold Ministers to account is more powerful here than in other institutions on these islands."* Of the options listed above, the **DUP** and **SDLP** stated that they would favour some form of hybrid between options 2 and 3. A **DUP** representative at the Committee meeting of 11th June emphasised the importance of giving recognition to "*non-Executive Parties above a certain threshold* [in terms of Party strength]" rather than *"parties who are entitled to be in the Executive but opt out."* A **Sinn Féin** representative raised the point that *"there already is a provision in place for parties where two Members are given speaking rights".* The **UUP** emphasised the importance of guaranteeing speaking rights to non-Executive/opposition Parties rather than additional financial resources. At the 11th June Committee meeting, the **UUP** representative added, *"I would have thought there should be a degree of rebalancing [within existing funding] between Executive and non-Executive parties, if somebody opts out".* A **DUP** representative pointed out that *"a governing party in Northern Ireland"* will also *"have a scrutiny role"* and so Parties should not *"be hindering our opposition role".*

129. The Committee then discussed **some issues related to the opt-out model of opposition**, which had been raised in earlier Committee discussions and in some stakeholder submissions. These were:

a. There was a view that if a party opts out of the Executive, and were therefore to accrue benefits arising from their non-Executive/opposition status, they should not have the option of returning to the Executive. Under current arrangements established under the Northern Ireland Act 1998, it would be possible for a party to return to the Executive if an action were taken (e.g. reconfiguration of Departments) that would result in d'Hondt being run again during the mandate. However, as the action precipitating such an

opportunity — for example, changing the number of Departments — would be under the control of the Executive, this issue may be less important in practice.

b. A more significant issue was whether a Party that opts out of the Executive after a period of time, say one year, should accrue any rights or benefits as a non-Executive/opposition Party. This could be achieved under existing legislation, though it may necessitate changes to Standing Orders, and would also protect against the potential incentive to seek to accrue benefits that arise from being in Government earlier in a mandate and seeking to oppose that Government as an election approaches. The Committee discussed this second issue and the representatives from the **DUP**, **SDLP** and the **UUP** recognised that, on balance, it would not be appropriate, or considered normal, to have sanctions to discourage Parties from opting-in and out of the Executive.

c. Committee discussions and some submissions indicated the value that there could be in the incoming Executive Parties seeking to agree a "high level" Programme for Government in the period prior to the running of d'Hondt, with the expectations that the full draft Programme for Government is published shortly after the new Executive is formed. This was set out in the **DUP** submission and was supported by the **SDLP** and the **UUP** during the 4th June 2013 Committee meeting, with a **SDLP** representative stating, *"My party is still very attracted to … the idea of agreeing at least the heads of agreement of a Programme for Government."*

d. The Committee discussed whether non-Executive Parties should be entitled to additional resources and speaking rights if they have a certain number of MLAs. The **SDLP** considered that there should be such a threshold, as well as a facility for technical groups, as exists in Scotland and Dáil Éireann.

e. Finally, on issues related to the opt-out model of opposition, the Committee discussed the specific issue of whether a non-Executive/opposition Party should hold the Chairpersonship of the Public Accounts Committee and perhaps the Standards and Privileges Committee. It was noted that an effort is already made to ensure that Chairpersons/Deputy Chairpersons of Statutory Committees are not from the same Party as the serving Minister. The only Party representatives who commented on this subject was the **UUP** representative, who referred to d'Hondt being run concurrently for Ministers and Chairpersons of Committees (see paragraph 114).

Community Designation and Petitions of Concern

130. There is no consensus within the Committee, particularly in the short-term and medium term, for replacement of **community designation** by, for example, a weighted majority vote in the Assembly of 65%.

131. However, the Committee discussed two areas where there appears to be some Party support for changes to **Petitions of Concern** with regard to:

a. A possible proportional increase in the number of MLA signatures (relative to the size of the Assembly) which can trigger a Petition of Concern. All Parties represented on the Committee recognised that, should the number of MLAs in the Assembly be reduced, this would present an opportunity to consider changing the proportional number of MLA signatures required for a Petition of Concern;

b. The possibility of amending Standing Orders to introduce a clear requirement that all Petitions of Concern relating to Assembly primary legislation (and Legislative Consent Motions) would result in an Ad-hoc Committee on Equality Requirements being established — in advance of consideration of the Petition of Concern in plenary — to advise on the equality and human rights associated with the issue being petitioned. Under this system the creation of an Ad-hoc Committee could only be prevented if

there is agreement in plenary on a cross-community basis that it is not required. While Party representatives did not address this particular area directly, the **UUP** representative said during the 4th June meeting that Petitions of Concern have been *"used and abused"* and that *"it would be healthy if there was a mechanism to limit that occurrence".* He went on to say, *"We ought to look at how we can produce better governance and better arrangements, such as have been suggested."*

Conclusions

132. **There was no consensus on ceasing to use/replacing the current D'Hondt system as the mechanism for allocating Ministerial positions or Committee Chairperson/Deputy Chairperson.**

133. **The Committee concluded that there is no consensus at present to move to a formal Government and Opposition model, such as exists in Westminster. It also concluded that there is no consensus to move from the current opt-out model, whereby Parties can exercise their right to opt-out of taking up their Ministerial post or withdraw from the Executive, based on existing Assembly provisions.**

134. **The Committee concluded that financial support for political parties should continue to be allocated on a broadly proportional basis and did not consider that additional resources should be allocated to non-Executive/opposition Parties.**

135. **The Committee concluded that Parties that exercise their right not to take their Executive entitlement would have "informal" recognition of non-Executive/opposition status on a proportional basis by:**

- **Additional speaking rights;**
- **recognition of status by order of speaking; and**
- **allocation of time for additional non-Executive business – the use of the allocation to be determined by non-Executive Party/opposition.**

The representatives of Sinn Féin stated that they were unable to support his conclusion.

136. **The Committee concluded that Parties that have failed to meet the Executive threshold for d'Hondt but have reached a suitable threshold should attract appropriate recognition in terms of speaking rights, status by order of speaking and allocation of time for non-Executive business, in proportion to their Party strength.**

137. **The Committee recognised that there may be some value in Technical Groups and recommended that this facility for smaller Parties of the Assembly be reviewed.**

138. **The Committee concluded that the Parties of the incoming Executive should aim to agree a Heads of Agreement of a Programme for Government in advance of the formation of the Executive, with a full draft Programme for Government published in accordance with current procedures.**

139. **The Committee concluded that there was no consensus for replacement of community designation by, for example, a weighted-majority vote in the Assembly of 65%.**

140. **Following the evidence that was presented to the Committee regarding Petitions of Concern, the Committee concluded that further detailed work in relation to Petitions of Concern needs to be carried out.**

Northern Ireland Assembly

Appendix 1

Minutes of Proceedings of the Committee Relating to the Report

Tuesday 4 December 2012, Room 21, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray (Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Stewart Dickson
Mr Paul Givan
Mr Simon Hamilton
Mr John McCallister
Mr Raymond McCartney
Mr Conall McDevitt

Apologies: Ms Caitríona Ruane
Mr Pat Sheehan

In Attendance: Mr John Simmons (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Mr Christopher McNickle (Clerical Officer)
Mr Raymond McCaffrey (Research Officer)
Ms Kiera McDonald (Legal Adviser)

5. AERC Next Review Subject

The Chairperson advised Members that, as the Committee was to receive a legal briefing from Assembly Legal Service on its next review subject, it would be appropriate for the Committee to go into closed session for the duration of the briefing and any subsequent discussion.

Agreed: To move into closed session.

11:05am The Committee moved into closed session.

The Chairperson welcomed a representative from Assembly Legal Service and invited her to join the meeting.

11:05am Assembly Legal Service representative joined the meeting.

The Assembly Legal Adviser briefed the Committee.

11:07am Mr Simon Hamilton joined the meeting.

11:16am Mr Roy Beggs left the meeting.

The Chairperson thanked the Assembly Legal Adviser.

11:24am The Committee moved into open session.

6. AERC Next Review Subject (continued)

The Chairperson welcomed a representative from Assembly Research and Information Service and invited him to join the meeting.

11:24am Assembly Research representative joined the meeting.

The Assembly Research representative briefed the Committee on the Research Paper entitled 'Opposition, Community Designation and D'Hondt' as requested.

This was followed by a short discussion on the paper.

The Chairperson thanked the Assembly Research Officer.

The Chairperson reminded Members that the Committee had the option of moving into closed session to discuss the subject of its next review.

Agreed: To move into closed session.

11:42am The Committee moved into closed session

11:42am Mr Stewart Dickson left the meeting.

11:43am Mr Roy Beggs joined the meeting.

12:01pm Mr Paul Givan joined the meeting.

The Committee discussed the topics to be covered in the Committee's next Review in order to identify the key issues that should be included in a stakeholder 'Call for Evidence' paper and reflected in the overall Terms of Reference of the Review.

Agreed: To continue discussions on this at the Committee's next meeting.

12:12pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 15 January 2013, Room 21, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray (Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Paul Givan
Mr Simon Hamilton
Mr John McCallister
Mr Raymond McCartney
Mr Conall McDevitt
Ms Caitríona Ruane
Mr Pat Sheehan

Apologies: None

In Attendance: Mr John Simmons (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)

4. D'Hondt, Community Designation and the Creation of an Opposition

The Chairperson reminded members that at the meeting of 4th December 2012, the Committee discussed its next review, which will focus on d'Hondt, community designation and the creation of an opposition. On the basis of that discussion, the Committee Secretariat provided an initial draft 'Call for Evidence' paper, which included draft Terms of Reference and the key issues and questions for stakeholders.

The Chairperson advised members that the Committee had agreed at the meeting of 4 December 2012 to spend the next few meetings discussing the issues that may arise in the Review in more detail. The Chairperson reminded Members that the Committee had the option of moving into closed session for this discussion.

Agreed: To move into closed session.

15:08pm The Committee moved into closed session.

15:08pm Mr John McCallister joined the meeting.

The Clerk of the Committee proceeded to outline the key aspect of the paper and the Committee then discussed the overall paper, the draft Terms of Reference and other issues relating to the Review.

15:10pm Ms Caitríona Ruane left the meeting.

15:13pm Ms Caitríona Ruane rejoined the meeting.

15:14pm Ms Caitríona Ruane left the meeting.

15:20pm Ms Caitríona Ruane rejoined the meeting.

15:23pm Mr Conall McDevitt left the meeting.

15:24pm Mr Conall McDevitt rejoined the meeting

Agreed: To continue the discussions at the Committee's next meeting.

The Chairman proposed to send a letter to the Secretary of State for Northern Ireland, requesting that a summary of the outcome of the recent NIO consultation on 'Measures to

improve the operation of the Northern Ireland Assembly' be forwarded to the Committee as soon as it is available.

Agreed: The Committee agreed to send the letter to the Secretary of State.

The Chairman proposed that the meeting moved into open session.

Agreed: To move into open session.

15:26pm The Committee moved into open session.

15:26pm Mr Roy Beggs left the meeting.

15:28pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 29 January 2013, Room 21, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray (Chairperson)
Mr Roy Beggs
Mr Stewart Dickson
Mr Paul Givan
Mr Simon Hamilton
Mr John McCallister
Mr Raymond McCartney
Mr Conall McDevitt
Ms Caitríona Ruane
Mr Pat Sheehan

Apologies: None

In Attendance: Mr John Simmons (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Mr Joe Westland (Clerical Supervisor)

4. D'Hondt, Community Designation and Provisions for Opposition

The Chairperson reminded Members that at the meeting of 15th January, the Committee discussed issues relating to its Review of d'Hondt, community designation and provisions for opposition. At that meeting, the Committee discussed the initial draft 'Call for Evidence' paper and suggested some amendments to it. The Chairperson informed Members that a revised paper has been provided to Members in this week's meeting pack, for Committee revision and agreement.

The Chairperson reminded Members that the Committee had the option of moving into closed session for this discussion.

Agreed: To move into closed session.

11:04am The Committee moved into closed session.

11:04am Mr Pat Sheehan joined the meeting.

The Clerk of the Committee proceeded to brief Members on the amended 'Call for Evidence' paper and the other papers provided to Members. The Committee proceeded to have a discussion based on these papers.

11:09am Ms Caitríona Ruane left the meeting.

11:09am Mr Simon Hamilton left the meeting.

11:10am Ms Caitríona Ruane rejoined the meeting.

11:10am Mr John McCallister joined the meeting.

11:11am Ms Caitríona Ruane left the meeting.

11:12am Ms Caitríona Ruane rejoined the meeting.

11:14am Mr Roy Beggs joined the meeting.

Agreed: To continue the discussions at the Committee's next meeting, with the aim of finalising the 'Call for Evidence' paper.

The Committee discussed the draft Stakeholder list and suggested some amendments.

The Chairperson noted an acknowledgement received from the Secretary of State for Northern Ireland, in response to the Committee's letter requesting that a summary of the outcome of the recent NIO consultation on 'Measures to improve the operation of the Northern Ireland Assembly' be forwarded to the Committee as soon as it is available. The acknowledgement states that a reply will be forwarded to the Committee as soon as possible.

11:29am The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 12 February 2013, Room 21, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray (Chairperson)
Mr Gregory Campbell
Mr Stewart Dickson
Mr Paul Givan
Mr Simon Hamilton
Mr John McCallister
Mr Raymond McCartney
Mr Conall McDevitt
Ms Caitríona Ruane

Apologies: Mr Roy Beggs
Mr Pat Sheehan

In Attendance: Mr John Simmons (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Ms Andrienne Magee (Clerical Officer)

4. D'Hondt, Community Designation and Provisions for Opposition

The Chairperson reminded Members that at the meeting of 29th January 2013, the Committee discussed issues relating to its Review of d'Hondt, community designation and provisions for opposition. At that meeting, the Committee considered the redrafted 'Call for Evidence' paper and suggested some amendments to it. The Chairperson informed Members that a revised paper has been provided to Members in this week's meeting pack, for Committee consideration and agreement.

The Chairperson advised Members that some amendments were also made to the stakeholder list, based on the discussion at the meeting of 29th January. An updated version of the stakeholder list was tabled, which includes additional academics suggested to the Committee Secretariat.

The Chairperson reminded Members that the Committee had the option of moving into closed session at this stage for further discussion.

Agreed: To move into closed session.

11:19am The Committee moved into closed session.

The Clerk of the Committee briefed Members on the amended 'Call for Evidence' paper and the other papers provided to Members. The Committee proceeded to have a discussion based on these papers.

The Committee discussed the draft stakeholder list.

The Committee discussed the possibility of an information-gathering visit to another legislature to inform the current Review.

Agreed: The Committee agreed to further discuss a possible visit at its next meeting.

The Chairperson proposed that the meeting move into open session.

Agreed: To move into open session.

11:32am The Committee moved into open session.

Agreed: The Committee agreed the 'Call for Evidence' paper and that it should be issued for consultation.

Agreed: The Committee agreed the stakeholder list.

11:34am The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 26 February 2013, Room 21, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray (Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Stewart Dickson
Mr Paul Givan
Mr Simon Hamilton
Mr John McCallister
Mr Raymond McCartney
Mr Conall McDevitt
Ms Caitríona Ruane
Mr Pat Sheehan

Apologies: None

In Attendance: Mr John Simmons (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Ms Andrienne Magee (Clerical Officer)
Professor Rick Wilford, Queen's University Belfast

3. Matters Arising

The Committee noted the letter from the Secretary of State for Northern Ireland to the Speaker dated 11th February 2013, regarding the recent NIO 'Consultation on Measures to Improve the Operation of the Northern Ireland Assembly'. The Committee also noted the summary of responses to the consultation, which it had requested.

The Committee noted the response from the OFMDFM Committee to its 'Call for Evidence' request, indicating that its Members were content for their Parties to make submissions to AERC on this matter.

There were no further matters arising.

4. D'Hondt, Community Designation and Provisions for Opposition

The Chairperson reminded the Committee that the purpose of this agenda item was for the Committee to consider oral evidence on its Review of d'Hondt, community designation and provisions for opposition.

The Chairperson invited Professor Rick Wilford, Director of Legislative Studies and Practice at Queen's University Belfast, to join the meeting.

10:35am Professor Rick Wilford joined the meeting.

Professor Rick Wilford briefed the Committee on his written submission to the Committee's Review.

This was followed by a question and answer session.

10:41am Mr Raymond McCartney joined the meeting.

10:44am Ms Caitríona Ruane joined the meeting.

11:01am Mr Conall McDevitt left the meeting.

11:02am Mr Gregory Campbell joined the meeting.

11:03am Ms Caitríona Ruane left the meeting.

11:16am Mr John McCallister joined the meeting.

11:21am Mr Paul Givan joined the meeting.

The Chairperson thanked Professor Wilford for his oral evidence to the Committee.

11:26am Professor Rick Wilford left the meeting.

11:27am The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 5 March 2013, Senate Chamber, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray (Chairperson)
Mr Roy Beggs
Mr Stewart Dickson
Mr Paul Givan
Mr Simon Hamilton
Mr Raymond McCartney
Mr Conall McDevitt
Ms Caitríona Ruane
Mr Pat Sheehan

Apologies: Mr Gregory Campbell
Mr Seán Rogers

In Attendance: Mr John Simmons (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Ms Andrienne Magee (Clerical Officer)
Professor Christopher McCrudden, Queen's University Belfast
Professor Brendan O'Leary, University of Pennsylvania

4. D'Hondt, Community Designation and Provisions for Opposition

The Chairperson reminded the Committee that the purpose of this agenda item was for the Committee to consider oral evidence on its Review of d'Hondt, community designation and provisions for opposition.

The Chairperson invited Professor Christopher McCrudden from Queen's University Belfast and Professor Brendan O'Leary from the University of Pennsylvania, to join the meeting.

10:07am Professor Christopher McCrudden and Professor Brendan O'Leary joined the meeting.

Professor Christopher McCrudden and Professor Brendan O'Leary briefed the Committee on their written submission to the Committee's Review.

This was followed by a question and answer session.

10:08am Mr Roy Beggs joined the meeting.

10:13am Mr Pat Sheehan joined the meeting.

10:14am Ms Caitríona Ruane joined the meeting.

10:23am Mr Roy Beggs left the meeting.

10:23am Mr Stewart Dickson left the meeting.

10:34am Mr Pat Sheehan left the meeting.

10:59am Ms Caitríona Ruane left the meeting.

The Chairperson thanked Professor McCrudden and Professor O'Leary for their oral evidence to the Committee.

11:06am Professor McCrudden and Professor O'Leary left the meeting.

11:07am The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 19 March 2013, Room 29, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray (Chairperson)
Mr Roy Beggs
Mr Simon Hamilton
Mr Raymond McCartney
Mr Conall McDevitt
Ms Caitríona Ruane
Mr Pat Sheehan

Apologies: Mr Stewart Dickson
Mr Paul Givan
Mr Seán Rogers

In Attendance: Mr John Simmons (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Ms Andrienne Magee (Clerical Officer)
Mr Jonathan Watson (Clerical Supervisor)
Professor Derek Birrell, University of Ulster

4. D'Hondt, Community Designation and Provisions for Opposition

The Chairperson reminded the Committee that the purpose of this agenda item was for the Committee to consider oral evidence on its Review of d'Hondt, community designation and provisions for opposition.

The Chairperson invited Professor Derek Birrell from the University Ulster to join the meeting.

10:46am Professor Derek Birrell joined the meeting.

Professor Birrell briefed the Committee on his written submission to the Committee's Review.

This was followed by a question and answer session.

10:51am Mr Pat Sheehan joined the meeting.

10:52am Mr Raymond McCartney left the meeting.

10:53am Mr Roy Beggs joined the meeting.

10:54am Mr Simon Hamilton left the meeting.

10:57am Mr Simon Hamilton rejoined the meeting.

10:57am Ms Caitríona Ruane left the meeting.

11:01am Mr Conall McDevitt joined the meeting.

11:22am Mr Pat Sheehan left the meeting.

11:23am Mr Pat Sheehan rejoined the meeting.

The Chairperson thanked Professor Birrell for his oral evidence to the Committee.

11:24am Professor Birrell left the meeting.

11:25am The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 9 April 2013, Room 21, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Pat Sheehan (Deputy Chairperson)
Mr Gregory Campbell
Mr Simon Hamilton
Mr Raymond McCartney
Mr Conall McDevitt
Mr Seán Rogers
Ms Caitríona Ruane

Apologies: Mr Stephen Moutray
Mr Stewart Dickson

In Attendance: Mr John Simmons (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Ms Andrienne Magee (Clerical Officer)
Mr Jonathan Watson (Clerical Supervisor)

4. D'Hondt, Community Designation and Provisions for Opposition

The Chairperson advised the Committee that, due to unforeseen circumstances, the scheduled evidence session with Professor Galligan of QUB has had to be postponed until 23rd April 2013.

The Chairperson referred the Committee to copies of all responses received to date in respect of the Call for Evidence paper and noted that several political parties had not yet provided a response.

Agreed. The Committee agreed that the Chairperson should write to the leaders of the political parties and independent Members of the Assembly who had not yet responded to the Call for Evidence Paper, requesting that they provide a response as soon as possible.

The Committee noted that, in its submission, Platform for Change requested the opportunity to present to the Assembly and Executive Review Committee.

Agreed: The Committee agreed that Platform for Change should be invited to give oral evidence as part of the current Review.

10:19am The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 23 April 2013, Room 21, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Pat Sheehan (Deputy Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Stewart Dickson
Mr Paul Givan
Mr Simon Hamilton
Mr Seán Rogers
Ms Caitríona Ruane

Apologies: Mr Stephen Moutray
Mr Conall McDevitt

In Attendance: Mr John Simmons (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Mr Joseph Westland (Clerical Supervisor)
Mr Jonathan Watson (Clerical Supervisor)
Professor Yvonne Galligan, Queen's University Belfast.

4. D'Hondt, Community Designation and Provisions for Opposition

The Deputy Chairperson reminded the Committee that the purpose of this agenda item was for the Committee to consider oral evidence on its Review of d'Hondt, community designation and provisions for opposition.

The Deputy Chairperson invited Professor Yvonne Galligan from Queen's University Belfast, to join the meeting.

10.06am Professor Yvonne Galligan joined the meeting.

Professor Yvonne Galligan briefed the Committee on her written submission to the Committee's Review.

This was followed by a question and answer session.

10.24am Mr Paul Givan joined the meeting.

10:28am Mr Roy Beggs left the meeting.

10:30am Mr Gregory Campbell joined the meeting.

The Deputy Chairperson thanked Professor Galligan for her oral evidence to the Committee.

10:55am Professor Galligan left the meeting.

11:07am The Deputy Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 7 May 2013, Room 29, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Pat Sheehan (Deputy Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Paul Givan
Mr Simon Hamilton
Mr Raymond McCartney
Mr Conall McDevitt
Mr Seán Rogers
Ms Caitríona Ruane

Apologies: Mr Stewart Dickson
Mr Stephen Moutray

In Attendance: Mr John Simmons (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Mr Joseph Westland (Clerical Supervisor)
Dr Robin Wilson, Platform for Change
Ms Eileen Cairnduff, Platform for Change

4. D'Hondt, Community Designation and Provisions for Opposition

The Deputy Chairperson reminded the Committee that the purpose of this agenda item was for the Committee to consider oral evidence on its Review of d'Hondt, community designation and provisions for opposition.

The Deputy Chairperson invited Dr Robin Wilson and Ms Eileen Cairnduff from Platform for Change to join the meeting.

10:05am Dr Robin Wilson and Ms Eileen Cairnduff joined the meeting.

Dr Robin Wilson briefed the Committee on the Platform for Change submission to the Committee's Review.

This was followed by a question and answer session.

10:08am Mr Roy Beggs joined the meeting.

10:09am Ms Caitríona Ruane joined the meeting.

10:12am Mr Paul Givan left the meeting.

10:12am Mr Gregory Campbell joined the meeting.

10:16am Mr Raymond McCartney joined the meeting.

The Deputy Chairperson thanked Dr Wilson and Ms Cairnduff for their oral evidence to the Committee.

10:26am Dr Wilson and Ms Cairnduff left the meeting.

10:26am Mr Roy Beggs, Mr Conall McDevitt and Mr Séan Rogers left the meeting.

The Deputy Chairperson advised Members that a response to the Committee's Call for Evidence Paper was received from the Green Party in NI.

The Deputy Chairperson advised Members that responses have still not been received from all political parties represented in the Assembly, and requested that Members whose parties have not responded make an effort to ensure that a response is sent to the Call for Evidence.

The Deputy Chairperson advised Members that, as agreed at the meeting of 23rd April 2013, a memo was sent to the Committee on Procedures stating that it would be appropriate for the AERC Committee to consider the issue as part of the current Review, and a response dated 29th April was received from the Committee on Procedures, stating that "it is content for AERC to take this matter forward as part of its Review."

The Deputy Chairperson advised Members that Assembly Research and Information Service provided the information requested at the previous meeting, regarding all Petitions of Concern submitted to date, contextualised to take account of periods when the Assembly was suspended.

Agreed: To move into closed session.

10:28am The Committee moved into closed session.

Agreed: To hear the briefing from the Assembly Legal Service representative at the Committee's next meeting, on 21st May 2013.

10:32am The Committee moved into open session.

10:32am The Deputy Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 21 May 2013, Room 29, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray (Chairperson)
Mr Roy Beggs
Mr Stewart Dickson
Mr Paul Givan
Mr Simon Hamilton
Mr Raymond McCartney
Mr Conall McDevitt
Ms Caitríona Ruane

Apologies: Mr Seán Rogers
Mr Pat Sheehan

In Attendance: Mr John Simmons (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Mr Jonathan Watson (Clerical Supervisor)
Mr Joseph Westland (Clerical Supervisor)

11.04am The meeting opened in public session.

5. D'Hondt, Community Designation and Provisions for Opposition

Members noted the responses to the Committee's Call for Evidence Paper received from the Alliance Party, DUP and SDLP, and a table listing the Key Points from all of the Call for Evidence responses.

The Chairperson advised Members that, as the Committee was to receive a legal briefing from Assembly Legal Service on an issue relevant to the current Review, and it would be appropriate for the Committee to go into closed session for the duration of the briefing and any subsequent discussion.

Agreed: To move into closed session.

11.06am The Committee moved into closed session.

The Chairperson welcomed a representative from Assembly Legal Service and invited her to join the meeting.

11.06am The Assembly Legal Service representative joined the meeting.

11.13am Ms Caitríona Ruane joined the meeting.

11.20am Ms Caitríona Ruane left the meeting.

11.33am Mr Paul Givan left the meeting.

The Chairperson thanked the Assembly Legal Adviser.

12.04pm Mr Roy Beggs left the meeting.

The Committee discussed key issues relating to the Review.

Agreed: The Committee agreed to continue its discussion on this at the next meeting.

12.09pm The Committee moved into open session.

12.10pm The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 4 June 2013, Room 21, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray (Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Paul Givan
Mr Raymond McCartney
Mr Conall McDevitt
Mr Seán Rogers
Ms Caitríona Ruane
Mr Pat Sheehan

Apologies: Mr Simon Hamilton

In Attendance: Mr John Simmons (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Mr Joseph Westland (Clerical Supervisor)

11.05 am The meeting opened in public session.

4. D'Hondt, Community Designation and Provisions for Opposition

Members noted the response to the Committee's Call for Evidence Paper received from Mr John McCallister and Mr Basil McCrea, and an updated table listing the Key Points from all of the Call for Evidence responses.

Members noted the information provided on financial provisions to Parties in the NI Assembly and the Scottish Parliament, which included modelling for a five-Member Party, as requested at the Committee's meeting on 21st May 2013.

The Chairperson advised the Committee that they had the option of moving into closed session for discussion of the key issues relating to the Review.

Agreed: To move into closed session.

11.06 am The Committee moved into closed session.

The Committee discussed key issues relating to the Review.

11.10 am Ms Caitríona Ruane joined the meeting.

11.25 am Mr Raymond McCartney left the meeting.

11.33 am Mr Paul Givan joined the meeting.

Agreed: The Committee agreed that a draft Report should be produced for Committee discussion at its next meeting.

11.41 am The Committee moved into open session.

11.43 am The Chairperson adjourned the meeting.

[EXTRACT]

Tuesday 11 June 2013, Room 21, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray (Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Stewart Dickson
Mr Paul Givan
Mr Simon Hamilton
Mr Raymond McCartney
Ms Caitríona Ruane
Mr Pat Sheehan

Apologies: Mr Conall McDevitt
Mr Seán Rogers

In Attendance: Mr John Simmons (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Mr Jonathan Watson (Clerical Supervisor)
Mr Joseph Westland (Clerical Supervisor)

10.33 a.m. The meeting opened in public session.

4. D'Hondt, Community Designation and Provisions for Opposition

The Chairperson reminded Members that a copy of the main body of the draft Report on the Review of D'Hondt, Community Designation and Provisions for Opposition was circulated to Members in advance of the meeting, for discussion and agreement.

The Chairperson advised the Committee that they had the option of moving into closed session for discussion of the draft Report.

Agreed: To move into closed session.

10.34 a.m. The Committee moved into closed session

The Committee discussed the draft Report.

10.35 a.m. Mr Simon Hamilton joined the meeting

10.38 a.m. Mr Gregory Campbell joined the meeting

10.45 a.m. Ms Caitríona Ruane left the meeting

11.23 a.m. Mr Pat Sheehan left the meeting

11.28 a.m. Mr Roy Beggs left the meeting

11.32 a.m. Mr Gregory Campbell left the meeting

Agreed: The Committee agreed that a further draft Report should be produced for Committee discussion and agreement at its next meeting.

11.51 a.m. The Committee moved into open session

11.52 a.m. The Chairperson adjourned the meeting

[EXTRACT]

Tuesday 18 June 2013, Room 29, Parliament Buildings, Ballymiscaw, Stormont

Present:	Mr Stephen Moutray (Chairperson) Mr Roy Beggs Mr Gregory Campbell Mr Stewart Dickson Mr Paul Givan Mr Simon Hamilton Mr Raymond McCartney Mr Conall McDevitt Mr Seán Rogers Ms Caitríona Ruane Mr Pat Sheehan	
Apologies:	None.	
In Attendance:	Mr John Simmons	(Assembly Clerk)
	Ms Ursula McCanny	(Assistant Assembly Clerk)
	Mr Jonathan Watson	(Clerical Supervisor)
	Mr Joseph Westland	(Clerical Supervisor)

10.35 a.m The meeting opened in public session.

4. D'Hondt, Community Designation and Provisions for Opposition

The Chairperson reminded Members that, following the discussion at the 11th June Committee meeting, a revised version of the main body of the draft Report on the Review of D'Hondt, Community Designation and Provisions for Opposition was included in the meeting folder.

The Chairperson advised the Committee that they had the option of moving into closed session for discussion of the final draft Report.

Agreed: To move into closed session.

10.36 a.m The Committee moved into closed session.

The Committee considered the final draft of the Report on its Review of D'Hondt, Community Designation and Provisions for Opposition.

10.36 am Ms Caitríona Ruane and Mr Raymond McCartney joined the meeting.

10.40 a.m Mr Seán Rogers joined the meeting.

11.16 a.m The Chairperson left the meeting.

11.16 a.m The Deputy Chairperson took the Chair.

11.19 a.m Mr Paul Givan joined the meeting.

11.25 a.m Mr Raymond McCartney left the meeting.

11.29 a.m Mr Simon Hamiliton left the meeting.

11.30 a.m The Committee moved into open session.

The Deputy Chairperson advised the Committee that the purpose of this session was to allow the Committee to agree the final draft of the Report on the Review of D'Hondt, Community

Designation and Provisions for Opposition and the draft motion for Assembly Plenary debate on the Report.

Agreed: That the covering pages and the 'Introduction' section stand part of the Report.

Agreed: That the 'Committee's Approach to the Review' section stands part of the Report.

Agreed: That the 'Committee Consideration' section stands part of the Report.

Agreed: That the 'Committee Analysis and Conclusions' section stands part of the Report.

Agreed: That the 'Executive Summary' section stands part of the Report.

Agreed: That Appendix 1 of the Report, the Extracts of the Minutes of Proceedings relating to the Review, stands part of the Report.

Agreed: That Appendix 2 of the Report, the Minutes of Evidence (Hansards) relating to the Review, stands part of the Report.

Agreed: That Appendix 3 of the Report, the Stakeholder list and Stakeholder 'Call for Evidence' paper, stands part of the Report.

Agreed: That Appendix 4 of the Report, Table of Key Points of Stakeholder Submissions and the full copies of stakeholders' submissions, stands part of the Report.

Agreed: That Appendix 5 of the Report, Correspondence and Other Papers relating to the Review, stands part of the Report.

Agreed: That Appendix 6 of the Report, Research and Information Service Papers relating to the Review, stands part of the Report.

Agreed: That the Committee Secretariat make any changes to typos and the format of the Report as and when necessary, as these have no effect on the substance of the Report and are purely for formatting and accuracy of text purposes.

Agreed: That the Deputy Chairperson of the Committee approve the extract of the minutes of proceedings from today's meeting for inclusion into the Report.

Agreed: That that the first edition of today's Hansard record of the Review be included in the Report.

Agreed: That the Committee Secretariat forwards an embargoed, electronic version of the Report as soon as it becomes available – with an appropriate covering letter from the Chairperson – to the Secretary of State, First Minister and deputy First Minister.

Agreed: The wording of the motion for debate in Assembly Plenary to be scheduled in Assembly Plenary on 1st or 2nd July 2013 (subject to agreement by the Business Committee).

Agreed: A Media Operational Notice is issued prior to the debate.

Agreed: To order the Report to be printed and that the Report be embargoed until the debate scheduled in Assembly Plenary.

Agreed: That the number of printed copies of the Report be kept to a minimum in the interest of efficiency.

Agreed: That a manuscript copy of the Report be laid with the Business Office by close Wednesday, 19th June 2013.

11.37 a.m The Deputy Chairperson adjourned the meeting.

[EXTRACT]

Appendix 2

Minutes of Evidence

4 December 2012

Members present for all or part of the proceedings:

Mr Stephen Moutray (Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Stewart Dickson
Mr Simon Hamilton
Mr John McCallister
Mr Raymond McCartney
Mr Conall McDevitt

Also in attendance:

Mr Ray McCaffrey	*Northern Ireland Assembly Research and Library Service*

1. **The Chairperson**: You are very welcome, Ray. If you want to brief the Committee on the paper, feel free to go ahead.

2. **Mr Ray McCaffrey (Northern Ireland Assembly Research and Library Service)**: Thank you, Chair. We were asked to look at the issues that you have just received legal advice on, but we will not be touching on any of the legal aspects. We are just going to draw on some information on how oppositions operate elsewhere and, hopefully, give the Committee some options to consider as it takes the review forward.

3. I think, generally, when people talk about opposition, and the possibility of creating an opposition in the Assembly, the model that is often cited is the traditional Westminster model. It is probably the most well-known model of institutionalised opposition, and it is the model against which the Assembly is most frequently compared. However, I think — just to place it in a bit of a wider context — that these institutions were created and were designed to address a particular set of circumstances and to accommodate competing political views in what could be classed as a deeply divided society. The term most frequently associated with this is "consociationalism", and that is the model that the Assembly operates within. Therefore, any consideration of the establishment of an opposition must recognise that framework, which underpins the workings of the Assembly and the Executive. Opposition has not really been widely studied within consociational models, but there are certain hypotheses that apply.

4. If members turn to page 3 of the research paper, there are a number of bullet points. Probably, to varying degrees, they apply in one way or another to the Assembly. The first one states:

"In order to facilitate cooperation and accommodation, governments will tend to include all or most of the pillar parties"

5. or the main parties. The second point states:

"parliamentary opposition tends to be small in size".

6. The third point — again, this is probably where you get into debating the pros and cons of these — states:

"elections will tend to be only mildly competitive as,…citizens will not vote for a party not representing their own"

7. community. You could debate whether that is changing. Towards the bottom of page 3, it states:

"in spite of such hypotheses, some commentators maintain that 'Nothing about consociation…precludes parliamentary opposition'"

and have argued:

"Mechanisms for rigorous accountability exist. Ministers face an Assembly Committee in their jurisdiction headed by a representative of another party."

8. The same research has argued:

"the d'Hondt mechanism ensures that not every party is in the executive, so there are automatically some opposition backbenchers

and it is up to parties to choose to be in government or in opposition…or to play both sides of the track…and be rewarded or punished by voters accordingly".

9. I wanted to give a bit of an overview of the context within which the Assembly operates. I will turn to the three issues in question. In formal opposition — that is most usually understood in terms of Westminster, the official Opposition currently being the Labour Party — provision is made in Standing Orders for the leader of the Opposition:

"the current Official Opposition is the Labour Party (which forms the Shadow Cabinet)".

10. It then lists the other opposition parties, which include the parties from Northern Ireland. In the devolved institutions, opposition is not a term that is widely used, it would appear, in official documents relating to the Scottish Parliament and the National Assembly for Wales. The preferred term seems to be non-government or non-Executive parties. It could be that this was a deliberate decision, when those institutions were set up, to avoid using, as it were, the language of Westminster.

11. On page 5, we get into how you accommodate non-Executive or opposition parties. Usually, certainly in the UK and Ireland legislatures, the role of opposition parties would largely be outlined in Standing Orders, rather than legislation, although, of course, separate legislation does exist regarding the funding of political parties to carry out their functions. Just to step outside the UK and Ireland, the South African Constitution provides an example where there is recognition of the leader of the largest opposition party, and this is subsequently given effect in Standing Orders. So it is really about where you see the role of opposition on the spectrum. Is it just parties not taking their seats in the Executive or do you want to go all the way to enshrining the role in legislation?

12. You have already heard legal advice on the provision of financial assistance to opposition. It is usually the case that financial assistance is provided to non-government or non-Executive parties. We can see this in the Scottish Parliament, the National Assembly for Wales, the House of Commons and Dáil Éireann. The paper from pages 5 to 8 sets out some of the details of the payments available to the parties. It is probably not necessary to go through each one at the moment.

13. I will skip ahead to "Composition of Committees" on page 8. It has been argued that the Committees in the Northern Ireland Assembly actually provide, or are there to provide, an effective means of opposition, given that the party to which the Minister belongs cannot be the same party to which the Chair of the Committee belongs. As far as we can tell, that appears to be fairly unique to the Northern Ireland Assembly, at least within the context of the UK and Ireland. Therefore, it could be argued that that is already a safeguard to enhance the role of an opposition. Again, membership of Committees in the House of Commons, the Scottish Parliament and the National Assembly for Wales is usually decided on a roughly proportional basis. The Government probably tend to dominate when it comes to House of Commons Committees. Furthermore, the allocation of Conveners or Chairpersons in the Scottish Parliament is undertaken using the d'Hondt method, and in the National Assembly for Wales, there is recourse to the d'Hondt formula if membership cannot initially be agreed, although it usually is.

14. Page 10 refers to "Parliamentary/ Assembly time". Again, the key point here is that Standing Orders usually allow time for opposition parties to bring forward business, which is what you would expect in any model of opposition. The only thing to highlight is in Dáil Éireann, which has taken forward a reasonably recent innovation, which is:

"On the first Friday of each month the Dáil sits to consider legislation introduced by any member of the Dáil except for a Minister or Minister of State."

15. Essentially, it is an opposition day, which gives non-Executive parties the chance to discuss legislation.

16. Pages 13 and 14 describe the process of "Community designation". Again, you have heard legal advice on that. Really, the issue that we would highlight is that there is, of course, disagreement on the use of community designation in principle. It has been said that it serves to entrench communalist politics. On the other hand, advocates of consociationalism would say that the divisions already existed, and they are just legislating to try to accommodate them. If you turn to page 15, towards the bottom, the paragraph beginning:

"addressing these consequences in the operation of the Assembly some commentators have argued that:

In effect, there are two orders of Assembly members: in relation to key decisions there are those whose votes always "count" and those whose votes never do so".

17. On page 16, however, there is a counterpoint to this argument:

"In fact, the votes of others always count — they count towards the majority…threshold".

18. The second indented paragraph states:

"Perhaps what critics…really mean to say is that the votes of designated unionists and nationalists are more decisive than the votes of designated others".

19. The final indented paragraph states:

"However, on a cross-community vote, the votes of designated unionists and nationalists are more likely than the votes of others to have a determinative effect on the outcome".

20. So, again, there is disagreement on the application of community designation.

21. Turning to page 17, it is useful to highlight the issue of Petitions of Concern because we can really see that this is where cross-community voting comes into play. In the 2011-15 mandate to date, nine Petitions of Concern have been tabled — six unionist and three nationalist. In the previous mandate, there were 33 Petitions of Concern — 20 unionist and 13 Nationalist. There is more information available on that in Appendix 2. Petitions of Concern require 30 members as signatories, and since 2007, the DUP has had the required numbers to present Petitions of Concern without the support of other parties or Independents. I think that the DUP has actually had the numbers since 2003, but the Assembly did not — *[Inaudible.]* Page 18 refers to the arguments for replacing community designation with the weighted-majority voting system, where rather than have nationalist and unionist quotas, the support of 60% or, perhaps, 66% of all members would be required. We thought it would be useful to look for other examples of community designation. Belgium would appear to provide such an example:

"At the national level in Belgium, in response to Francophones' fear that they might be outvoted and dominated politically by the Flemish majority, Belgium has put in place a variety of institutional mechanisms that prevent Flemish domination through majority rule."

Therefore:

"As part of the consociational arrangement, the Belgian Parliament is divided into a French-speaking group and Dutch-speaking group."

22. So, they are designated, but it is restricted to legislation rather than motions and it is known as the "alarm bell" procedure. I will just dwell on it very briefly. Page 19 refers:

"When the parliamentary language groups had a role to play, the constitution required a concurrent majority of votes in each language group of each house".

23. That is further qualified:

"The total of the affirmative votes cast in the two language groups was required to amount to at least two-thirds of the votes cast. In addition, there was an 'alarm bell' procedure, which to be triggered, required a motion signed by at least three-quarters of the members of one of the language groups…, stating that the provisions of a specified bill were likely to be seriously detrimental to relations between the two language communities."

24. When the "alarm bell" procedure was invoked, as it were:

"proceedings were suspended and the motion was referred to the Cabinet".

25. Therefore, the point to make in relation to community designation is that there appear to be a number of options available: you could get rid of it; you could keep it; or you could keep it but restrict its use to certain parliamentary proceedings as appears to be the case in Belgium.

26. Finally, I will touch on the issue of d'Hondt. As members are well aware, what is unusual about Northern Ireland, the Northern Ireland Assembly and the Executive is that this is the only place where d'Hondt is applied at such a high level — at Executive level. Therefore, coalition government is not based on traditional inter-party negotiations following an election. Instead, membership of the Executive is an automatic entitlement of electoral strength determined by the application of the d'Hondt divisor, which allocates seats on the basis of the highest average. Therefore, if a party wins a significant number of seats, it stands a good chance of being in the Executive. Previous research shows:

"The D'Hondt formula should be used for the nomination of the FM and DFM",

which means:

"that the first and second largest parties would nominate the FM and DFM — so they could come from any party, not just a unionist or nationalist party".

27. The research goes on to state:

"Alternatively, the Executive could be constituted by the Sainte-Lague mechanism, which is more advantageous for small parties than D'Hondt."

28. I suppose one of the issues that critics of the Executive might raise is that it has been cited that there is no alternative to the sitting government. Indeed, if you look at the Scottish Parliament, there is provision for a vote of no confidence in the Government that is not available in Northern Ireland because it is constrained by the application of d'Hondt.

29. That was a brief run through the key issues that we were asked to address. I suppose one of the things that we could sum up with is that before consideration is given to details such as application of funding or parliamentary time, it would be important to decide on the overarching model of opposition. Would there be one opposition party officially recognised in the Assembly or would all parties be opposition parties? I think that those are probably the key issues that would need to be considered before the details are touched upon. Thank you, Chair.

30. **The Chairperson**: OK, thank you for that, Ray. Do any members have questions?

31. **Mr McDevitt**: Just briefly, on the Scottish and Welsh situation, you said that the parties not in the Executive are called parties not in Government rather than an opposition. That said, Standing Orders in the Scottish Parliament and the Welsh Assembly make provision for the existence of such a group, and I suppose the consequential question is how do they make provision? Is it just like your last point that all the parties not in the Government or the Executive are given certain rights in accordance with their size or does one — the biggest party — have some sort of primacy or a principal role?

32. **Mr McCaffrey**: It appears that all parties are treated as opposition parties, which is a departure from the Westminster model, which recognises Labour as the official Opposition.

33. **Mr McDevitt**: Chair, I would like to explore that a little bit. Therefore, Standing Orders go down through the parties by size, I guess, in the order in which they would be called?

34. **Mr McCaffrey**: On a proportional basis.

35. **Mr McDevitt**: OK.

36. **The Chairperson**: OK. Thank you. No other questions? OK, Ray. Thank you very much for that.

12 February 2013

Members present for all or part of the proceedings:

Mr Stephen Moutray (Chairperson)
Mr Gregory Campbell
Mr Stewart Dickson
Mr Paul Givan
Mr Simon Hamilton
Mr John McCallister
Mr Raymond McCartney
Mr Conall McDevitt
Ms Caitríona Ruane

37. **The Chairperson**: Members, as you know, the Committee has spent several meetings discussing a draft 'Call for Evidence' paper for its Review of d'Hondt, community designation and provisions for opposition. Are members content with the 'Call for Evidence' paper as amended and that the paper be issued for consultation?

Members indicated assent.

38. **The Chairperson**: Are members content with the stakeholder list as drafted?

Members indicated assent.

26 February 2013

Members present for all or part of the proceedings:

Mr Stephen Moutray (Chairperson)
Mr Pat Sheehan (Deputy Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Stewart Dickson
Mr Paul Givan
Mr Simon Hamilton
Mr John McCallister
Mr Raymond McCartney
Mr Conall McDevitt
Ms Caitríona Ruane

Witnesses:

Professor Rick Wilford *Queen's University Belfast*

39. **The Chairperson**: Today's evidence session is the first in a series. Professor Rick Wilford, who is the director of legislative studies and practice at Queen's University Belfast, will present to us this morning. Professor Wilford, you are very welcome again. You are no stranger to this Committee. It is good to have you back.

40. **Professor Rick Wilford (Queen's University Belfast)**: Good morning. Thanks for inviting me back. You will see that I have produced the template and the summary paper. I will rattle through the summary paper with you to give you the heads up on where I am coming from on the agenda that you have got. I followed the order of the template, so I will start with d'Hondt, which, as you know, is one method of copper-fastening proportionality. It also has the purpose of ensuring inclusivity or inclusiveness in the Executive. It meets the tests of proportionality and inclusiveness, but there are alternative methods of doing the same thing, one of which is Sainte-Laguë, which I mentioned when I appeared before you some time last year.

41. The actual formula, whether it is d'Hondt or some other method, does matter because, technically, they are rather different. Sainte-Laguë uses a larger divisor — 1, 3, 5, 7, 9 — and that has the effect of advantaging smaller parties in the process of seat allocation around the Executive table. However, it seems to me that what matters as much as the actual formula, although they have differential effects, is the way in which the process of allocating seats around the Executive table is conducted. One thing that was evident in 2007 and 2011 but was not true of 1999 was the informal politics that went on. So, I think that it is a mix of informal politics and discussions among parties about who might get what, as well as the formula itself, which is quite mechanistic in its application.

42. I have floated the idea that you might want to consider changing the formula to Sainte-Laguë precisely because, if there is to be a reduction in the number of Departments and MLAs, the Committee and the Assembly may want to give consideration to ensuring, as far as possible, that the principle of inclusiveness is defended. If there is to be a reduction in the total number of Members in the Assembly, that could be a disadvantage for smaller parties, and there could be a compensating factor by altering the formula for allocation of seats around the Executive table and seats to chair and deputy chair the Committees. Any change is likely to be contingent on those reductions; that is to say, in the number of Ministers and the number of seats.

43. I will turn now to community designation. As I pointed out in the template paper, this has nothing to do with a sense of existential doubt. It is a means of ensuring that cross-community consent applies to key decisions, and, as you know, key decisions are listed in the Northern Ireland Act 1998. My only view on that is that it may be a way of entrenching difference within the

Assembly and that there may be a case for moving towards a weighted majority provision instead of the test of power of consent or weighted majority as they currently exist. I am sympathetic to the argument that designation copper-fastens or underwrites difference, and some would argue that it entrenches sectarian thinking in the Assembly.

44. If you move to a weighted majority, provided it is pitched at a sufficiently high level, you can secure the end that community designation currently provides. It could be done another way, and that might, at least, loosen the perception that the Assembly is simply an assemblage of distinctively different communities. So, I would suggest that maybe 65% or two thirds of those present in voting take the place of community designation and the two tests that are currently applied.

45. The petition of concern has become an increasingly popular method. It offers a belt-and-braces approach for parties and a safeguard against some sort of majoritarian approach in the Assembly. I think that the weighted majority could achieve what petitions of concern are designed to serve, but the problem there is that, if you pitch it too high, particularly if you are going to go for formal provision of an Opposition, you might deny that opportunity to smaller parties in the Assembly.

46. I would like to see the Assembly move towards a weighted majority system, but I can understand fully why parties might want to retain a petition of concern. You cannot simply list all the issues that should be designated as key decisions. I think that the list would probably be too long and, in a sense, the petition of concern procedure is an economic way of designating an issue as a key decision.

47. It is about certainty and reducing uncertainty. If parties have that device available to them, they can ensure that they will have a safeguard if anything is likely to cause conflict or disruption among parties. I understand the reasoning behind that, but I think that the weighted majority system should, in itself, provide a sufficient assurance that no particular issue could be railroaded through the Assembly. So, whether you want a belt-and-braces approach or are simply prepared to go with the weighted majority approach is a matter for you. I think that the latter would help in suggesting that Northern Ireland politics is beginning to normalise as a consequence of dropping the petition of concern procedure. It would mean that you would operate on the basis of a politics of recognition rather than very sharply defined politics of identity, which is what the petition of concern procedure actually affords.

48. I will turn now to opposition. I know that some people will argue that the Committees perform an oppositional role. If they do, it is opposition with a lower-case "o", but they are not a surrogate for a formal Opposition, with a capital "O". Any self-respecting liberal democratic parliament would have provision for a formal Opposition and enable Committees to perform an oppositional role if they so choose. That is to say that they are not alternatives. The one advantage that a formal Opposition has is that, in theory at least, it can present itself as an alternative Government-in-waiting, ready to take over if the electorate decides to throw out the rascals who are currently in office.

49. Formal Opposition is complementary to a rigorous Committee system. In the Northern Ireland context, trying to present itself as an alternative Government in waiting is going to be difficult, not least because such an alternative would have to be based on a coalitional basis anyway. So, if there is to be an Opposition, one of the things that the Committee and the Assembly will have to grapple with is what entitles a party to select an oppositional role. If formal Opposition was enabled, I think that some sort of threshold or baseline would need to be established in order for a party to designate itself or to claim the role of being an opposition party. Currently, to become entitled

to seats on a Committee or speaking rights, a minimum of three members form some sort of grouping or party in the Assembly. You might want to think about that in relation to what formally would constitute an Opposition. Should it simply be a party that otherwise is eligible for a seat around the Executive table, and/or should there be some kind of baseline figure? That is something that you need to think about.

50. The issue here is how you institutionalise opposition, and that includes not only what constitutes, or what numeric criterion you would need form an Opposition, but things like speaking rights in the Chamber, for example, to respond to a ministerial statement, a Committee report or whatever it might be. You need to think about the full ramifications of institutionalising opposition. If you will the end — the provision of a formal Opposition — then you have to will the means to enable the formal Opposition to conduct itself properly. That would include, for example, the opportunity to move a censure motion in the Chamber, as is common to opposition parties in other parliamentary democracies.

51. I made two small points in relation to other accountability measures. One is to put the liaison group on a statutory footing, which is something that I have argued before, and, secondly, to enable it to cross-question the First Minister and deputy First Minister, at least annually, on policy co-ordination and legislative co-ordination to focus on the strategic role of the Office of the First Minister and deputy First Minister (OFMDFM).

52. You need to fund an Opposition, if there is going to be one, and that is a matter for the independent financial review panel. If an Opposition were to be provided, I do not think that special measures should be adopted to afford the opposition parties some sort of priority. Either the d'Hondt or the Sainte-Laguë mechanisms will afford that opportunity. I do not think that they should be given any special preference, particularly if speaking rights were to be accorded to opposition leaders or an opposition leader. You have to have supply days to enable the Opposition to do its role properly. There is a guide in the Scottish model where they have 16 half-days during the parliamentary year when they can structure the business of the day in the Scottish Parliament, and, on a scale-back basis, if there were to be a formal Opposition, something in the order of 10 or 12 half-days during an Assembly term would be appropriate.

53. If you are going to recommend that there should be provision for a formal Opposition, certain things follow in train once that strategic decision is taken. You need to fund an Opposition, and you need to give it the resources to enable it to conduct the role as a formal Opposition in the Chamber, and that means supply days, speaking rights and financial resources.

54. I think that I will stop there.

55. **The Chairperson**: Thank you, Professor Wilford. I will open the meeting up to questions. I will allow Conall McDevitt in first, as I am aware that he will leave us shortly.

56. **Mr McDevitt**: Thank you, Chair. I apologise, Rick, for having to leave early. As always, thank you for your thoughts. The area that I am most interested in exploring is community designation and weighted majority. I want to tease out the idea that you could keep community designation but begin to introduce weighted majority for particular types of decisions on, for example, another thing that you have introduced, the concept of censure. What are your thoughts on the next phase being that we would maintain community designation but that we would explore weighted majority decisions in certain aspects, and, in particular, how appropriate to the question of censure would the application of a weighted majority be?

57. **Professor Wilford**: In a sense, of course, you have both now —

58. **Mr McDevitt**: To some extent.

59. **Professor Wilford**: Yes. Certainly for key decisions. I am only suggesting that this would apply to key decisions. I do not think that you need to bother too much about extending the scope of the key decisions, except and in so far as that we should be back to where we were in 1999-2002, where the First Minister and deputy First Minister were subject to an endorsement, and that was a key decision. There are different ways of doing that, either on a joint ticket or for the whole ministerial slate, which was recommended in the comprehensive agreement of 2004.

60. You have it now. The issue here is that, if we were to have a weighted majority, where do you pitch the level? Obviously, the level matters, because it has to be sufficiently high to enable the Assembly to demonstrate that it does have cross-community support, but it must not be too high to frustrate opposition parties seeking to designate a particular issue as a key decision. As you know, most decisions on the Floor of the Chamber are taken on a simple majority vote. For the relatively few that are subject to the key decision procedure, a petition of concern is there to so designate a matter if a party or parties deem that to be the case.

61. One option that has been floated is that, instead of each member having to designate as one thing or another, you designate a whole party as belonging to one designation or another, and I suspect that Brendan O'Leary will mention it when he appears before you next week. Therefore, instead of everyone having to sign in as a unionist or a nationalist or other, you simply have the parties designating all their members in a block. One of the problems that I have —

62. **Mr McDevitt**: Sorry, what practical difference would that make?

63. **Professor Wilford**: None, in effect. Although the perception might be that that cements even further the perception of the place as being more deeply embedded in a concept of either/or politics. Whereas, if you move to a simple — I say simple but it is not simple — majority voting system, it enables the perception that maybe Northern Ireland is moving on a bit and that one does not need the Linus's blanket of designation, whether as an individual or as a party block. As I said in my paper, this is not about existential doubt: everybody knows where they are coming from, and people know where they are coming from. One of the problems that I have with designation is the fact that it can conceal differences on policy issues within a party. The working assumption would be that everybody within a particular party block agrees on everything, but that is not necessarily the case. Parties, in themselves, are coalitions of interest, and members will disagree. It allows some flexibility, but it is a perceptual thing as much as anything. As I said earlier, it is about recognition rather than a hard and fast concern with identity. I do not think that anybody has issues with their identity; it is more, perhaps, shifting towards recognition and respect for difference.

64. If you designate, whether individually or in a block, you do not really have to think about it again. Whereas, if you move to a weighted majority system, some Members might think — perish the thought — that, on certain issues, they do not agree with their party leadership. Of course, that raises the whole issue of relationships between Members and Whips.

65. **The Chairperson**: Can I ask you about the petition of concern? You said that there may be a case for increasing the threshold or abandoning it altogether. Do you feel that a compromise could be reached, whereby a petition of concern could be used but its use could be restricted? Do you have any mechanism for that?

66. **Professor Wilford**: You have to grapple with the purpose of a petition of concern. What is it there for? It is there as a kind of belt-and-braces device, so that, if a party is particularly concerned about the implications of a proposal, whatever that may be — whether it is

legislative, policy or procedural — it has the assurance, provided it has the numbers, that it can lodge a petition and thereby oblige the taking of a cross-community vote. My view is that if you move to a weighted majority, and you pitch it at a sufficiently high level, which is guaranteed to secure cross-community consent in the Chamber, you probably do not need the device. However, that is, I think, a matter of confidence within and among the parties. They need to have that backstop just in case something occurs that they find difficult to accept. Petitions of concern can be used constructively, but they can also be used obstructively. It is really a matter of judgement about the basis upon which, and the purposes for which, the petition is presented.

67. **Mr Hamilton**: Thanks for your presentation, Rick. I just wanted to delve a little deeper into your points about the provision for an Opposition and the threshold, which, I think, is interesting.

68. When we, as a Committee, discussed this before opening up the evidence session, the issue of small parties forming an Opposition came to the fore. In some respects, it could be the case that if you facilitate or institutionalise an Opposition, some individual — I am not thinking of anybody in particular; current events are just happening — could have a perverse incentive to set themselves up as a party in this institution in order to get the benefits of funding, speaking rights, and so forth. Is that where you are coming from? I can see how you could have a problem there.

69. I am supportive of the idea of facilitating an Opposition. However, I think that it would be a little preposterous if, as well as having large parties in the Executive by whatever arrangement — whether it is a weighted majority, d'Hondt or whatever you use, because we are still going to have those big parties in Government — you might have two or three individuals in a group who style themselves as an Opposition to get speaking rights. If we were to reconstruct what we do in the Assembly Chamber following on from any changes to provide for an Opposition, that might enable them to ask questions of the First Minister or deputy First Minister or another smaller party in the Executive that does not hold that Department, so it starts to become a little preposterous. Is that where you are coming from?

70. **Professor Wilford**: Exactly, Simon. I think that you have encapsulated one of the anxieties that I have. If you provide for a formal Opposition, I do not anticipate or envisage that enabling any and all non-Executive parties to constitute the Opposition. I think that, rather like the fact that you need three Members to form a group in order to get speaking rights, Committee places in the Assembly, and so on, you have to set a minimum. This is a very tricky question. This is not a scientific issue. It is a matter of dark political arts rather than hard science.

71. **Mr McDevitt**: Do not encourage him.

72. **Professor Wilford**: No.

73. **Mr Hamilton**: Now I am salivating.

74. **Professor Wilford**: Go back to the first Assembly when three anti-agreement unionists were elected as independent unionists and came together as, I think, the united Assembly unionist group or something: there were three of them, so that could arguably be a precedent. You set the benchmark, as it were.

75. Given the premium on coalition formation for the Executive, I do not think that the Assembly should impede the possibility of non-Executive parties forming some kind of Opposition coalition in the Chamber, but the onus is on them to agree. I think that, provided they meet a threshold — I would suggest three, but it could be higher, because what one would not want is an archipelago of single-Member opposition groups — the onus would then be on them to seek agreement to form a coalition or Opposition in the Chamber, if they were so minded. In a sense, one could argue that that rather reflects the formation of the Executive in and of themselves. It is a voluntary act to go into the Executive. Equally, it would be

a voluntary act to form an Opposition. I do, however, think that you would need to set a threshold.

76. **Mr Hamilton**: You have not said anything about timing and the moment at which you choose to do that. After an election, in the current system, if parties are over a certain threshold, they can choose to join the Executive. You can, in the current system, depart at any time you want. This point has come up in our discussion: would you be in favour of setting a rigid time in which you make that decision to avoid a cynical departure from an Executive that are maybe taking unpopular decisions prior to an election, for example? Do you fix it at a certain point, such as immediately after the election, so that you choose to join or not to join or do you allow it to be flexible?

77. **Professor Wilford**: I think that you have eight working days after the election to construct the Executive. The negotiations that would happen in the post-election context would probably provide sufficient time for parties to make a decision. However, I do not think that should be the only point at which a party makes a decision about whether to go into Opposition. It could take the decision within that sort of time frame and say that there is not enough for it to agree on; therefore, it could go into Opposition. If, during the lifetime of an Executive and an Assembly, a party that had gone into the Executive decides later to leave because of its opposition to whatever it may be, it should be able to do so. However, having left, it cannot go back in. So, that has to be a once-and-for-all decision. I would not say that, if you make the decision to join the Executive within the eight-day time frame, you have to stay in. There are different points at which a party could elect to take an oppositional role. I would not limit it to that initial period.

78. **Mr Dickson**: Thank you. This has all been very helpful. I want to ask about the whole area around opposition, a motion of censure and the interrelationship between those and petitions of concern. When is a motion of censure a petition of concern and when is a petition of concern a motion of censure?

79. **Professor Wilford**: During the chequered history of the Assembly, we have not debated a motion of censure because, of course, there is no provision for it.

80. **Mr Dickson**: Exactly.

81. **Professor Wilford**: Let me complicate the picture even further. There is one possible option, which is to go for what is called a constructive vote of no confidence, which is that you only move a vote of censure when you have an alternative Government-in-waiting and ready to take over. That is the German model.

82. A vote of censure would have to meet, clearly, a test and should meet the weighted majority. The difficulty with that is that it almost looks as if it is simply going through the motions, because one would expect the Executive members, unless some are disaffected, to vote against the motion of censure. This is the thing about willing the end and willing the means. If you are to will the end of a formal Opposition, you have to will the means, and one of the means is the ability to seek to move a motion of censure. That is the point. It may be just for the optics, but it is a procedural device that should be available if you are to move to the provision for a formal Opposition.

83. **Mr Dickson**: Should the will not also include the ability to complete that motion of censure and bring the institution down?

84. **Professor Wilford**: It could, yes. I would have thought that, before such a motion would trigger that, if inter-party relations were sufficiently sour that that were to be the outcome, you would probably not require a motion of censure.

85. **Mr Dickson**: I am more interested in the relationship between that and the petition of concern. I am concerned about what I see as the cynical use of the petition of concern for political reasons rather than for reasons of

genuine concern and in the way in which the petition of concern is meant to be used. Therefore, should some other mechanism, whether it is a motion of censure or something like that, not put down a very strong marker as to why people are opposed to something?

86. **Professor Wilford**: There is provision, and there has been from the start, for the moving of a motion of no confidence in a Minister. In the first mandate, it was attempted in relation to both Martin McGuinness and David Trimble. On each occasion, it fell short of the required number. There was an attempt to move a motion of no confidence, which would have triggered a cross-community vote in the Chamber. That can happen now.

87. The issue of the petition of concern procedure is one that I mention in the paper. If one moves to weighted majority voting on key decisions, we should maybe increase the number of Members who are required to trigger a petition of concern. That would offset the possibility of that device being used vexatiously. You could build in a threshold that would frustrate that. However, you might then think that, if you pitch it too high, the opposition parties will be frustrated because they simply do not have access to that device. What they could do is move a motion of no confidence, a censure, in the Chamber, and it would then be up to Members to vote. It is as simple as that. It may not be successful, but, if that device were made available, it would at least give them the opportunity to use it. However, again, you would have to set some kind of threshold where that should be met. Maybe it is 30, or maybe you should bump it up a bit. Lowering it would be an even more radical proposition, but the likelihood is that you would run into misuse of the device.

88. **Mr McCartney**: Thank you very much for your presentation. I missed the beginning, but I have read your paper.

89. I want ask you for your views on systems that are designed in a particular way. The Good Friday Agreement was designed in a particular way. There can be a tendency to look at the building blocks and to try to reform those building blocks without looking at how each impacts on the other. The discussion on opposition has to happen alongside one on a petition of concern. In essence, if you were in Opposition and had the strength to bring a petition of concern, you could literally vote down everything in the Assembly. We should not try to separate all these things. We should not look at reform and having a formal Opposition without looking at the petition of concern. Likewise, we should not look at the size of the Assembly without looking at its impact on the representation thresholds. I would like your view on that.

90. **Professor Wilford**: I absolutely agree. This has to be done in a holistic way. I do not think that I have suggested anything that offends the principles of inclusivity or proportionality. They are cornerstones of the design that we have. I do not think that anything that I am suggesting erodes those cornerstones. However, I completely agree with you that, if you are going to move in this direction, you have to do it in a 360 degrees way. It must not be a case of picking on this particular area or that particular area without giving due regard to what the knock-on effects might be.

91. I am all for joined-up thinking. One of things that I find frustrating about the inquiry that you are all engaged in is that, whatever recommendations you may or may not agree, the efficiency review panel will ultimately have to look at those recommendations and buy into them. The risk is that the Committee might agree on something that the panel may not. Ultimately, it has the executive authority to make the decisions. However, if this process is to be at all meaningful, that panel and this Committee should really be working in a joined-up way to try to come to some agreement on what the reforms ought to be, if you believe that reforms are necessary.

92. It should not be regarded as an à la carte menu; it should be regarded as a much more integrated, holistic process. That has to be the primary motive here. It means that you have to address the potential implications of whatever the reform package may turn out to be.

93. The Select Committee on Northern Ireland Affairs was here yesterday and today. The draft Bill is very limited in its scope. I understand that the Secretary of State is minded that, if there is inter-party or all-party agreement on a reform package, the Bill will be amended. It is only at its pre-legislative scrutiny stage, but the clock is ticking.

94. I wonder whether, because of the complexities, and so on and so forth, members might be minded to say, "Well, what we have works up to a point. We do not really need to contemplate too significant a set of changes, and, therefore, we will rumble along." What I suggest, and what other witnesses will perhaps suggest, is that you have an opportunity to create a more effective and perhaps a more efficient system of joined-up scrutiny and to make the Assembly more like a parliamentary democracy than it already is by, for example, having provision for a formal Opposition. However, that does not mean that I am fixed on the Westminster or Dáil model of opposition.

95. The experience of consociations such as Northern Ireland is that it is extremely difficult to provide for a formal Opposition. Switzerland has tried and failed. It is probably the nearest parallel that we have in the way in which Executives are formed, and so on. It is, if you like, a democracy without a capital "O" opposition. That does not mean that there is no small "o" opposition or no oppositional politics. It functions, but the saving grace of the Swiss example is the provision for direct democracy, which we do not have. They initiate a system of referendums, and so on. We do not have that. There is not that kind of opportunity for our population to become involved in strategic decision-making.

96. You are focused, on the one hand, on having provisions that meet the tests of inclusivity and proportionality and, on the other hand, looking to see the extent to which you can make the Assembly more parliamentary, if you like, in the way in which it functions. That may mean providing for a formal Opposition. From what I read, the disposition of the parties is that there is a weight in favour of providing for a formal Opposition. If you make that basic decision, you have to think about what resources you should provide for those parties given that there is a threshold, as Simon said, and a point below which a party cannot legitimately describe or designate itself as the formal Opposition.

97. If you will that end, you have to will the means. It is about whether one operates as one does now. A lot of people are content, up to a point, with the oppositional role discharged by the Statutory Committees, in particular. However, the Committees are not an alternative to a formal Opposition. Look at the models in the South or over the water at Westminster: they have both. It is about the nitty-gritty procedural stuff. How do we provide for it in a way that does not offend the basic principles that underpin the agreement? That is the issue.

98. **Mr Sheehan**: Thanks for your presentation, Professor Wilford. I was wondering about the different formulae for guaranteeing proportionality in representation. You mentioned the Sainte-Laguë formula. Have you done any maths on that? If we were to change to the Sainte-Laguë formula tomorrow morning, what would be the practical changes?

99. **Professor Wilford**: No, I have not. I should have; shouldn't I? There are two versions of the Sainte-Laguë formula. One is the straightforward version, which is the divisor that goes up in the order of 1, 3, 5, 7, 9. With d'Hondt, the order is 1, 2, 3, 4. With d'Hondt, it is arithmetical. With Sainte-Laguë, it increases at a faster rate. The advantage of that is that it assists smaller parties because the bigger

parties get hit earlier in the allocation process.

100. There is also a modified version of Sainte-Laguë where, in fact, the first divisor is 1·4. So the divisor increases from the start. I cannot do it in my head; I will, or maybe you could get the Committee Clerk or somebody from the research office to do it. I do not think that it would have a material effect.

101. Where it would make a difference, I think, is if the total number of MLAs was reduced. Let us assume we had an eight-Department Executive plus OFMDFM: if you took out those Ministers and the junior Ministers, you would be left with about 60-odd Members to discharge all the roles. If you were to reduce the number to 90, 80 or whatever at some point in the future, that would give the smaller parties something of an assurance that they would get a look-in when it came to ministerial allocation. The risk with smaller numbers being elected is that the smaller parties really do get marginalised. However, they do have to take their chances in the elections. I do not think that one should be too altruistic in relation to smaller parties. If you were prioritising inclusivity, you might be minded to move to a Sainte-Laguë formula, because that is more likely than d'Hondt to ensure the inclusiveness of smaller parties. I think that that is the issue for you.

102. **Mr Sheehan**: On the issue of community designation, you say:

"a change would supply a signal that NI is capable of moving from ascribed labels which may conceal as much as they reveal."

103. You said that it would be a change in perception as much as anything else. Are you talking about the international perception of there being a divided community here? If that were the case, would it not, in actual fact, be better to have a model that shows the outside world that, even where there are divided communities, it is possible to develop a model that is capable of giving governance to wherever it is?

104. **Professor Wilford**: I suppose that what you are saying in a nutshell is, "If it ain't broke, don't fix it", because it is currently working. It is working, I suppose, imperfectly, but then all parliamentary systems work imperfectly, and I do not think that perfect should be the enemy of good. If you remove community designation, I do not think that that will change perceptions locally, nationally or internationally of the divided nature of Northern Ireland society at all.

105. The fact that one would, as an alternative, provide for weighted majority voting on key decisions, in itself, reflects that communal divisions persist on some matters. I think that you are right in the sense that you implied that it is as much a presentational issue as it is a substantive one.

106. The rider I added there about labels concealing as much as they disclose is that — I made this point earlier — you will have differences of opinion amongst Members in parties. To date, it has been very rare for Members of one party or another to rebel when it comes to Divisions. That is a rare occurrence. When you have one all-encompassing label, what you are doing, in effect, is challenging people even more to signal that they might not agree with the leadership, because so much emphasis is placed on the cohesion of the party block.

107. Back-Bench dissent is a norm of parliamentary practice and parliamentary life at Westminster. Here, Back-Bench dissent just does not exist. All I am suggesting is that, if you move to a weighted majority system, that might give people a little bit more leeway to say, "Actually, I don't agree with my party on this issue. I don't need the label. I am not concerned about my identity, because that is a given". It is a philosophical point, perhaps. Instead of being so focused or preoccupied with identity politics, one should be more concerned with the politics of recognition and respecting people's differences. Other than to provide a voting safeguard through the petition of concern device, for example, you do not

need the label for the people outwith the Assembly, whether they are an international audience or whatever, to know that we are a divided society. The point that I am making is that it may be whimsical; nevertheless, if one moved away from this assuming necessity of a communal label, that might be regarded as some kind of progression here, which does not diminish the scale of the problems that there are over division in Northern Ireland.

108. **Mr Beggs**: Thanks for your presentation. It has been very useful. I will pick up on two issues. First, a petition of concern may be brought by 30 out of 108 MLAs, which is about 27% or 28%. There are, I think, nine non-aligned Members. In reality, 30% of the Assembly have to sign a petition of concern. It strikes me that this device is being exercised in an unhealthy number of debates. There is another vote today, and a petition of concern has been tabled. I am curious as to how you came across the figure of 35%. Why 35%?

109. **Professor Wilford**: That was lazy thinking on my part because of the suggestion that we were going to move away from that device and choose a weighted majority of 65% or two thirds, as some people suggested. The figure was more or less plucked out of the air when I was writing this paper. It was to ensure that it could not be used in a vexatious way. The frequency with which the petition of concern device has been used has increased across a range of measures, whether they are procedural, legislative or policy. It is a way of limiting recourse to that device because you could have a weighted majority system instead. I just took 65 from 100 and ended up with 35. It was as simplistic as that.

110. **Mr Beggs**: There are positives and negatives of going to 65%. In theory, some legislation could go through on 55% and not be seen as being community sensitive. It is just that people accept the vote at 55%, and it goes through and allows change in governance to occur. Yet, there is a need to give protection for other areas that could be perceived as being adverse to one community or the other. Could you perceive a situation where some petitions of concern would still be required, and, having exercised that petition of concern, the issue would be voted on with the 65%? Would that be a way of limiting the blockage in the Assembly to legislation, yet showing community sensitivity on certain key issues?

111. **Professor Wilford**: Yes, it could. There are certain key decisions that ordinarily trigger the requirement for cross-community voting. The petition provides an additional safeguard. You are right that most decisions are taken on a simple majority basis, but if you move to a system of weighted majority on what are currently defined as key decisions, unless there were to be a massive seismic shift in voting patterns in Northern Ireland, that 65% is a safe figure to ensure that no issue could be progressed in the face of significant opposition from one or other party block in the Assembly. The alternative would be to ramp up the petition of concern device and begin to add to the list of what constitutes key decisions. For example, in the first Assembly, the Programme for Government was subject to a cross-community vote. That was then subsumed into the vote on the Budget, so that discrete, separate vote was then dispensed with. The only change that I would make in respect of what is subject to a key decision is the vote for First Minister and deputy First Minister. I would like to see that reintroduced either as a discrete vote or on an Executive slate vote subject to the 65% test.

112. **The Chairperson**: Thank you. No one else has indicated that they wish to speak. Therefore, I will just thank you for coming up and presenting to the Committee today.

113. **Professor Wilford**: Thank you very much.

5 March 2013

Members present for all or part of the proceedings:

Mr Stephen Moutray (Chairperson)
Mr Pat Sheehan (Deputy Chairperson)
Mr Roy Beggs
Mr Stewart Dickson
Mr Paul Givan
Mr Simon Hamilton
Mr Raymond McCartney
Mr Conall McDevitt
Ms Caitríona Ruane

Witnesses:

Professor Christopher McCrudden	*Queen's University Belfast*
Professor Brendan O'Leary	*University of Pennsylvania*

114. **The Chairperson**: I welcome Professors McCrudden and O'Leary. Thank you for your memorandum and attendance today. I ask you to begin your submission.

115. **Professor Brendan O'Leary (University of Pennsylvania)**: Thank you very much. It is an honour to supply evidence to you. Professor McCrudden and I will highlight the key elements of the memorandum that we submitted, and I will add some further reflections on the simulations that I sent yesterday. Professor McCrudden will speak to legal issues in a moment.

116. Let me highlight five components of our arguments. First, we defend the d'Hondt system. We say that it has worked well, facilitates speedy Executive formation, and achieves difference-blind inclusivity and power sharing across all political parties that have a significant mandate. This way, Northern Ireland avoids the types of crises in Executive formation that occur in Belgium, Iraq, Israel and Italy. The d'Hondt system is not unique to Northern Ireland, but it is especially suited to a deeply divided place that seeks to accomplish jointness and proportionality in the Executive. We note that it was explained to the public in the 1998 referendum, endorsed in both jurisdictions in Ireland.

117. Secondly, in our supplementary evidence, we show that the use of an alternative method to d'Hondt — namely, Sainte-Laguë, which is typically kinder to smaller parties — does not offer a significant prospect of enhanced representation in the Executive for the others, especially if that was to be combined with possible reductions in the size of the Northern Ireland Assembly. At best, Sainte-Laguë would marginally enhance the likelihood that others obtain the last Ministry out of a 10-member Executive or get a single higher pick among Executive portfolios. In our view, the use of Saint-Laguë would not significantly compensate small parties for their loss of seats in an Assembly reduced by 36 Members or, indeed, one reduced by 18.

118. Thirdly, regarding an opposition, we argue that the existing arrangements are better than they might appear, even to those schooled in the orthodoxies of the Westminster model. We think that it is politically inappropriate to prefer the Government and opposition model for Northern Ireland. We note that membership of the Executive is voluntary. Parties are free to go into opposition. The chairing and deputy chairing of Committees by MLAs from competitor parties holds Ministers to scrutiny much more effectively than in the Westminster model. The relatively high number of MLAs who are not in the Executive is beneficial for enhancing scrutiny. It is certainly better than what would follow from reducing their numbers. We commend enhancing MLAs' policy and administrative scrutiny capabilities through increasing resources available for expert assistance, which is also good for building party capacity. We are not persuaded of the merits of increasing

the likelihood of votes of no confidence in the Executive as a whole, and we note existing provisions for admonishing particular Ministers. The suggestions for change, we believe, flow from the suppositions of the Westminster model, which simply do not meet the needs of Northern Ireland.

119. Fourthly, regarding designation, we welcome the improvements made at St Andrews regarding the mode of election of the First Minister and deputy First Minister. We also carefully note in our memorandum the difficulty in creating difference-blind qualified majority rules for legislation in the Assembly. A 60% difference-blind rule might encourage a majority opposed by all designated nationalists, and it might encourage a future majority opposed by all designated unionists. By contrast, a 65% or 66% rule would enhance the likelihood that one party — not a designated group — would enjoy a veto over all legislation, despite having significantly less support than a majority in the Assembly. Any higher threshold for a qualified majority rule would likely create the pathologies associated with moves towards unanimity. For those reasons, we think that the existing rules on designation are appropriate as mutual confidence-building arrangements. We accept that the others are less pivotal than nationalists and unionists under the existing rules, but we observe just as emphatically that, under any plausible alternative arrangements, they would be disproportionately pivotal, which would be neither obviously democratic nor necessarily better for conflict regulation.

120. Lastly, regarding Assembly size and consequences of reductions in the number of MLAs, in supplementary evidence, I have simulated two reductions in Assembly size. In scenario 1, the Assembly is reduced by 18 MLAs, and, in scenario 2, by 36 Members. The first scenario results in the proportion of nationalist MLAs increasing and the proportion of unionist MLAs decreasing. Others, by contrast, would increase their share of the Assembly very slightly, but not increase their numbers. The second scenario would result in the proportion of both nationalist and unionist MLAs increasing, while the proportion of others would decrease. We also observe that any significant reduction in the size of the Assembly — for example, by 36 Members — would enhance the likelihood that the Alliance Party would not win a place in the Executive, whether the Executive were large — 10 members — or small — six members. We also observe that a smaller Executive of six makes the likelihood of parity in the number of nationalist and unionist Ministers far more probable. It would almost certainly remove the presence of others on the Executive.

121. There is a straightforward tension between reducing the size of the Assembly and the desire to maintain proportionality, which a shift from d'Hondt to Sainte-Laguë would barely modify. Reducing the size of the Assembly, given current party strengths and voter preferences, is also likely to increase the share of nationalists in the Assembly, which may encourage unionists to prefer the status quo. Many desirable properties of the existing system, namely reasonable opportunities for small parties, proportionality and having a significant number of MLAs who are not in the Executive, are all enhanced by keeping the existing Assembly at its existing size. Ours is, therefore, a conservative argument. There is much wisdom in the present arrangements, which flow from much learning and many compromises. Beware of changing without very good cause a system that is working well. Especially beware of the unintended consequences of what might appear to be minor reforms. Northern Ireland has fought and negotiated its way to a functioning set of institutions. We think that it should stick with them unless there are decisive objections to them, cross-community consent to those objections and cross-community consent on what would work better.

122. **Professor Christopher McCrudden (Queen's University Belfast)**: Thank you

for the invitation. We did not include in our original submission any discussion of the equality or human rights implications of the current or possible future arrangements. We noted, however, that the Northern Ireland Affairs Select Committee, in its recent call for evidence, asked specifically whether there are any equality and human rights considerations that should be brought to its attention. It might be useful to this Committee if I briefly touched on those issues. I am happy to clarify further the points that I am about to make if necessary. For obvious reasons, this part of our evidence is in my name only. The general conclusion — before I explain why I reached this conclusion — is that the likelihood of equality law or human rights law being the grounds for any successful challenge to the current arrangements is so negligible that the Committee would be justified in dismissing it.

123. I will concentrate on the implications, particularly of the European Convention on Human Rights, for the current arrangements. There are two issues that we should distinguish. The first is whether the mere requirement of parties to register as unionist, nationalist or other is itself a breach of human rights requirements under article 8 of the convention, which protects the right for private life, or article 9, which protects freedom of religion. I am aware that a question was asked in the Assembly, some time ago, about the effect of recent European Court of Human Rights case law on monitoring in the fair employment context, which might be thought to raise somewhat equivalent issues. In my view, the relevant case law of the European Court of Human Rights poses no threat to the requirement on parties to choose a designation in the Assembly. The cases in which the European Court of Human Rights objected to requirements to disclose affiliations and identities all involved the forced disclosure of religious or ethnic identities, and it is by no means clear that the court would regard unionist, nationalist or other as ethnic classifications, let alone religious classifications, although there is some possibility that it might. Even if the European Court of Human Rights were to view designations as ethnic classifications, the other elements of those cases come into play. All the relevant cases in which claims have been successful on those grounds have involved individuals, but the designation requirements for the Assembly relate to parties, not individuals. Party designations in the Assembly are chosen, based on self-identification, rather than imposed. There can be no objection on the procedural fairness of the process of designation. There are strong prudential justifications for the system, as we have just heard and as we have set out in more detail in our memorandum. It would, in short, be a dramatic departure from precedent were the court to regard the Assembly designation requirements as by themselves contrary to the convention, and my professional judgement is that it would not.

124. The second major issue is whether the other practices that the Committee is considering would amount to a breach of article 3 of protocol 1 taken alone or in combination with article 14. Article 3 of protocol 1 protects the right to fair elections, and article 14 prohibits discrimination. As regards the arrangements for the appointment of the Executive, the legal position is straightforward. Article 3 of protocol 1 does not apply to the formation of an Executive, only to the right to vote for and to be elected to the Assembly. Article 14 also does not apply because it is not a stand-alone prohibition of discrimination; it would have to engage some other right. Article 3 of protocol 1 seems to be the only possible candidate, and we have seen that it does not apply. So there appears to be no legal basis for challenging the formation of the Executive under human rights law in this respect. In any event, the system of proportional and sequential allocation of ministerial portfolios is difference-blind. It does not, on its face, allocate on the basis of religion or ethnicity, and nor does it, of

course, exclude the others from gaining ministerial portfolios.

125. As regards the election of the First Minister and deputy First Minister, you will be aware that the 1998 agreement specified that those posts would be held only by a designated unionist and a designated nationalist. The subsequent rule agreed at St Andrews in 2006 changed that system. As you well know, the post of First Minister is now awarded to the largest designation in the Assembly, whether nationalist, unionist or other, and the deputy First Minister post is awarded to the second-largest designation in the Assembly, whether unionist, nationalist or other. Therefore, the method now adopted after St Andrews is difference-blind, meaning that there is no prohibition on others being elected as First Minister or deputy First Minister.

126. As regards the arrangements requiring unionist and nationalist agreement on any important decision in the Assembly by providing for qualified majority rules, we have already accepted that they have the effect of rendering the legislative votes of those self-designating as others less likely to be pivotal. Does that amount to a breach of article 1 of protocol 1, on the ground that the vote cast by a voter for a candidate of a party that will register as "others" is of less value than that of a voter voting for a unionist or nationalist candidate? The answer to that question is more complicated, because it is clear that article 1 of protocol 1 does apply and, therefore, that article 14, prohibiting discrimination, would apply as well, unlike in the context of the selection of the Executive or the First and deputy First Ministers.

127. It is also more complicated legally, because of the decision of the European Court of Human Rights in the Sejdić and Finci v Bosnia case, in which aspects of the constitutional arrangements agreed at Dayton to settle the civil war in Bosnia were successfully challenged. The decision of the court was that constitutional prohibitions on others — that is, non-constituent peoples; think nationalist and unionist — from being able to stand for the upper house of the federal parliament were contrary to the convention insofar as they prevented a self-identified Jew and Roma, who did not wish to self-identify as one of the constituent peoples, from standing.

128. The Northern Ireland arrangements would, nevertheless, survive any challenge on those grounds under the convention, in my view. The main reason, again, is that the rules on designation are not based on ethnicity or religion. They refer to national identification. Given that no suspect classification, such as ethnicity or religion, is used, requiring heightened scrutiny by the court, the default rule applies — that is, that electoral systems, the right to vote and the right to be elected are all matters within national competence and expertise, to which the court generally gives a very wide margin of appreciation. It is also relevant that the Dayton agreement was never subject to democratic approval, unlike the Belfast/Good Friday Agreement.

129. In conclusion, whatever the merits or demerits of the existing arrangements on political, prudential or ethical grounds, there is no good reason under equality or human rights law to depart from those arrangements.

130. **The Chairperson**: Thank you very much. I want to open it up to questions from members. First of all, in relation to the opposition within the Assembly, you have been pretty clear in saying that you see no clear need for enhancing resources, whether in money, time or positions, for exclusively opposition parties. Will you expand on why?

131. **Professor O'Leary**: Our basic philosophy is that the system established by the Belfast/Good Friday Agreement has as its core the principle of proportionality. As far as our understanding goes, it is our empirical appraisal that small parties get proportional access to all sorts of resources in the Assembly, including questioning time, and so on. We think that that is the appropriate rule. We also think that, unlike the

Westminster system, opposition parties and/or small parties get a more significant role to play in scrutiny, so we found it difficult to find a special case for enhanced opposition support.

132. We also noted that the distinctive characteristic of the dual leadership — having a First Minister and a deputy First Minister — made it almost conceptually impossible to think of an appropriate set of opposition figures. Would there be a first leader of the opposition and a deputy first leader of the opposition? How could they be constituted? Those were the factors that led us to be sceptical about any special need for fresh support for opposition. It is possible that the Committee and/or the Assembly might wish to review matters if a much higher proportion of parties, on a stable basis, went into opposition, but I do not think that that is the situation currently faced.

133. **Mr McDevitt**: Thank you, gentlemen. My party, certainly, agrees with the basic proposition that the d'Hondt process should remain at the heart of the institutions. I just want to explore Professor O'Leary's last remark. Surely, it would be prudent for this Committee to put in place arrangements should the circumstances arise in which one or two substantial parties were to choose not to take advantage of their d'Hondt entitlement and, therefore, following an election, opt out of their entitlement to the Executive without prejudice, possibly, to their entitlement to Committee seats or other roles and responsibilities in the Assembly. If they were to do so, is there not an argument that Standing Orders, the operational modus of the Assembly, would have to shift a little bit to acknowledge that there were now substantial blocks, not so much Government opposition, but non-Government?

134. **Professor O'Leary**: Perhaps. However, I think that it is also important to observe the point that you raised, namely that one of the special features of the Northern Ireland arrangements is that you can decide not to participate in the Executive and yet, remarkably, receive your entitlement either to chairing or deputy chairing Committees, for which there is no analogue in the Westminster model of democracy. It seems to me that, for that reason, opposition parties get a very reasonable share of resources and opportunities under the existing system. Personally, I see no special need to review the possibility for greater resources for the opposition if the circumstances that you envisage were to materialise. However, it is not for me to decide that matter.

135. **Mr McDevitt**: Perhaps, Chair, I could continue on that issue. Members will all have their own opinion, but I do not think that the Committee is fixated on the Westminster model. I think that we accept that, whatever we are talking about, it is unlikely to be the Westminster model. Therefore, from my point of view, it is about preserving the integrity of d'Hondt — as you say, still being entitled to exercise your proportional rights with regard to scrutiny mechanisms — but envisaging a situation in which, for whatever reason, as long as the principle of power sharing is maintained round the Executive table, parties may just opt out. Have you had the opportunity to look in any detail at the practical expression of scrutiny in plenary? Have you had the opportunity to analyse what happens, for example, at Question Time? How do you feel about what happens, for example, at the First Minister and deputy First Minister's Question Time, when the overwhelming number of questions are posed by their party colleagues and are, often, co-ordinated between the two parties?

136. **Professor O'Leary**: We report the findings of a systematic appraisal of Question Time by Professor Conley at the University of Florida. His findings are genuinely interesting. It is true that roughly one third of questions that go to the First Minister and deputy First Minister are related to constituency matters. However, he shows, very significantly, that both the Ulster Unionist Party and the SDLP engage in extensive scrutiny of the Executive

through Question Time and do so more than the other parties. He also shows the remarkable phenomenon that each party tends to specialise in a certain area of public policy, so it may well be that people from the same party, as in the Westminster system, are soft on their own members of the Executive. Nevertheless, other parties do generate lots of serious scrutiny of Ministers.

137. In response to your general query, let us go to the heart of the agreement on this question, which is the notion of proportionality. If, in the scenario that you are talking about, the SDLP and the Ulster Unionist Party were to withdraw from the Executive, they would automatically have a higher proportion of opposition time and resources. So, I assume that, under your existing Standing Orders — though I beg to be corrected — they would automatically be entitled to an increased share of access to Question Time and other resources. Personally, if that were not the case, I would be in favour of such a transformation.

138. **Professor McCrudden**: I want to make two very brief points in response to Mr McDevitt. The first is that we should not lose sight of the recommendation that, in general, we would like more facilities to be provided to MLAs in order to enable them to be more effective in questioning and scrutiny. It is not that we are, in any way, hesitant or uneasy about scrutiny: we are very much in favour of it. However, we are not convinced about its being directed to a particular group, as it were, rather than to the generality of MLAs.

139. The second point comes back to the broader question that you began with. I think that there is an important point of principle at stake here. The supposition, not behind your question but behind some arguments as to why you should move to an opposition model, is based on the notion that, in some way, the opposition model is the normal model. There has been quite a lot of talk about normalisation. It is precisely that that we want to resist. Steps towards the opposition model seem to suggest that the normalised model would be one of Government and opposition, as in the Westminster model. However much moving towards that in small steps may not have been the original intention, we are worried that it gives the impression that the Westminster model is the normalised model, which we suggest is not appropriate in these circumstances.

140. **Mr Hamilton**: Thanks for your presentation. I want to follow on from the point that Conall has elaborated on: your evolving position on the resourcing of opposition parties. As you say in your paper, Professor O'Leary, every party that is entitled to a place in the Executive has the right not to take up that position. Let us use the SDLP as an example. You do not mind me using the SDLP as an example, do you? As it stands, if the SDLP were to withdraw from the Executive today, it would not get any more time in the Chamber. Questions are allocated on an individual Member ballot basis. It would be freakish if it were to happen, but it is conceivable that, for every Question Time in an Assembly term, no SDLP Member could be drawn to ask a question. They may get called for supplementary questions. However, it is conceivable that they would not be called for a question. That is unlikely to happen. However, if it did, the SDLP would not get any additional time or monetary resources to employ people to scrutinise. It is possible, too, that its Members may not chair any scrutiny Committee for the critical Ministries. There are no additional resources. Even though parties have the right to pull out, that does not afford them any additional rights or status to scrutinise. That is the point.

141. We have a few parties that would style themselves as an opposition, but you are talking about one- and two-Member parties. We had a discussion last week about thresholds and whether you could really consider a party that had two Members to be an appropriate opposition. However, if a party like the SDLP withdrew, with 14 Members, it would get to a certain level. It would

not, by any means, be dominant in the Assembly, but it would be significant enough. That was the point you made: if you had a sizeable and more stable opposition, that would be sufficient to resource. Your position in the paper was not an argument for resources, but are you saying that, in certain circumstances, if certain parties were to do it and do it on an ongoing basis, resources — time and monetary resources — would be appropriate?

142. **Professor O'Leary**: We want to be cautious in our answer. The first thing I would say is to repeat the point that Professor McCrudden made that we are generally in favour of enhancing resources to all MLAs to enhance their policy, scrutiny, administrative and monitoring capabilities. We would want that to apply to the parties in the Executive as well as to those parties in opposition. We make the point in the paper that the system now built in Northern Ireland actually provides for better opportunities for those not in the Executive compared to the Westminster model. So, it would be generous for the Assembly to decide to resource such opposition parties further. Of course, if it was minded to do so, that is its prerogative. However, our point is simply to observe that nothing under the principle of proportionality requires the Assembly to do more than it is doing at present.

143. **Mr Hamilton**: I am almost arguing against my party's position. A party that pulls out but does not get any additional resources is, therefore, not able to probe my party and the other parties that remain in the Executive. That is not a bad position to be in.

144. **Mr McDevitt**: It is all right from inside it at the moment, as you keep reminding us.

145. **Mr Hamilton**: It is entirely tactical.

146. The question is about whether it is fair. If our parties decided not to take their Executive positions, is it "normal", to use that phrase, that they should not be getting a little bit more? It is not about money to do whatever they want with; it is more about time resources and the ability to scrutinise in Committee and plenary.

147. **Professor McCrudden**: One of the points that we need to come back to is the centrality of proportionality in this context. You get the resources that, to put it crudely, voters want you to get: the resources are proportionate to your electoral support. Were one to take a party into "opposition" and that "opposition" role proved popular, the general rule of politics is that that party will get more votes, more support, more MLAs and will be able, on a basis of proportionality, to carry out even more successful monitoring in calling the Executive to account. The principle of proportionality is central to the mechanism. I think that I speak for both of us when I say that breaching the principle of proportionality by giving some groups of MLAs more resources than apply to the run of the mill would be a worrying trend.

148. **Mr Hamilton**: I do not disagree with you about the principle of proportionality as it relates to democratic representation or positions in the Executive. However, I am not entirely sure whether it was ever envisaged that it would go down as far as pounds, shillings and pence. We had an interesting discussion last week about thresholds, and there is a ridiculousness about a party of two people getting lots of money, time and resources that the electorate did not afford them via the ballot box. It creates a perverse incentive for people to create such an establishment. There is a difference once you get beyond a certain threshold, although I am not stating a position on what I think that should be. However, it is interesting that in an earlier discussion, we said that if there was a sizeable party over a sustained period, it might perhaps be worth looking at.

149. **Professor McCrudden**: I should say that we both read Rick Wilford's evidence to the Committee and the discussions surrounding it. I should also say that we were not convinced by it.

150. **Mr McCartney**: Thank you for your presentation. Your paper was very good; it opened up some of the points that I want to raise today. There has been commentary on the need for an opposition, although there has been rather less narrative about why people suddenly feel the need for an opposition now when there was not so much discussion about it in the past. I do not want to reduce the argument to a sentence or two, but I am forced to. You touched on people believing that other models are normal and, almost by extension, that equals better. However, from reading your paper, I infer that if a number of MLAs or parties decided to go into opposition, they would find themselves in a better position than what is described as the "normal" opposition that exists in, say, Westminster. Is that a fair reflection of your position?

151. **Professor O'Leary**: It is fair in respect of proportional access to time and leadership positions in Committees. As you know, the official Opposition at Westminster gets special resources that enable it to fund a great many special assistants who work on behalf of members of the shadow Cabinet. There are resource opportunities that the official Opposition gets in a Westminster-style system.

152. Thank you for your generous comments on our paper. One of the things that we want to emphasise in the series of submissions is that there are parliamentary models other than the Westminster one, including the European Parliament model, in which the principle of proportionality is applied more or less all the way through. That is another form of normality to which the Northern Ireland Assembly might want to refer.

153. **Mr McCartney**: At present, if parties decide to go into opposition by choice, which is your contention, they would have Chairs and Deputy Chairs of Committees, which is not the case in Westminster.

154. **Professor O'Leary**: Correct.

155. **Mr McCartney**: Therefore, in many ways, they would put themselves in a more advanced position. Resources make a difference, and I will not minimise that. However, opposition should come about through opposing policy or by suggesting a different way of doing things rather than having more resources to do it. If you have the position and the platform, you may find yourself in a better position than some of the well-resourced opposition spokespersons that you find in other models.

156. **Professor O'Leary**: You have interpreted us correctly.

157. **Mr McCartney**: It even relates to using d'Hondt in the first instance. You contend that d'Hondt was employed because it favoured the larger parties, whereas Sainte-Laguë might have been better proportionally.

158. **Professor O'Leary**: There is a law of political science that you will find rather peculiar. However, it is simple to state, and I will not elaborate on it at any great length. Each definition of proportionality is proportional in its own way. The d'Hondt system is one way of accomplishing proportionality that operates to the benefit of larger parties, whereas Sainte-Laguë or Webster generally operates to the benefit of smaller parties. There is modified Sainte-Laguë, which operates to the benefit of medium-sized parties.

159. There is a whole family of proportionality systems, each of which accomplishes a slightly different objective. We do not want to take the view that one system of proportionality is always better than others. However, there were considered reasons for choosing d'Hondt. It has worked effectively. We note through our simulations that the application of Sainte-Laguë would not make a significant difference to the others, although, before we carried out the simulations, we thought that it might. However, the others stand to lose most from a reduction in the size of the Assembly. If you are concerned to protect the interests of the smaller parties, the best way to do that is to

keep the Assembly at roughly its current size.

160. **Mr McCartney**: There was a debate in the Assembly yesterday on the Miscellaneous Provisions Bill that the Secretary of State is taking forward. The new model for selecting the First Minister and the deputy First Minister was described yesterday as a "corruption". However, your paper states that it is an enhancement, a better reflection and, indeed, opens up the possibility that you do not have to be a unionist or nationalist by designation to fill either post.

161. **Professor O'Leary**: Right. There are several features of the new system that are helpful compared to the old one. First, they are much closer to the d'Hondt principle. Secondly, as we have said, the others have a full opportunity to get either the first ministership or the deputy first ministership. Thirdly, each group gets to choose its own leader. There is no obligation on them to vote for the other party's nomination for leader, which is a much tougher call than endorsing your own leader.

162. **Mr McCartney**: No one has provided the narrative. We all have our own political viewpoint on why opposition has become a hot subject in recent times. However, nothing that I read here indicates that, as regards delivering good governance or best practice, the idea of a traditional "opposition" model is better than what is already on offer for parties that want to go into opposition.

163. **Professor McCrudden**: I must distinguish between a formal role for the opposition, as is being sketched out now and as Professor Wilford sketched out to some extent last week, and effective scrutiny by a group of MLAs. Professor O'Leary and I are deeply committed to effective scrutiny. Anything that would increase that scrutiny would be good, provided that it does not undermine the basic structure of the operation of the Executive and the Assembly.

164. We have no reason to believe that there are not very effective ways of enhancing a scrutiny and monitoring role for MLAs without having to create a formal opposition role. Confusion sometimes enters the public debate about Opposition with a capital "O" and opposition with a lower-case "o". Opposition with a lower-case "o" is entirely consistent with what we are arguing. Indeed, we strongly support it. Opposition with a capital "O" is a different game.

165. **Mr McCartney**: One of the headlines of this is that the opposition provides an alternative government. Therefore a party's leaving the Executive voluntarily could provide the electorate with an alternative way of the Executive's doing business. It is not as if you need a formal structure to provide the alternative.

166. **Professor O'Leary**: A party could offer itself as a better party for the electorate to consider. However, in the context of the proportional representation system and multi-party government, it is implausible that a single party that goes into opposition could truly represent itself as an alternative government. It could represent itself in future as willing to bargain on different items that it would insist on having in a Programme of Government. However, that is quite a different picture from the classical Westminster model in which the Opposition hopes to accomplish a full scale parliamentary majority at some future election. That is not the kind of world in which we are living here.

167. **Mr McCartney**: I will be party political here. There may be a formal Opposition at Leinster House, but some people might say that the true opposition is a different party. The alternative to the politics of the government may not necessarily be the designated opposition. That can be possible in a multi-party system as well.

168. **Professor McCrudden**: This is not what you are doing, but there is a danger in picking and choosing bits of another system and assuming that they will have the same effects when transferred to your system. We suggest considerable

caution in that regard. The system is an organic whole and operates in a particular way. We are against change for the sake of change, but we are not against change if it will lead to a more effective operation of the system. However, we are concerned about how far it would undermine this system.

169. **Mr McCartney**: In our party's presentation to the Select Committee, we made the point that, as this system is made up of a number of blocks, it is possible that you could have an opposition of 30 MLAs that, through use of the petition of concern, could block all the work of the Executive. You cannot just tinker without looking at all the blocks that might make our system of government more —

170. **Professor McCrudden**: As far as we are aware, part of the discussions are set in the context of possible reductions in the size of the Assembly and the Executive. I do not know how far those discussions have progressed. However, if one of the concerns for the opposition model is that you want to be seen to support small parties, I come back to the point that Professor O'Leary made earlier: the best possible way to support small parties in the existing system is by not reducing the size of the Assembly.

171. **Professor O'Leary**: Or the size of the Executive.

172. **Ms Ruane**: Go raibh maith agaibh. Tá fáilte romhaibh. You are very welcome. I am sorry that I was late for the initial part of the presentation. Like Raymond, I have read your papers and have listened to what you said, and it is very interesting. Our party wants inclusivity, diversity, fair play and power-sharing arrangements, including the scrutiny role that you are talking about, so the Human Rights Commission and the Equality Commission are a very important part of the arrangements. It is interesting that you say that reducing the size of the Assembly could diminish inclusivity. In my constituency of South Down, the majority of voters are nationalist, yet you have representatives from most of the parties. That is good. I like to see that, particularly given the times that we are living in now. This has been a very interesting discussion.

173. I want to focus on gender in Stormont and in our institutions, as we do not have good percentages of women. Have you given any thought to that?

174. You mentioned the scrutiny role. We are a young institution, and I agree that we need to increase our capabilities. Do you have a view on the Politics Plus programme that was launched last week here and the work of the Assembly trust on that?

175. **Professor O'Leary**: Thank you for your comments. International practice on gender is very interesting in this respect; it seems to have no concerns whatsoever about quotas for females. By contrast, ethnic and religious quotas tend to generate much more debate and controversy. It is not clear philosophically why that should be the case; nevertheless, it suggests that it is open to the Assembly to consider obliging parties to have quotas of female candidates if it chooses. That is the fastest route to increasing female representation in the Assembly. It is a little bit more difficult to do that under the single transferable vote than under list proportional representation. It would be bad to move to a world in which, in particular constituencies, there are only female candidates. I do not think that that would be a desirable model. Short of that, however, it is up to parties, by and large, to reform themselves to increase female representation. I will leave Chris to answer the other parts of the question. He may wish to disagree with me on the other matter because we did not have a prior consensus on the question of gender.

176. **Professor McCrudden**: I am afraid that I will pass on the second question because I do not know enough about it.

177. As you will know, increasing the participation of women is an issue that is close to my heart. However, there is a lack of good empirical information on how the system works in the context

of women. Over the past two years, I have been supervising a thesis by a graduate student of mine who has been working precisely on the question of how to increase the representation of women in electoral systems, and he has many interesting conclusions that I am happy to share with you. I am sure that he would as well. One conclusion is the difficulty of knowing precisely how best to change a specific electoral system in a particular context to increase representation. Assuming that we want to increase representation, which I suspect we both do, the question is how to do that in a particular context. However, I am not aware of any empirical research in Northern Ireland on why the system results in a disproportionate number of women not being elected. Therefore, the starting point is — I am an academic so I would say this — much more attention to the current electoral system in Northern Ireland and how best it might be changed. Therefore, assuming that there is an agreement on the result, I would want to know a great deal more about the mechanics of how this particular system works. I just do not have the information at my fingertips. In other words, I cannot say at the moment which particular bits of the system need to be changed to have the most effective results. Professor O'Leary mentioned the quota systems that have been introduced: some have been very successful; some have not. Mostly, that relates to local conditions and local systems. That is the best that I can do, I am afraid, Ms Ruane.

178. **Ms Ruane**: It is Caitríona. I would be very interested to see your student's thesis. I am a delegate from our party to the Convention on the Constitution, and Stewart is a delegate from his party. There was a very interesting weekend that focused just on women in politics. If your student does not have it, I suggest that he take a look at it. It was very good, and many excellent academics provided very interesting information. All the statistics and research show that you need to get a critical mass of women in to change a culture. Moreover, they show the importance of getting women into winnable seats. The key thing is that party managers understand the importance of change. In the South, a law is being brought in that a party will be penalised financially if at least 30% of its candidates in local elections are not women. We argue that it should have gone further, but it will have an impact. Would you like to comment on that?

179. **Professor McCrudden**: It is precisely that second aspect of the question that I was indirectly hinting at. For example, under the system that operates in France, a financial penalty is attached. The empirical information on how that works is very mixed, so I do not think — to use the cliché — that there is a magic bullet here. It is by no means clear that simply introducing a financial penalty will automatically be successful. So far as I know, and being entirely dependent on my graduate students supplying me with the information, the effect in France has been that, at certain times, parties have just accepted the financial penalty. Therefore, it has had no effect other than a relatively marginal penalty being imposed that parties are willing to accept. A very context-specific argument needs to be made. I would not assume that if it works in the South, it will automatically work in the North. Each system needs to devise its own particular arrangements. That said, your first point on internal arrangements in parties to sensitise must be correct.

180. **The Chairperson**: Conall, you wanted to come in on the same point.

181. **Mr McDevitt**: It is a slightly different point, Chair. It is on your observations on petitions of concern. I am happy to leave it to the end if other colleagues want to come in on that point.

182. **The Chairperson**: Paul Givan had indicated.

183. **Mr McDevitt**: I am happy to wait until after Mr Givan.

184. **Mr Givan**: Thank you very much for the presentation. You make a very strong defence of the arrangements that were established under the Belfast

Agreement. We did not support that agreement, so we are not as precious about the institutions.

185. **Professor McCrudden**: And St Andrews.

186. **Mr Givan**: Yes. When we are looking at issues such as proportionality, from our perspective, things are on the table to make changes. Our boundaries are tied to Westminster, so if you are predicating your argument on there being 108 MLAs, our destiny is not in our own hands. Had the changes been made, we would have been facing a reduction of 12 MLAs.

187. **Professor O'Leary**: Eighteen, surely.

188. **Mr Givan**: No; we were to lose 12 MLAs. We were to lose two constituencies. It was to drop to 16 constituencies, so we would have had a reduction of 12 MLAs.

189. **Professor O'Leary**: That was under the proposals to make each constituency the same size.

190. **Mr Givan**: Yes; it was going to be kept as six Members in each constituency, but we would have been electing from 16 constituencies. If that had happened, and it may well come back on the table in a future Westminster term, what implications would that have for your arguments?

191. **Professor O'Leary**: I would not run simulations on constituencies that do not exist. That is why the simulations that you have presuppose the maintenance of the existing 18. I thought that that was a reasonable short-term assumption, given the fallout at Westminster between the two coalition parties in government about reviews of parliamentary boundaries.

192. If you reduced the number of constituencies in Northern Ireland and kept six members per constituency, the effect on proportionality and the small parties would be less than what would happen if you reduced the number of people returned from each constituency. Keeping the principle of six people per constituency is very important. There is logic in the relationship between the multi-member district in Northern Ireland and the Westminster constituency. However, it may be for the Assembly to consider whether it would want to make — in its own interests and in the interests of long-term proportionality or a stable size of the Assembly — proposals to Westminster about fixing its own organisational and constituency arrangements for long-term stability. I do not anticipate another huge growth in the population of Great Britain, vis-à-vis Northern Ireland, that might have adverse consequences for the number of constituencies in Northern Ireland, but it is something that the Assembly could consider.

193. To summarise, reducing the number of constituencies by one or two, if you keep the number of people returned per constituency the same, is much less consequential for proportionality and for small parties than a model where you would reduce the number of people returned per district.

194. **Mr McDevitt**: Thank you, Chair, for another bite at the cherry. I want to pick up on the observations that you both made in your submission about the petition of concern. You said:

"We have observed that the Petition of Concern has occasionally been abused to block decisions which have nothing to do with community-specific vital nationalist or unionist interests."

195. You suggest how we might preserve the integrity of a petition but prevent it being blocked. Can you elaborate on that?

196. **Professor O'Leary**: Our philosophy is that you, as representatives of Northern Ireland in the Assembly and as representatives in a partnership system, should, as much as possible, resolve any disputes that you have among yourselves among yourselves rather than using outside bodies. We were most reluctant to see judicial review petitions and most reluctant to see the two Governments acting in some way as arbitrators over whether something was a genuine petition of concern. However, we saw no reason why the Assembly could not set up an informal committee under the presiding officer to establish

some kind of protocols in which party elders or senior party members might meet to try to inhibit misuse of the petition of concern. It would be up to them to devise their own proposals. We did not presume to sketch quite what form those would take, but we thought it best for the Assembly to come up with an internal mechanism for handling those questions. I am thinking out loud here, but it could be, for example, that when the presiding officer is elected, together with his or her deputies, they would give guidance as to how they would treat petitions of concern.

197. **Mr McDevitt**: I presume for that to be a workable model, whether it was the Speaker and Deputy Speakers, just as a collective, given that they are probably representative of the Assembly having a function, that we would all accept that petitions of concern are just petitions of concern and that they are not blocking mechanisms for selfish party or political interest, and that we would see them solely as an opportunity to address a communal inequality that may arise.

198. **Professor O'Leary**: It would be a way for the Assembly to try to make sure that the petition of concern served its original function.

199. **The Chairperson**: Thank you for taking time out of your schedule to present to us today.

200. **Professor O'Leary**: Our pleasure; thank you.

201. **Professor McCrudden**: Thank you.

19 March 2013

Members present for all or part of the proceedings:

Mr Stephen Moutray (Chairperson)
Mr Pat Sheehan (Deputy Chairperson)
Mr Roy Beggs
Mr Simon Hamilton
Mr Raymond McCartney
Mr Conall McDevitt
Ms Caitríona Ruane

Witnesses:

Professor Derek Birrell *University of Ulster*

202. **The Chairperson**: We are about to hear a presentation from Professor Derek Birrell, professor of social administration and social policy at the University of Ulster. Professor Birrell, you are very welcome. We are low on numbers but we are delighted to have you. Please start your presentation, and afterwards there will be questions.

203. **Mr Hamilton**: We are low on numbers but high on quality.

204. **The Chairperson**: Absolutely.

205. **Professor Derek Birrell (University of Ulster)**: I should start by explaining that I work mostly in the areas of social policy, public administration and governance, rather than pure politics, so I do not spend my time trying to work out mathematically the outcome of the d'Hondt formula, and so on. I am not a pure political scientist.

206. I will try to focus on issues that maybe have not been drawn to the Committee's attention or that tend not to be much discussed in relation to d'Hondt, an Opposition, and so on. I will skip some of the other issues on which the Committee has probably received quite substantial comment.

207. I will start with d'Hondt, Ministers, ministerial office and Committee Chairs. Two main issues draw attention in the role of d'Hondt in underpinning power-sharing arrangements and the 1998 agreement. The d'Hondt system has been operating in Northern Ireland in the context of government Departments, following very much a Whitehall model of the principle of ministerial Departments, coterminosity in functions between departmental functions and the Minister, a single Minister — for the most part — in charge of each Department, and quite a large number of Departments, which, at present, allows five parties to hold ministerial office.

208. Of course, there are alternatives to that. You do not have to have that coterminosity. The first point arising from that is this: if you went down to six or seven Departments, would that create problems for running d'Hondt and allocating Ministers? The answer is not necessarily, in that you do not have to be restricted to six or seven Ministers. That happens only if you are tied very closely to the ministerial Department model because you could have 12 Ministers, for example, with two in each Department. They could be from the same party or from different parties as part of the power-sharing Executive, or you could have discrete areas for a senior Minister and junior Minister, which is the type of system that operates in Wales. Scotland has really abolished Departments and instead has 30-odd directorates, so it can be fairly flexible in ministerial allocations. Therefore, you can decouple d'Hondt from the idea of a ministerial Department.

209. The second point is about d'Hondt and Committee Chairs. That, again, can be allowed to operate in different contexts. In Scotland, d'Hondt is used for Committees. The main idea is proportionality. Of course, if you link that to the idea of opposition, normally an official Opposition chairs some Committees in most parliamentary systems. I am looking mainly at Scotland and Wales because of

devolution and also because I do some work there. In Scotland at present, the SNP Government have only nine Chairs of Committees, and the opposition parties have five. In Wales, of the 10 main Committee Chairs, five are held by the governing party and five by the opposition parties, although it is quite normal for the governing party to hold both the Chair and the Deputy Chair. I will come back to that.

210. The last point is that the possible exception to d'Hondt — it depends, but it may have to be an exception — is the Public Accounts Committee, the Public Audit Committee, or whatever it is called, because, normally, in all systems, it is opposition parties that hold the Chair and Deputy Chair positions on the Public Accounts Committee. That is a parliamentary convention that is quite strongly established.

211. I will move quickly through community designation and the criticisms of it, which are quite well rehearsed. Are there any alternatives? There are quite complex alternatives that might not be very popular, including official recognition of the "Other" category and MLAs being able to change designation fairly quickly, which could be complex or difficult. The requirement for a weighted majority in place of community designation might result in much the same outcomes. Cross-community support on the basis of party rather than individual MLAs could be looked at, but, of course, that would place a lot of restrictions on parties and individual Members. Community designation could be altered or amended, but it would probably be quite difficult to get agreement on that or to get a workable system without abolishing it in favour of some weighted majority.

212. Matters for cross-community vote raises the issue of petitions of concern. Originally, I think that petitions of concern were intended to deal mainly with constitutional and procedural matters. They have been interpreted more widely, but, of course, it is quite difficult to place a strict limiting definition on when they should be used. There are options to require a higher a proportion of MLAs, but the petition of concern has become somewhat embedded as part of the system of checks and balances in the devolved system here.

213. I will move on to provisions for opposition. Of course, when we think of parliamentary opposition, everyone tends to think of the Westminster model, which is the one that dominates in Britain and Ireland. That has been very closely related to the two-party system, although, at present, that is an issue. It is tied to the notion that there is a Government in waiting, that there are two parties that alternate in office and do not really rely on other parties. There is not really much prospect of coalitions and negotiations about coalitions, except at present, of course, in the UK Government context.

214. What about opposition under devolution? That would give greater status to non-Government parties, might enhance scrutiny and furthers the idea of every MLA — or almost all MLAs — participating in the parliamentary process. It may lead to the opposition becoming an alternative Government. However, the devolved institutions in Scotland and Wales have operated with opposition parties, but not in opposition, because there is no official Opposition in Scotland or Wales. All parties — defined as having more than two or three Members — that are not in Government can be considered opposition parties. In Scotland and Wales, they organise themselves into shadow Cabinets, or shadow Executives. There are 12 in the Labour shadow Cabinet in Scotland, 13 in the Conservative shadow Cabinet, and 11 Welsh Conservatives form a shadow Executive. However, they are not a structured official Opposition. The two main opposition parties in Scotland do not necessarily co-operate with each other; they may do so, but not necessarily. Those Assemblies make arrangements for individual, usually single, opposition Members. Something else that is perhaps slightly different in

Scotland and Wales is that they have a strong participative ethos, which was in some of the original thinking about devolution. Very recently, the SNP Executive discussed the Scottish Budget with the opposition parties; that is normal.

215. Finally, there is a slight complication in that you can have a situation in which there is not a formal coalition, but, as is the case with the Governments in Scotland and Wales, there is a voting arrangement with opposition parties. That has happened with the Green Party in Wales. At significant times, it has said that it would support the Welsh Government, but it regards itself as an opposition party. So you can have somewhat flexible arrangements.

216. In Northern Ireland, you would probably have to have smaller parties opting out of an all-party Government. Would the two main parties — the two largest parties — be happy with that? Would they prefer an all-party Government? Can you give any incentives to the smaller opposition parties? It might be a financial incentive, or, in practice, it might be a more significant role; it depends.

217. One other significant factor that maybe does not receive so much attention is what difference having official Opposition parties would make to the governing parties, because, in a sense, it would have to make a difference to them as well. A kind of Government-and-Opposition model would have to operate, and, of course, that presents some difficulty for the Executive in Northern Ireland, where there is not the principle of collective responsibility. That is not written into how it works.

218. There is the issue of different levels of opposition. Do you have opposition among the governing parties, as you can have at the moment, and a second level of opposition between the governing parties and the opposition parties, which is a type of two-tier opposition?

219. Given the time, I will skip over the issue of financial arrangements. I think that the evidence on that will be produced before the Committee.

220. I move now to the issue of Committees and opposition, which I mentioned briefly at the beginning. Committees are elected on a proportional basis, and if you had official Opposition parties, it probably would not make a great deal of difference. I note the current distribution of Statutory Committee Chairs among the five parties. It is highly unlikely that an Opposition at Stormont would be entitled to more than three or four Committee Chairs, so it would not make a huge difference. However, it would raise one or two issues. Would it be acceptable for a Chair and a Deputy Chair to come from the same political party? That happens in Scotland and Wales, for example. On the other hand, it could be a positive move to end the original concept of Assembly Committees as, in a sense, an opposition to the Minister, because it is not really the tradition for Back-Bench Committees to be seen as a place of special opposition influence. They are normally a place of Back-Bench influence; or even agreed Back-Bench influence. That is a slight difference that might come about if you had an Opposition. Is there a problem with an opposition party leader being Chair of a Committee? Not really; that happens in Scotland and Wales. The governing party or parties have a majority on the Committee anyway. The exception may be the Public Accounts Committee because, in a sense, it would have to have an opposition Chair and Deputy Chair. That is a strongly established convention.

221. I will skip over the rights that an Opposition may have in respect of questions and speaking time. Those are probably quite well recorded. That just leaves me with additional information and conclusions. Can you develop in Northern Ireland a sort of Government versus Opposition culture? You probably need parties of a significant size to form an Opposition. A few small parties would not really suffice.

222. There is then a choice for the opposition parties: would they willingly opt out of holding one ministerial office, or even two, and instead choose to be an official Opposition? That has been discussed quite a bit. How appealing would that be to the two largest parties? They may accept losing the Chair of the Public Accounts Committee. Would they be seen as moving into closer co-operation with each other as a corporate Government entity facing an Opposition?

223. Even with official Opposition parties, the Assembly may still be operating on the basis of double opposition because Ministers and parties in the Executive are free to publicly oppose each other. How would that be affected if you had an official Opposition? That is a quick run through some of the points that are in my paper.

224. **The Chairperson**: Thank you for that, Professor Birrell. On d'Hondt, your paper refers to:

"Greater commitment to achieving collective views within Executive and joined up government".

225. Have you any thoughts as to how we would ensure that greater commitment?

226. **Professor Birrell**: Greater commitment is probably widely encouraged by several factors. The alternative is that, on some occasions, there will obviously be impasses or slowness in decision-making in the Executive. Collective responsibility is not written into the Northern Ireland system at all, but it is written into the Scottish and Welsh legislation. If you do not have the principle of Executive responsibility, you have to have some kind of voluntary movement towards largely having Executive responsibility. An official Opposition might encourage that, but it is rather difficult in the Northern Ireland context to see that opposition at the moment. It might happen in the future as a kind of shadow Government in waiting along the lines of the Westminster model.

227. You are asking me how you might encourage greater commitment to Executive decision-making. Except on some very divisive political issues or where there are strong ideological views, you would hope that increased policymaking capacity and increased news, opinions, data and information from different sources, including research networks, communities, lobbying groups and research bodies, might make the best way forward clearer. There are some issues such as those.

228. It is going slightly off the point, but I mentioned to Conall bodies such as the Education and Skills Authority in the context of modern public administration. If you look at all the writings and even the calculations about efficiency and savings, I am not sure that you would see that coming up as a modernising idea. You might get consensus more often if the policy advice were stronger and better. I say that not to denigrate Northern Ireland in particular, but it has been a big problem in Scotland and Wales, where quite a lot of attention has been paid to the issue.

229. **Mr McDevitt**: I am sorry, Derek, I was caught up with business in the House. I want to ask about cross-community support and where you see the line being best drawn in proving and establishing it. I want to ask you about it on two levels, the first of which is whether you have any views beyond what you said in your paper about weighted majority voting. If so, what are those views?

230. Secondly, I noticed that you made an observation about changing the threshold for a petition of concern. Could you talk us through where you see that opportunity? Do you see any pitfalls in possibly going to 50%, as you said?

231. **Professor Birrell**: I was looking at various alternatives. That comes up as an alternative. However, not many parliamentary or government systems opt for weighted majorities, and, generally, coalition Governments are formed by negotiation and agreements that are sometimes fairly informal and highly formalised. The weighted majority comes into play almost if you cannot think of a better way of building checks

and balances. Back in 1998-99, the Northern Ireland Act and the agreement were quite clever in producing a structure of checks and balances without going for weighted majority. There has been some experience of it in Belgium, I think, but you find very few examples of it. I think that it leads to maybe trying to count up the number of individual MLAs all the time, so it makes life more difficult for parties. The 60% weighted majority would be a broad brushstroke.

232. The designated community principle in Northern Ireland is also fairly unusual. I know that you could find one or two examples of it, but it is unusual. I go to quite a lot of conferences in Scotland, Wales and England about devolution, and so on. In recent years, I have noticed that people always ask, "As long as you have community designation, does that not show that the whole system is a kind of failure?" I think that, in the future, it will probably have to be addressed. I am not necessarily a major advocate of weighted majorities. It has to be weighed against other systems of checks and balances. You get involved in whether it should be 50%, 60% or 70%, whether it should be different for different issues or different kinds of legislation, and whether there should be votes of confidence.

233. **Mr Sheehan**: I apologise for missing the first part of your presentation, Professor Birrell; I was in the Chamber. I am interested in the financial incentives for an official Opposition. It seems that an official Opposition could operate adequately without any financial incentive. Will you elaborate on why there should be some incentive?

234. **Professor Birrell**: The first thing that people might argue is that there are some extra costs, because the opposition parties do not normally have access to civil servants. They cannot be advised by civil servants, and they might not have access to information and data, and so on. They need some money to make foreign trips, whereas Ministers can just head off. So, there are some practical things to consider. Those extra costs are there to make up for some of the benefits and advantages that they do not get. So, that is certainly one strong argument.

235. The more difficult area is whether they are being given a bit of a financial incentive. Those in London may say, "We know that you are not in power, and we know that you cannot decide anything, but you have a role to play. Ministers get high salaries and junior Ministers get salaries, so we are going to encourage the Opposition." Shadow Ministers are not given a salary, but they can be assisted in a certain way. So, you can argue about the amounts that are involved. In Northern Ireland, that issue crops up because potential opposition parties may be faced with a choice of losing a ministerial position. However, if only one Minister is involved, the financial calculation is not great.

236. It is just a backing up to the status. You could argue that, instead of more financial incentives, they just get the status incentives. That means that if a Minister appears on television, the opposition person must come on as well, which increases their profile. You see it at Westminster. When Parliament opens and the MPs all troop in for that, at present, the leader of the Opposition walks alongside the Prime Minister leading the procession; it is not the Prime Minister and the Deputy Prime Minister. So, that is the status issue.

237. It is a mixture of those things. It is normally not a bribe, as it were, but, in Northern Ireland, there is a slight notion that perhaps you would need a bribe.

238. **Mr Beggs**: Thanks for your presentation.

239. I would like to go back to petitions of concern. There has been a spate of them recently. Interestingly, even those designated "Other" have joined with particular designated groups to get the 30-Member threshold. However, as indicated, that leads to the potential for stalemate. There is now a sense that the petition of concern is being misused by both sections. How did you come across the figure of a 50% requirement

for a petition of concern? Is that not almost doing away with the petition of concern? If you have 50% agreeing to an issue, you clearly have a majority. To change the current threshold, increase it and avoid the stalemate, you will need buy-in from all sides.

240. **Professor Birrell**: I take your point. I think that that might refer more to the discussion that took place when the system was originally mooted back in the 1990s, when it was seen as a constitutional issue. Therefore, if you were heading for a major quasi-constitutional change, you really needed more than 50% — my paper says just 50% — or a significant number. Of course, as you say, it has worked out that it can be used for all kinds of policies if the party presenting it feels strongly. Obviously, it will be an issue if it is widely used. There are a number of impasses already in the system, or at least there are checks that lead to impasses. Some people argue that that is the whole point of it and that it is about making it more difficult to operate without a consensus or to force people into some sort of consensus. However, it leads to impasses, delays and, maybe, the lowest-common-denominator approach where you can get a level of agreement.

241. As long as you have petitions of concern, one option would be to have some kind of figure. However, that would be quite a radical change. The other option is to go back to the original idea and to define more closely what is meant by a petition of concern. I am sorry; that does not fully answer your question, but I take your point that 50% might not be appropriate.

242. **Mr Beggs**: In the other places that you referred to where protection is built in, are there any other examples of the idea of a blocking section? I think that the figure of 27% or 28% at present could block legislation. Are there such blockages anywhere? There are advantages for having it, as it protects the community, but the stalemate means that there are also disadvantages.

243. **Professor Birrell**: I am not really certain. There are the obvious consociational countries, as they are called — I think that Switzerland, Holland and Belgium are the major ones. If they have it, I think that it would certainly be restricted to constitutional-type issues. In the Swiss system of government, I think that 75% of the cantons have to vote in favour of any constitutional change, as they define it.

244. As far as I know, I do not think that there is an example of a petition of concern. It would certainly be worth checking, although that kind of comparative government is not something that I operate with. Nevertheless, it would be interesting to find out. However, from my knowledge at the minute, I do not think that there is such an example.

245. **Mr Beggs**: It would be a useful for the Committee to look over the range of motions to which petitions of concern have been tabled so that we can get a reflection on what has happened in the past.

246. **Professor Birrell**: I think that there have been about 12 or 14 so far, although you might move to the situation of having half a dozen a year.

247. **The Chairperson**: The Committee Clerk has indicated that that information is in the research paper.

248. **Mr Hamilton**: I did not want to talk about petitions of concern, and I know that you were not nailed down on the specifics of the Swiss example. However, in that system, if in every instance, 75% of cantons have to vote for it, a petition of concern would be a much more attractive proposition. It happens only on a handful of votes. One that recently grabbed attention was legislation. However, in most cases, it has been deployed for motions that are debated in the Chamber, which are of no particular weight other than as an indicator of a general view.

249. You said in your presentation that you see that moving to a traditional Government versus Opposition system is unlikely in Northern Ireland. You said that it would be necessary for a party of a significant size to become

an opposition party and to not be represented at the Executive. The size of an official Opposition and whether strictures should be placed on its size has come up in a couple of evidence sessions. Are you making that comment on the basis that, unless a party in opposition is of a certain size, its ability to be effective in opposition is difficult? I would agree with that point. For example, you would not have the numbers to shadow, in the traditional sense, and to enable you to say that there are 10 Ministers, so we must supply 10 opposition spokespeople. Are you coming at it purely on that basis?

250. A point that has come out in other discussions that we have had is that there is almost a slightly ludicrous position. If we facilitate an official Opposition, and a party of a couple of Members, as is the case with some parties in the Assembly, is the next biggest party outside the Executive, it would become the official Opposition. It would not be entitled to be in the Executive anyway. You could then have two people as the official Opposition. Have you considered that, as well as the obvious, straightforward point that the bigger you are, the more effective you are going to be?

251. **Professor Birrell**: That is true. The grouping would need to be a certain size to be effective at all. In Scotland and Wales, it is two or three; you can go down to quite low numbers and be recognised as an official Opposition party. They cannot operate terribly effectively, but they are given a certain status. For example, a place might be found for them as Deputy Chair of one of the 20-odd Committees. So, some slight recognition is given to them. The Conservatives in Scotland cannot really function as an Opposition, because they are too small in number. So, at the end of the day, it is a matter of size.

252. The importance of a couple of Members is a slightly different issue. One or two single Members representing a small party or some cause can still become very significant, depending on which way they vote on certain issues, and so on. They might have a degree of opposition power, as it were. However, where the formal structures of participation are concerned, it would be very difficult to operate. Obviously, the question is: where do you draw the line? Suppose you have a couple of parties, each with four or five Members. Does that just about make it viable?

253. **Mr Hamilton**: Rick Wilford discussed that. It was a point that provoked my interest because it is something that I have thought about. We have a few one-person parties in the Assembly, and they are recognised as a party. I think that that is on the basis of how they run.

254. **Mr McDevitt**: They stood on a party ticket.

255. **Mr Hamilton**: You run as a party. Even though only one person gets in, you are still recognised in the confines of the Assembly as being a party. For a variety of reasons, we have then had a proliferation of single-Member parties. Rick made the point that, really, there is almost a perverse incentive. You get additional speaking time and additional resources. There is, therefore, an incentive for some people to become an opposition party, even though they are a single Member. Rick favoured a level of about three Members, although I may be quoting him incorrectly.

256. **Professor Birrell**: I think that, rather strangely, it is three Members in Wales and two in Scotland. It is built into legislation in Scotland and Wales, in that they do not talk about a party; they talk about a political group. So, if you have two or three individuals, they can then go and form themselves into a group, even though they might be from different small parties.

257. **Mr Hamilton**: It is one of those technical issues. If we proceed down this line, it is one of those little things that we would have to think about, rather than saying that, yes, we will have an official Opposition, and then finding out that that is one person.

258. **The Chairperson**: There are no other questions. Thank you, Professor Birrell, for attending today.

23 April 2013

Members present for all or part of the proceedings:

Mr Pat Sheehan (Deputy Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Stewart Dickson
Mr Paul Givan
Mr Simon Hamilton
Mr Sean Rogers
Ms Caitríona Ruane

Witnesses:

Professor Yvonne Galligan	*Queen's University Belfast*

259. **The Deputy Chairperson**: I welcome Professor Yvonne Galligan to the meeting. Thank you for coming and for sending us your written presentation. If you are ready to go ahead with your presentation, feel free to do so.

260. **Professor Yvonne Galligan (Queen's University Belfast)**: Thank you very much, Chairperson. I will make a short presentation that broadly summarises and pulls together some of the ideas that I presented in my submission. Thank you for the opportunity to appear before the Committee to discuss aspects of the operation of Parts III and IV of the Northern Ireland Act 1998. I would like to suggest that, on the matters in question, it is timely to consider their operation as part of a regular cycle of reflection and assessment of the workings of the institutions. I imagine that finding agreement and building consensus might take a little bit longer.

261. The issues are treated separately, but they have reciprocal impacts. I would like to broadly suggest that the principles of inclusivity and power-sharing that underpin the Northern Ireland Act 1998 should be kept in mind as discussions on reform are undertaken, and interpreted to include gender diversity, as well as other forms of diversity. My presentation will address those matters, as did my submission.

262. I turn first to d'Hondt. As I stated at greater length in my written submission, d'Hondt has served Northern Ireland's politics well. It has been accepted as a fair and transparent means of distributing Executive and Assembly Committee leadership positions. In my view, there are three conditions that make d'Hondt work well in the Northern Ireland setting: transparency, inclusiveness and proportionality. This enables the politics of negotiation on substantive post distribution to take place in a context of certainty regarding the numerical distribution of positions among the parties. However, given the need to accommodate five parties in the power-sharing Executive, d'Hondt works best with a minimum threshold of 10 positions, which is sufficient for all significant parties to be represented while conforming to the principles of inclusivity and power-sharing.

263. The consequences of a reduction in the number of Executive posts or Committee Chair and Deputy Chair positions would need to be carefully considered, not only in light of the politics of inclusion, but in respect of the operation of d'Hondt and its role in preserving the consociational arrangements. If a formal opposition were to emerge, d'Hondt could still act as a mechanism for the allocation of Executive positions as it does at present, leaving the Executive-forming parties to negotiate on the substantive policy areas and a Programme for Government. It could also be retained for the allocation of Committee Chair and Deputy Chair positions, again in the interests of inclusive politics. Often, a Government will seek to control the majority of Committee leadership positions. That happens elsewhere, but, in a Northern Ireland context, conserving a meaningful voice and presence for non-Executive party representatives

would be an important part of continued confidence building in the political arrangements.

264. A related aspect of inclusion and power-sharing is that of gender, facilitated by d'Hondt. As my submission indicates, women have less of a share of power in the institutions than men. Over half of the number of men who were elected in 2011 hold leadership positions in the Executive or Assembly, compared with 40% of the number of women who were elected.

265. In the context of a reduced-in-size Assembly and Executive, women are likely to lose out on power-sharing. That could potentially be exacerbated further if the plans to reduce each constituency representation by one are carried out. If one examines the last seat filled in each constituency in the 2011 election, one will see that women are in a more marginal position than men. On the last count, 13 men and five women were returned, which is 15% of men and 25% of women who were elected in 2011. DUP and SDLP women would be particularly vulnerable to seat loss if the pattern of 2011 were repeated. Three of the five DUP Members and two of the three SDLP Members who were elected on the last count were women. Therefore, the point that I am making is that d'Hondt interacts with other dimensions in addition to party representation. In the interests of inclusivity, representative democracy and power-sharing, gender balance in the political institutions matters.

266. I turn now to community designation. The mechanism for supporting consociational decision-making is coming under the spotlight once more. Views are divided on whether it accommodates competing identities or perpetuates ethnic divisions. It has certainly irked those representatives who do not wish to indicate a community designation and those who argue that they represent both major communities and others. At the same time, community designation has provided an element of certainty in the political process that, with other measures, has allowed politics to establish legislative routines and practices. Changing community designation in respect of the 12 voting areas that are listed in the Northern Ireland Act 1998 is a sensitive matter. It is about trust in the institutions and politics to deliver a fair outcome that commands broad cross-community consensus. The effects of any change to those principles of inclusivity on power-sharing need to be considered in that regard.

267. Community designation interacts with cross-community voting. That is evident in the operation of petitions of concern. The intent of petitions of concern was to alert the Assembly to upcoming decisions that could have a bearing on significant community-specific interests. However, the use of petitions of concern seems to have extended beyond the key community-specific interest that it was intended to address. Therefore, there is scope for a number of initiatives on that, some of which could be undertaken independently of other reforms. One could be to clarify the circumstances in which a petition of concern could be invoked, possibly confining it to legislation only. Another would be to introduce a qualified majority for non-legislative matters on which a petition of concern is lodged. A third, more radical departure would be to require a qualified majority for all issues that are related to community designation and cross-community voting. That would remove the parallel-consent requirement for key decisions. That point has been raised in the briefing paper that accompanies this evidence hearing. I lay those points before you without necessarily coming to a view on one side or the other. I offer them as issues for discussion and exploration. Obviously, a political decision is required on which of them, if any, would be considered possible to pursue.

268. Finally, I turn to the matter of opposition. I present a case in my submission for enhancing current opposition opportunities because I believe that there is scope to extend the role of Committees as they stand at present. I

believe that there is benefit to be gained from relaxing the discipline of the Whips in order to facilitate wider discussion in Committees and wider purview of Committees. There is also something to be said for not having every MLA on a Committee as of right. Again, those issues are open to discussion.

269. There are consequences to the introduction of a more "conventional" form of opposition. One of those is that the Executive may need to begin to consider operating under the rubric of collective Cabinet responsibility, at least in some areas. Indeed, in that regard, the discussion on opposition allows space for a discussion on how the Executive Government are functioning. What about policy-sharing, policy continuity, joined-up government, and thematic policy initiatives? These are areas that would enable an opposition to function more effectively if some semblance of collective government were in place and if there was a longer-term plan to which the Executive could be held accountable.

270. If an opposition were instituted, there would need to be rules for what exactly constituted an opposition. How much speaking time would the opposition or opposition parties be allowed? Who would represent the opposition group or groups? Would there be a leader of an opposition or would all leaders of opposition groups have rights of their own? Would that person or persons have additional speaking rights and the right to question the First Minister and deputy First Minister? That is all part of the nitty-gritty of developing the framework for oppositional politics to take place. If that is the decision, it may not be easy to move to that model immediately, but, in the absence of that happening, there is merit in Committees flexing their muscles more and taking on inquiries of a more cross-cutting or far-reaching nature than they currently do. That would require additional research assistance. Indeed, enhancing the research capacity allocated to individual MLAs would contribute to MLA scrutiny and development.

271. One aspect in considering the emergence of an opposition is the leadership of Assembly Committees. Customarily, in Westminster-type systems, those positions are in the gift of the Government. I suggest, as I did earlier, that the d'Hondt system could continue to be used for allocation of Committee roles of Chairperson and Deputy Chairperson, with all recognised opposition groups having an opportunity to be involved in leading scrutiny of the Executive. With that, I conclude my formal presentation to you. I am very happy to discuss any matters arising.

272. **The Deputy Chairperson**: Thanks very much for that, Professor Galligan. I will start off by asking a general question. I noticed that when you referred to conventional opposition in your submission, you had the word conventional in inverted commas. I mention that because the argument has been advanced that, to have a normal democracy, to go through the normal processes of holding government to account, scrutinising legislation, and so forth, there is a need for a formal opposition. Others will argue that, given the institutions that we have here, there is no need for that because there is a high level of scrutiny and holding the Executive to account. The difficulty is that many people use Westminster and the system there as their reference point. Would you like to comment on that general issue of the formal opposition and whether that is a prerequisite for normal democracy, whatever "normal" means?

273. **Professor Galligan**: That is a very interesting question, Chairperson. It goes to the heart of the matter, which is how we construct our democracy here, and to what extent is it normal or not. I think that looking at the Westminster Government/Opposition relationship to some extent constrains our opportunities for thinking about what opposition means and what holding the Government to account means. Clearly, a normal arrangement — in the sense of a Westminster-style system — is largely based on a two-party system; certainly

a system of two dominant parties. Obviously, there are other parties in the mix, but two parties are dominant in that system. It is very easy to accept that as the model. As the briefing paper points out, there are many forms of opposition and every one of them is appropriate for that particular circumstance. In my view, our facility for holding the Government to account already has much potential. We should be looking at how that power is utilised, developed, and exploited, if we feel that there are some constraints on our holding the Government to account. That is my view. There is a lot of scope for developing the existing institutions with democratic procedures and practices that are also "normal".

274. **Mr Beggs**: You seem to be arguing for continuing with big government and that, should there be a reduction in the number of Departments and Ministers, you would want to see additional junior Ministers appointed for the purposes of inclusivity. However, as junior Ministers are appointed by a principal Minister, that practice would not necessarily widen inclusivity. Why do you argue that it would? I do not understand that.

275. **Professor Galligan**: If there is to be a change in the number of Departments, it would involve more than just changing that number and keeping everything else as it is. There has to be a lot of consideration. If we are going to change the size and number of our Executive Departments, we must think very carefully about how we make government work. There is no point in, let us say, cutting out two or three Departments and merging them with others without a rationale as to how those rearrangements will deliver better government. It may be that more than one Minister will be needed to deliver that better government in those particular spheres. I do not necessarily say that the current method of appointing junior Ministers should be continued. Junior ministries should perhaps be distributed in a similar way to the senior ministries.

276. **Mr Beggs**: I will move on. Petitions of concern have been abused; most people recognise that. However, the abusers have been the DUP and Sinn Féin, which also have the power to stop any change to the mechanism of petitions of concern. What would encourage those parties to relinquish some of that power, which they seem to relish?

277. **Mr Hamilton**: It is hard to abuse the system when you cannot get enough signatures.

278. **Mr Givan**: You established it in the agreement.

279. **Professor Galligan**: I think that petitions of concern are meant to be warning bells and signals.

280. **Mr Beggs**: They are just blockages. They block legislation and motions.

281. **Professor Galligan**: Yes; that is exactly what has happened. That is why I suggest that, instead of a petition of concern being triggered by 30 signatures, the test or the threshold should be much higher than that. A petition of concern should require, for example, a qualified majority of the Members of the Assembly. That would mean that it would require more than any individual party alone — either the DUP or Sinn Féin — to lodge a petition of concern. That is what I am getting at, moving forward.

282. **Ms Ruane**: Go raibh maith agat, a Chathaoirligh. Tá fáilte romhaibh. You are very welcome. I want to make two points. I will start with the petition of concern. Lest you leave with something that is not factual, I think there was a bit of misrepresentation by previous contributors. First of all, Sinn Féin cannot complete a petition of concern on its own; we have 29 MLAs. Secondly, as part of the negotiations, we negotiated petitions of concern in relation to an equality mechanism. A petition of concern is a warning bell in relation to equality.

283. If you look at where Sinn Féin has used them, you will see that it was to protect equality; for example, the Ad Hoc Committee on welfare reform. If you look at where other parties used them —

indeed, Roy's party has used them along with the DUP — it was to block areas of equality. In fact, I think that the DUP used a petition of concern to stop Jim Wells from having to apologise when he should have had to apologise.

284. **Mr Givan**: The National Crime Agency —

285. **Ms Ruane**: Sorry, I did not interrupt you, Paul.

286. **Mr Givan**: I did not speak.

287. **Ms Ruane**: He uses a good example with the National Crime Agency. That was in relation to the protection of rights in respect of fingerprints and retention of data, which goes against international courts and legislation.

288. You spoke about a qualified majority. In relation to petitions of concern, what is your view on maybe two parties having to initiate a petition of concern instead of requiring 30 signatures, so that it is not just one party? I think that the DUP has used a petition of concern seven or eight times on its own. Do you think that is a good mechanism for democracy and equality?

289. **Professor Galligan**: My point, without getting into any of the party politics of this, is that irrespective of what party is able to initiate a petition of concern under the current rules on its own, and one never knows what the electoral arithmetic will throw up at any point in time, I suggest that 30 signatures is too low a threshold, irrespective of whether three parties could each achieve 30 signatures.

290. There has to be an agreement that an issue, whatever it may be, is a genuine issue of concern that reflects a general concern within the Assembly. That requires more than just 30 Members to indicate a concern. Maybe it could be through two parties. However, maybe instead of it being party related, it could be Member related: the threshold could be moved up to whatever 55% or 60% of the membership of the Assembly is, so that there is some way of moving a petition of concern and not using it as a blocking mechanism, as has been said.

291. **Ms Ruane**: I will move to my second area. I wanted to compliment you on your focus on gender diversity. That is particularly interesting, given that we have 21 women Members. When we look across the Benches, there are very few women. Although I welcome the percentage of 40% of women in the Executive, that figure is so high only because Sinn Féin picked three women out of its five Ministers. There is only one other woman in the Executive. We need to improve on that 40%.

292. In relation to MLAs, I note — I have not seen this before — how women would lose out if we cut the number of constituencies and the number of Members who represent constituencies. Like Pat — I think it was Pat who said it — I am not a great fan of the first-past-the-post system. It is fundamentally anti-democratic, and we should not be blindly following England or anywhere else. The Scottish system is interesting. We were over there recently. They have regional representation, looking at policy, and also individual MSPs representing constituencies, so they are focusing on constituencies and another layer is focusing on policy. I think that there is something interesting there.

293. There is also an opportunity to increase gender representation. I am regularly the only woman on a Committee. That is the case for women from other parties, and I know that that is a factor for them. I think that that then often leads to gender-biased representation on various Committees. So, I welcome that you are here and that you focused on gender. Could you give us some advice on how we not only maintain but increase the number of women in the Assembly?

294. **Professor Galligan**: Increasing the number of women in the Assembly is a challenging agenda. I think that, unlike many other countries in the world, there is a mechanism at your disposal that most parties have decided that they do not want to look at. That mechanism is the Sex Discrimination (Election Candidates) Act 2002, which enables parties to introduce their own supportive measures for gender-balanced

representation. I think that political parties could use that tool much more to support women's representation.

295. It occurred to me only after I had presented my submission to you some weeks ago to do a piece of research on looking at who filled the last seat at the previous election That is because, obviously, the last seat is always the marginal seat, if there is one. From the figures, it was very clear that, in some instances, women who ran in 2011 were in a more vulnerable position and in a greater position of vulnerability than men. I think that that is quite disturbing. So, it is about bringing more women in as candidates and positioning them to run in winnable constituencies. That is the key. It is not enough to bring in more women to run as candidates; they need to run in winnable constituencies. Again, I think that there is a lot of room for further development there, so we will have to see how it goes.

296. Northern Ireland lags way behind the other devolved Parliaments and Assemblies. Over 40% of Members in the Welsh Assembly and over one third of Members in the Scottish Parliament are women. That happened because, when both Parliaments were established, they embedded the principle of equality of opportunity. In our circumstances, although we also embedded the principle of equality of opportunity, that relates to different fault lines and divisions in our society. I think that now is an appropriate time to extend that to gender and gender balance in Parliament.

297. **Mr Rogers**: You are very welcome. I have a little question to ask about petitions of concern, which seem to exercise a lot of people around the table. Do you not believe that a qualified majority would undermine the whole purpose of a petition of concern and, in particular, squeeze smaller parties? That is my first question.

298. **Professor Galligan**: Do you mean that it would undermine that it is meant to express a community's key interests?

299. **Mr Rogers**: Yes.

300. **Professor Galligan**: I do not think that we would be discussing this if petitions of concern had not been used differently from the way in which they were intended to be used. That is why I raised the issue of a qualified majority. The threshold of that qualified majority is open for question. I only suggested a figure, but it does not have to be that; it could be 55%. The point is that petitions of concern are a way of supporting the trust in and confidence that politics is representative, which is sort of what you are saying to me. I think that when that role leaks away, petitions of concern have to be brought back to their initial purpose and function. It seems to be that the point that can trigger a petition of concern is causing the problem. It is on that moment that one must focus. What are the trigger mechanisms that alert that alarm bell? If 30 is too low, perhaps we should be raising it to prevent the alarm bell from being raised too often and unnecessarily. However, we also want to set it at a point that allows for a genuine expression of interest. So, I think that it is a matter of finding the formula that brings it back to what it was.

301. **Mr Rogers**: My second point is about opposition. You said that, in a Northern Ireland context, conserving a meaningful voice and presence for non-Executive parties is very important. What sort of a mechanism do you see for that? You mentioned additional time and so on for non-Executive parties. Can you elaborate on that?

302. **Professor Galligan**: If there is a scenario where there is a clear-cut opposition and parties choose not to take their seats in the Executive and go into opposition, I think that it would become quite important that those parties be recognised in their capacity to hold the Government to account and that they be recognised in their own voices in doing so. So, if one, two or three parties decide not to take up their seats, they would not be a collective one-voice opposition; there would be an opportunity for each of them to bring

their perspective and diverse view to the table to hold the Executive to account. They would not be one block.

303. That leads me to say that there is also a role for people from very small parties. They could join together or align with other parties to have speaking rights as such, or they could form an independent block in their own right as an independent grouping of MLAs wishing to hold the Executive to account. So, I envisage a more inclusive and more diversified opposition than a one-voice opposition.

304. **Mr Dickson**: Thank you for your presentation. I want to follow through on two areas: community designation; and opposition. I appreciate that you indicated that community designation has served the process well to this point in time, but you use a word that irks me. That word is "irked". It is not due to being irked that I do not choose to designate myself as unionist or nationalist; it is a matter of political belief and philosophy that I do not wish to be defined by a sectarian title. Rather, I wish to represent everyone in the community. There needs to be recognition of that. I feel undervalued, and, indeed, my vote is undervalued, for as long as that remains. Is there an understanding of that? How will we work our way through that?

305. **Professor Galligan**: I appreciate your point. I was mindful that there are clearly tensions for people and representatives — individuals are representatives of different voices in the community — and it is clear that this space for diverse voices is restricted because of the community designation. It is a point at which, if there is ever going to be "normal" politics, the normality of the politics has to include all voices. Therefore, community designation needs careful thinking through. For example, people say that "other" is a community designation, but, in fact, it is not really a designation at all.

306. **Mr Dickson**: No, it is not, and it undervalues a group of people in the Assembly. If I wish to share my voice with unionists or nationalists on a particular subject, I am free to do that, and I can effectively add my voice to theirs. However, they are in a more difficult position if they wish to add their voice to mine. Their voice counts more than mine. It is an area on which we are clearly going to have to do a lot more work, and I would welcome more information on it as we progress through this.

307. Turn to opposition, there is a feeling or perception that there is no opposition in the Assembly, that opposition was poorly thought out in the Assembly or that it is ill catered for in this organisation. Having looked last week at, for example, the Scottish Parliament, I can see that it is quite clear that we actually have clear lines, roles and rules for people in the organisation and that we are not that different from the Scottish Parliament, which has opposition. There may be a few tweaks that we could do with matters such as speaking time, for example. However, I am interested to know how you see opposition being developed. Does opposition just simply mean those parties that are either too small to be in the Executive or that choose not to be in the Executive? That is also a free choice; a party may choose not to be in the Executive. It may be that, at some stage in the future, a significant number of people may choose not to be in the Executive. One party or another may decide to take that line. Your view is that d'Hondt serves everybody well, so how would it serve in those circumstances? Would it allow the largest non-Executive party more time than the next smallest party and so on, going right down to the single Member?

308. **Professor Galligan**: Opposition is an issue that needs careful attention. Having looked at the Assembly, I think that there is a lot of opposition in the Assembly as it is and that there is a lot of scope for opposition in the Assembly. As I said, there is room to extend and to take the power that opposition allows for Committees to be more proactive —

309. **Mr Dickson**: Even in this model?

310. **Professor Galligan**: Even in this model. That is my view.

311. This relates to an earlier point that I made, but I think that, at the moment, we should welcome that we have got so far with our consensual politics, with the politics of the Assembly and with the consociation of power-sharing politics. Even though the agreement is 15 years old, the Assembly is in fact not much more than six years old — you could maybe push it to seven — in its regular and continued working. So, in a way, we have only one full parliamentary term, if you like, under our belt. This is our second parliamentary term, and it has its own uncertainties, such as length of time and all the rest.

312. I think that we can sometimes be a little too hard on ourselves. We can say, "Things are not working, so we have to fix them really quickly." In fact, maybe they are not working, but maybe we do not need to fix them really quickly; maybe we need to fix them slowly and carefully in an organic manner rather than in a knee-jerk manner. The Scottish Parliament has been going for 15 years, so it has double the amount of experience and is bedding in. As we all know from our own experience of politics and other areas, it just takes a little bit of time for dust to settle and for processes to bed in. However, that does not mean that we should not be reflecting on how those processes are working. We should absolutely be doing that. That is where we should be with the opposition issue.

313. **Mr Campbell**: My apologies for being late. The issue that you raised about gender and the last seat had not occurred to me. Surely you do not think that the greater preponderance of females that is likely to win final seats is down to their gender. Is it not the case that the lesser number of female candidates that stood previously is only now being reflected in voters becoming more used to giving higher preferences to more women rather than women being regarded as the final candidate or the second, third or fourth choice?

314. **Professor Galligan**: I think that that is an important point about how the electoral system interacts with candidate gender, who the voters choose and how that works through the system. Interestingly, at the previous election, we found that voters were more inclined to give women than men their first vote across all parties except the DUP.

315. So, even though there are fewer women than men running as candidates, when you average it all out, you will see that voters were as likely to give their first vote to a woman as to a man but, in fact, went further and were more likely to give their first vote to a woman. That is the first point.

316. **Mr Campbell**: I presume that that is the case where, across the board, voters can select a male or a female. If they do not have a female candidate, obviously they cannot vote for a woman. I take it that that analysis took account of that and that you had to discount areas where there were all-male candidates.

317. **Professor Galligan**: Yes. That tells us that the Northern Ireland electorate is not necessarily going to discriminate against women candidates. That is an important point.

318. Coming to your second point, when one looks at the counts and at who was in the race for the final seat, one sees that, across all 18 constituencies, it is obvious that more men than women were in the race for the last seat. However, when you take that as a proportion of the number of men and women who were elected, it looks as though women are in the more vulnerable position. My point is that if you take the last seat away, you will consequently have proportionately fewer women than proportionately fewer men returned.

319. **Mr Campbell**: I understand that. Can we ascertain why that should be the case? Why should female candidates be at proportionately greater risk? I accept that they are, because you looked at the figures and found that to be the case. However, why is that? Why is it that, on

the fifth seat, a female is more likely than a male to be at risk?

320. **Mr Hamilton**: May I butt in? I will propose a theory for why that is the case. You noted that, for the DUP, three of our five female Members were vulnerable at the last seat. Each of those three was a first-time candidate.

321. **Mr Campbell**: That is my point.

322. **Mr Hamilton**: Yes, and the other two topped the poll in their constituencies. I know that very well, because I trailed in miserably behind one of them. So, I am living proof that our voters far prefer women candidates. Three of them were first-time candidates, and one was brand new in politics and had never run for anything in her life. So, they did not have the benefit of incumbency, which is widely acknowledged everywhere in political science as being of some benefit to those who are running. There is other evidence to back that up. Those three people were all brand new candidates running for Assembly constituencies. In two cases, they were councillors, but that is only a tiny area of their entire constituency.

323. **Mr Campbell**: That is what I was alluding to.

324. **Mr Hamilton**: Sorry, I jumped in ahead of you.

325. **Mr Campbell**: Is it not the case that, slow and evolutionary as it might be, the issue that you correctly raise is more likely to be resolved when we see more female candidates on the ballot paper over two or three electoral cycles? As more women become more predominant in more places in the electoral world, more voters will place them higher on the ballot paper and they will be less likely to be the last candidate. Is that not likely to be the case?

326. **Professor Galligan**: I definitely agree with your point that, the more women who run, the more likely it is that women will be elected. That is very true, and I support that argument for a long term.

327. I have also observed that incumbency clearly matters, as you said. Whether somebody is a first-time candidate or not in the new political experience also very much matters, as does the level of support that a party attracts. Not all the women that I was looking at were first-time candidates. One of the vulnerable women was a long-time candidate for another party. Therefore, incumbency does not always protect or help women, nor does the fact that they were first-time candidates. So, party support also fits into this equation, and we need to consider that.

328. **Ms Ruane**: I have two brief supplementary questions to ask. It is very interesting to see how everyone gets so exercised when we talk about proactive measures for women. It is great that we are having this debate; I think that it is really important. Anyone who is involved in politics knows that it is about party support and how you divvy up party votes in a constituency. So, if a party wants to get women elected, it can, and if it does not take measures to do that, there will be very few women elected. It is as simple as that. You can add incumbency, etc, but there will be loads of men who are not incumbents and are still well up there. So, rather than starting to pick holes, I think that we would be better accepting that we have a problem, that we have a lack of women and that we need more.

329. I would be the first to say that Sinn Féin needs more women, yet we have the highest number of women in the Assembly. However, that is not good enough for me or, indeed, for the men in our party. That is because it should not just be women fighting for gender equality; men should do that as well. Thankfully, the men in our party are doing that.

330. I forgot to ask about this previously, but latitude is the other point that I wanted to raise. I think that others in the room might be interested in that. I speak as the only female Whip, which is also interesting, but I know that Stewart is a Whip for his party. You mentioned

more latitude in Committees. Can you elaborate a little bit on that?

331. **Professor Galligan**: I was thinking that a Committee — the Health Committee, for example — might feel that an issue that it wished to tackle fell within its broad remit or policy area. That issue need not necessarily always shadow an Executive matter, but it is obviously a societal problem of some kind or another. That Committee would investigate it as a Statutory Committee in its own right. It would explore and develop it and come up with a view or recommendations and a position on that policy issue.

332. That might also mean that that Committee would have to work with another Committee, because many of our societal problems are multidimensional. For example, somebody who is in poverty is not just poor financially; they are poor in many other ways and need support in other ways. So, Committees could instigate tackling those kinds of cross-cutting issues off their own bat — and why not?

333. **Ms Ruane**: Thank you. I am sorry that it was so hard to hear because of the two gentlemen talking. I think that we need to be respectful to our guests.

334. **The Deputy Chairperson**: Thanks very much for coming along, Professor Galligan. Thanks for your written submission and for your patience in answering all the questions.

335. **Professor Galligan**: You are very welcome. Thank you very much for the discussion. I very much enjoyed it. I wish you well in your work.

7 May 2013

Members present for all or part of the proceedings:

Mr Pat Sheehan (Deputy Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Paul Givan
Mr Simon Hamilton
Mr Raymond McCartney
Mr Conall McDevitt
Mr Sean Rogers
Ms Caitríona Ruane

Witnesses:

Ms Eileen Cairnduff *Platform for Change*
Dr Robin Wilson

336. **The Deputy Chairperson**: I welcome Dr Robin Wilson and Ms Eileen Cairnduff. Thank you for your submission and your attendance. I ask you now to give us an oral briefing.

337. **Dr Robin Wilson (Platform for Change)**: Thanks very much, Deputy Chair and members, for having us. Eileen and I are conscious of time and of the imminence of the statement at 10.30 am. I propose to give a five-minute presentation and then either of us will field questions.

338. I stress that we are asking you to consider the submission in conjunction with that of the previous year on the number of Departments and the size of the Assembly, and to see what we present to you today as a coherent overall package of proposals on the three issues that you have asked to be addressed.

339. What we are really saying across this submission is that the argument about the kind of governance structures that we have here has been bedevilled, over the years, by a polarisation between people who fundamentally believe that the Westminster model is the model and who consider that the winner-takes-all political culture at Westminster is what we should aspire to, and those on the other side who have rejected that model in favour of an insistence on having, essentially, a communal veto against majority rule.

340. What we try to say in this paper is that there is a middle way. That does not make us the voice of the Alliance Party. The middle way says that we should think of the wider European context as the model. In that wider context, the norm is not a winner-takes-all culture but shifting coalitions of different parties as elections succeed one another. In Northern Ireland, we should try to reach a point as soon as possible where we have a more flexible system of power sharing, which retains the equality of citizenship at its heart but, nevertheless, allows us to be more normal in that European sense.

341. What we suggest on the issue of d'Hondt is that the way through that argument, which, again, polarises between people who want a voluntary coalition and those who say we should keep it as it is, is to have a mandatory, agreed coalition, which would be formed after each election. It would not need to be an all-inclusive grand coalition. Parties could choose to be part of that coalition or not part of it, depending on their ability to agree on a programme. Such a Government should operate with collective responsibility in support of that programme, as did, of course, the 1974 power-sharing Government. They should operate in a joined-up way, which the d'Hondt arrangements do not encourage. That would send out a very strong signal to society in Northern Ireland that we have a purposeful Government, committed to reconciliation. In that light — and Eileen may want to come back to this later — we think that the arrangements for communal designation are totally inappropriate in a democratic society, because a democratic society has to be based on the idea that voting counts

and makes a difference. You do not simply have a view on an issue that derives from your religious background but you listen to the arguments and change your view as you may. In that context, communal designation has proved to be a straitjacket that has prevented the emergence of more normal politics in Northern Ireland, and it has sent the wrong signal on reconciliation to wider society.

342. We suggest that it is possible to provide various minority protections, and we offer three possible ways to do that: through a super-majority requirement to form a Government; a Northern Ireland bill of rights; or through a requirement that a Government be formed on a 50:50 basis. Those can easily replace communal designation as a safeguard to militate against majority rule.

343. Finally, in that context, it seems logical to have an opposition consisting of those parties that elect to be non-governing parties after an election, and which can, therefore, hold the Executive to account. That is, as we point out, allied to the reconstitution of the Civic Forum, which is a statutory duty that is not being implemented, with a view, if one is in one of those opposition parties, to being able to present the case as to why one should be in government after the next election.

344. I have just skated over the surface, but it is probably best to leave it at that and take comments and questions.

345. **The Deputy Chairperson**: Thank you very much for that, Robin. Will you elaborate on what you mean by a numerical super-majority requirement, and comment on the need for a cross-community requirement for Government formation for a period of time?

346. **Dr R Wilson**: The current position is, obviously, that we have communal designation and the sense is that the cross-community support requirements provide you with a safeguard against winner-takes-all type of behaviour. We do not want winner-takes-all type of behaviour. However, there are other ways that would keep the baby of power sharing and equality without the bath water of entrenching sectarianism, as with the current arrangements.

347. We suggest that, after an Assembly election, there would be negotiations among the parties on a potential Programme for Government. Whichever parties decided to coalesce behind that programme would then have to be able to command a sufficient majority in the Assembly to go into government together and implement that programme. What the precise figure for that should be is a matter of legitimate debate. I think that around the 65% level would be reasonable but that is something that people can argue back and forth about.

348. **The Deputy Chairperson**: Sorry, can I just stop you? Are you saying that it would not require a majority within each community bloc, as such, but just a majority of, as you say, maybe 65%?

349. **Dr R Wilson**: It would require a super-majority in the Assembly of some figure that would be agreed, say 65%, for the sake of argument. There would not be communal designation.

350. **The Deputy Chairperson**: On a practical issue, could you imagine the formation of any Government in those circumstances that would include Sinn Féin?

351. **Dr R Wilson**: Yes. Any party could be in government and any party could decide not to be in government. There is no reason why, for example, you could not have a Government, for the sake of argument, that included Sinn Féin, the SDLP, the Alliance Party and — I am not quite sure what is happening to the Ulster Unionist Party. I am sorry to intrude on private grief but whatever there is there. The DUP might say that it does not want to be a part of that and will campaign for a different Government in the future.

352. The beauty of having a number, once you get away from communal designation, is that anybody can be in and anybody can be out. Obviously, however, you could not

have a situation where you simply had one community dominating the Executive to a degree that would frighten anybody on the other side.

353. **Ms Eileen Cairnduff (Platform for Change)**: Surely, Sinn Féin has sufficient numbers in the Assembly now that the 65% number should not frighten it. Surely, you should not think that you will be put out at this stage of the game. I hope that we have reached a more mature stage in our government that things such as these can be considered.

354. **Dr R Wilson**: If I was a Sinn Féin member, I would agree with what Eamonn McCann said at the beginning of the Assembly, which was that Sinn Féin should go into Opposition and provide a left-wing opposition to the Government. That would be my position.

355. **The Deputy Chairperson**: I am not surprised that Eamonn would take that position. It sounds to me an awful lot like self-regulation of the Assembly. We know from experience in not just the political field but other fields that self-regulation often does not work.

356. **Mr McDevitt**: I declare an interest as someone who was involved with Platform for Change when it was being established.

357. You suggest that we set aside designation, and one of the models that you proposed was that there would be some way to do what you called a 50:50 Government. How would you know that it was a 50:50 Government if you did not have designation?

358. **Dr R Wilson**: That, we are suggesting, is not a particularly desirable fallback. It is, essentially, the Belgian model in the sense that the Government in Belgium has to consist of 50% Walloons and 50% Flemings. It is not a very good model because government in Belgium does not work. Leaving that aside, the comparison, Conall, would be with the fair employment monitoring system. I do not mind saying on a fair employment form that I am perceived as a member of the Protestant community. I am an atheist, but I know what I am doing when I say that. What I resent is anybody who says, "You are a Protestant, ergo you are also a unionist, loyalist or a member of the so-called PUL community", which I detest with a passion.

359. I have no problem at all about having to ensure that a Government would be 50:50 in the sense of people from Catholic and Protestant backgrounds, and any others could then be thrown in. What I have a big problem with is the idea that our political choices are programmed by birth and we would then have to have a Government of, say, 50% unionist and 50% nationalist, without anybody like me on the secular left of politics getting a look-in.

360. **Ms Cairnduff**: On a personal level, that is the main issue that I am strongly against. I am a Catholic unionist, I suppose, which is a new phrase that is being mentioned quite a lot. I would hate anybody to think that, because I am a Catholic, I am, ergo, a nationalist. I am actually English by birth but that does not mean very much these days.

361. **Mr Hamilton**: We will not hold that against you.

362. **Ms Cairnduff**: Exactly, do not. I am also in a mixed marriage. The messages that all this gives to the wider community is what leads us into problems with flags and national anthems at football matches.

363. **Mr McDevitt**: I will play devil's advocate. That is the scenario that would arise if you applied the fair employment test to government here. As it is today, with the test and designation, religion has nothing to do with it.

364. **Ms Cairnduff**: What about the others?

365. **Mr McDevitt**: What I am saying is that religion has nothing to do with it. Therefore, it is not an accident of birth thing.

366. **Ms Cairnduff**: Surely it is implicit.

367. **Mr McDevitt**: No, it is not at all implicit.

368. **Dr R Wilson**: I am a social scientist, Conall. I know of no correlation in social

sciences that is anything like as close between how people designate in the Assembly and their religion. There was only one person in the Assembly whose designation I could not have predicted from their religious background, and that was John Gorman, who was a Catholic and in the Ulster Unionist Party. Every other single person who has designated since 1999 did so in a way that you could have predicted from their —

369. **Mr McDevitt**: That is not true. Billy Leonard, as far as I remember, was a Sinn Féin candidate.

370. **Dr R Wilson**: I beg your pardon, yes.

371. **Mr McDevitt**: I think you would probably find one or two other examples. It is the exception.

372. I am just trying to work it through. If you were to move away from mandatory designation, which I think probably everyone would see as a desirable outcome in the long term, there are phases that would allow you to move through that. If you were to move to 50:50, even if it were a voluntary designatory model, you would be reduced to religion, as you rightly point out. Of course, that would be extremely regressive because it assumes that it is just religion that defines your politics.

373. **Dr R Wilson**: No, because what you would be saying, as with the fair employment case, is that it does not say anything about your actual religion but just the background from which you come. That is just a safeguard, as we say. We do not think that it is the best one. We would much rather it was a super-majority and/or a bill of rights requirement, and you could have those as belt and braces if you wished. However, that is the example if it came to it and there was no other way that it could be done. Just to balance it out: I am an Irish citizen.

374. **Ms Cairnduff**: With fair employment, obviously it is always done in secret. If you fill in anything, it is usually put in a separate envelope, so we would expect that to be similarly done here.

375. **Mr McDevitt**: Eileen, let us apply the test to that. I do not mean to hog the session. This is a representative Parliament, so, if you vote for someone and their political platform in good faith and then there is the criterion that, let us say, the Government will be made up of half and half and you did not know that individual's religion, there would be a democratic issue on their criterion for being in government and the basis on which you would vote for them. So, you could not do it in secret. It is just not possible. You would be withholding from the electorate a vital piece of information that would then be relied upon to establish the composition of a Government.

376. **Ms Cairnduff**: I suppose so.

377. **Mr McDevitt**: One of the things that we are trying to do is think our way through an organic and evolutionary process, and one of the debates that has emerged in Committee is the idea of moving from the d'Hondt all-in, effectively, model to what I suppose the Committee is calling the d'Hondt opt-out model, where, after an election, parties would come together. They would know their potential entitlement according to the d'Hondt formula, and it may be a question of negotiating a Programme for Government, with those who cannot sign up to it leaving to form an opposition. This would be in the interim, obviously, to your idea, but how would you feel about that as a next step?

378. **Dr R Wilson**: In some ways, Conall, on any reasonable reading of the Belfast Agreement, you see that the Programme for Government was meant to be the gel that would hold the Executive together. Unfortunately, it did not end up playing that role. I would have no problem if d'Hondt were to fade into the background as the emphasis on coming together around the Programme for Government took over. If people were to feel that that was a more secure way of doing it and were fearful that, if there was no foundation, things could roll back, that would be fine.

379. **Mr Beggs**: You mentioned that it was thought that the Programme for Government would be the gel that would hold the various offices together with a united purpose. Do you agree that agreeing a Programme for Government a year after going into office is very bad practice, is illogical in most political norms that exist throughout the world and is not helpful? Do you agree that if it were agreed before office was taken, it would be beneficial for the community and everyone and would bring cohesiveness to that Government?

380. Secondly, in my opinion, there has been a lot of abuse of key votes from certain political parties on both sides. Have you any suggestion for how to alter the current regulation to bring about what was originally intended?

381. **Dr R Wilson**: Roy, thanks for both your points. On the first, in the wider European model that we are talking about, it is not unusual for it to take weeks or months to form a Government while the parties that will eventually form it decide to agree on a programme. You cannot really agree in advance of the election, because you do not know what the election will show up. Part of what we are trying to say is that it is important that ordinary electors think that how they will vote makes a difference to what the final pattern turns to be. Nevertheless, I agree with the thrust of what you are saying, which is that there should be a link to a Government being formed and a programme being developed by that Government. The ordinary electors' point of view is that they elect people to do things, and, if there is not a connection between the Programme for Government and the formation of a Government, it disconnects people from the political process.

382. It would be much more purposeful if we could have, as Scotland does, a quite developed Programme for Government, with the Government committed to set of very clear policy goals. That would give politicians here the ability to say that this is something very different from what would have been done if we had direct rule. I am afraid that most people here would not say that that much has been done that is that different, because the Programme for Government has not been strong enough.

383. With regard to your second point about key votes, yes, they have been abused because different parties at different times have come at it in a partisan way. The idea was that it was meant to protect minorities; not the parties. We state in our proposal that that is one of a number of reasons why a Northern Ireland bill of rights that is based on some basic minority rights and protections should find its role and come back to the fore, because you could then get rid of those mechanisms for key votes that, like you say, are open to abuse.

384. **Mr Beggs**: Do we need a bill of rights to do that? Surely that could be agreed in the Assembly at present by just simply changing the regulations around key votes.

385. **Dr R Wilson**: It does not need to be agreed, but it would certainly be my view, given the divided nature of Northern Ireland, that the value of incorporating the two minority rights conventions from the Council of Europe, which we refer to in the submission, would be very strong. It would be seen as a signal that their rights were being protected, and it would be seen as Northern Ireland being in full compliance with the requirements on a European level.

386. **The Deputy Chairperson**: Are there any other questions? No?

387. Thank you very much for coming in. It has been short —

388. **Dr R Wilson**: We were conscious that it was a rush.

389. **Ms Cairnduff**: Thanks very much for giving us your time.

390. **The Deputy Chairperson**: The day after a bank holiday is always hectic. Apologies for that.

391. **Dr R Wilson**: Thank you very much for your time. We will obviously be available if you need to discuss any of those things further.

18 June 2013

Members present for all or part of the proceedings:

Mr Pat Sheehan (Deputy Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Stewart Dickson
Mr Paul Givan
Mr Conall McDevitt
Mr Sean Rogers
Ms Caitríona Ruane

392. **The Deputy Chairperson**: Members, I propose that we consider for agreement the final text of the draft of the report, section by section. Are members agreed?

Members indicated assent.

393. **The Deputy Chairperson**: Are members content with the covering pages in the "Introduction" section of the report?

Members indicated assent.

394. **The Deputy Chairperson**: Are members content with the "Committee's Approach to the Review" section of the report?

Members indicated assent.

395. **The Deputy Chairperson**: Are members content with the "Committee Consideration" section of the report?

Members indicated assent.

396. **The Deputy Chairperson**: Are members content with the "Committee Analysis and Conclusions" section of the report?

Members indicated assent.

397. **The Deputy Chairperson**: Are members content with the "Executive Summary" section of the report?

Members indicated assent.

398. **The Deputy Chairperson**: Are members content with appendices 1, 2, 3, 4, 5 and 6 of the report?

399. **Ms Ruane**: Sorry, which appendix?

400. **The Deputy Chairperson**: Appendices 1 to 6.

401. **Ms Ruane**: What page is it on?

402. **The Deputy Chairperson**: It is not in this —

403. **The Committee Clerk**: The appendices were e-mailed to all members because they contain the evidence in such depth.

404. **Mr Beggs**: Are they just the evidence?

405. **Ms Ruane**: So, it is just the papers?

406. **The Committee Clerk**: Factual records, yes, of the evidence received.

407. **The Deputy Chairperson**: Do we have formal agreement on appendices 1 to 6?

Members indicated assent.

408. **The Deputy Chairperson**: The final version of the report will be proofread one last time before the report is ordered to print. Are members content that the Committee secretariat make any change to typos and to the format of the report, as and when necessary? Such changes will have no effect on the substance of the report and are purely for the purposes of formatting and accuracy of text. Are members agreed?

Members indicated assent.

409. **The Deputy Chairperson**: The extract of minutes of proceedings and minutes of evidence — Hansard — from today's meeting will have to be included in the report. Are members content that Stephen and I, as Chairperson and Deputy Chair, approve the extract of the minutes of proceedings from today's meeting for inclusion in the report?

Members indicated assent.

410. **The Deputy Chairperson**: Are members content that the first edition of today's Hansard record of the review be included in the report, as there is insufficient

time for members to review the transcript and provide comments on it?

Members indicated assent.

411. **The Deputy Chairperson**: I propose that a copy of the final embargoed report be forwarded to the Secretary of State and to the First Minister and deputy First Minister as soon as it is available. Are members content that the Committee secretariat forward an embargoed electronic version of the report, as soon as it becomes available, with an appropriate covering letter from the Chairperson to the Secretary of State and the First Minister and deputy First Minister?

Members indicated assent.

412. **The Deputy Chairperson**: We now consider the draft motion on the report tabled for debate in the Assembly. At this stage, if the Committee wish to have the report before the Assembly before summer recess, the probable dates are 1 July or 2 July. Are members content with the wording of the draft motion?

Members indicated assent.

413. **The Deputy Chairperson**: In anticipation of the report being debated, a media operational notice will be drafted to be issued the week prior to the debate. It will indicate the date of the debate, the indicative timing, when available, and state that the report will be embargoed until the start of the debate. Are members content that a media operational notice to that effect be drafted and issued the week prior to the debate?

Members indicated assent.

414. **The Deputy Chairperson**: Finally, are members content that the Committee order that its report on the review of d'Hondt community designation and provisions for opposition be printed following today's meeting and that hard copies be kept to a minimum, in the interest of efficiency? Are members also content that a note be put to the Business Office today, signalling that an embargoed manuscript copy of the report will be laid in the Business Office by close tomorrow?

Members indicated assent.

415. **The Deputy Chairperson**: I advise members that the report should be returned by the printer and distributed to all MLAs by midweek next. The report will, of course, be embargoed until the debate on it commences in plenary sitting.

416. **Mr Beggs**: May I have clarification? Are we printing the summary report with the CD, rather than the whole report, as is normal practice? It would be very bulky to print the whole evidence.

417. **The Committee Clerk**: In keeping with normal practice, it will be a CD.

418. **Mr Beggs**: OK.

Appendix 3

Stakeholder List, Stakeholder 'Call for Evidence' Paper

Stakeholder List

Parties and Independent Members of the Northern Ireland Assembly

- Alliance Party
- Democratic Unionist Party (DUP)
- Green Party (GPNI)
- Social Democratic Labour Party (SDLP)
- Sinn Féin (SF)
- Traditional Unionist Voice (TUV)
- UK Independence Party (UKIP)
- Ulster Unionist Party (UUP)
- Mr John McCallister, MLA (Independent)
- Mr David McClarty, MLA (Independent)
- Mr Basil McCrea, MLA (Independent)

Clerks of Relevant Parliaments

- Clerk/Director General of the Northern Ireland Assembly
- Clerk of the House of Commons
- Clerk to the Welsh Assembly
- Secretary General and Clerk to the Dáil
- Clerk to the Scottish Parliament
- Clerk to the States of Jersey
- Clerk of Tynwald (Isle of Man)
- Clerk to the States of Guernsey

Academics

- Professor Derek Birrell (University of Ulster)
- Dr Ruth Fox (Hansard Society, London)
- Dr Yvonne Galligan (Queen's University Belfast)
- Professor Robert Hazell (University College London)
- Dr Muiris MacCarthaigh (Institute of Public Administration, Dublin)
- Professor Christopher McCrudden (Queen's University Belfast)
- Professor Brendan O'Leary (University of Pennsylvania)
- Dr Eoin O'Malley (University College Dublin)
- Rt Hon Peter Riddell (Institute for Government)
- Dr Meg Russell (University College London)
- Alex Schwartz (Queen's University, Canada)
- Professor Rick Wilford (Queen's University Belfast)

Other Political Parties Registered in Northern Ireland*

- British National Party
- Cannabis Law Reform
- Common Good
- Community Partnership (Northern Ireland)
- Conservative and Unionist Party
- Éirígí
- ENG
- Fianna Fáil - The Republican Party
- Freedom Democrats
- Give Our Children A Future Party
- Humanity
- Irish Republican Socialist Party
- iXDemocracy
- Labour Party of Northern Ireland
- Libertarian Party
- Money Reform Party
- National Front
- People Before Profit Alliance
- Procapitalism
- Progressive Unionist Party of Northern Ireland
- Real Democracy Party
- REPRESENT
- Restoration Party
- Socialist Party (Northern Ireland)
- The Animal Protection Party
- The Workers Party
- UK in Europe Party (UK EPP)
- You Party

Other Key Stakeholders

- Office of the First Minister and deputy First Minister (OFMDFM)
- Committee for the Office of the First Minister and deputy First Minister
- Northern Ireland Committee – Irish Congress of Trade Unions
- Platform for Change

*Excludes Minor Parties.

12 February 2013

Northern Ireland Assembly

Assembly and Executive Review Committee

Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

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Section 4: Issues (as set out in Phase 1 of the Committee's Terms of Reference) and Questions to consider **D'Hondt** 1) Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons. **Community Designation** 1) Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly.	Pages 13-15

Provisions for Opposition

1) Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity.

   In particular, whether:

a) Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties;

b) Arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition;

c) Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.

Section 5: Additional Information Page 16

Section 6: Contact Details Page 16

Section 1 **Stakeholder Details**				
Stakeholder Name		**Telephone Number**		
Stakeholder Address		**Stakeholder Type (Include one or more X)**		
		Registered Political Party		**Local Government**	
		Academic		**Government**	
		Legislature		**Non-Government**	
		Other (Please Specify)/ Member of the Public		
Please provide some background information on your role as a stakeholder				
(This box will expand as you type)				
Guidelines for Completion of Submissions				
The Committee would ask that stakeholders submit electronic responses using this pro forma. Stakeholders should be aware that their written evidence will be discussed by the Committee in public session and included in the Committee's published Report. Stakeholders should also be aware that if they decide to publish their submissions, the publication would not be covered by Assembly privilege in relation to the law of defamation.				

Section 2

Introduction

Powers

2.1. The Assembly and Executive Review Committee is a Standing Committee established in accordance with Section 29A and 29B of the Northern Ireland Act 1998 ("the 1998 Act") and Standing Order 59 which, amongst other powers, provide for the Committee to:

I. make a report to the Secretary of State, the Assembly and the Executive Committee, by no later than 1 May 2015, on the operation of Parts III and IV of the Northern Ireland Act 1998; and

II. consider such other matters relating to the functioning of the Assembly or the Executive as may be referred to it by the Assembly.

Assembly and Executive Review Committee's Next Priority for Review

2.2. The Committee agreed the **Terms of Reference** of this next Review of Parts III and IV of the Northern Ireland Act as follows:

The Assembly and Executive Review Committee will review d'Hondt, community designation, and the provisions for Opposition Parties/Non-Executive Parties in the Northern Ireland Assembly to assist them in holding the Executive to account, guaranteeing safeguards and protections to ensure that the institutions operate on an inclusive and power-sharing basis. The Review will not only address each area separately but examine the interrelationship between the three areas in the context of any proposed changes.

Phase 1 – Review Evidence Gathering

The Review will take evidence on **d'Hondt** in relation to:

1) Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons.

The Review will take evidence on **community designation** in relation to:

1) Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly.

The Review will take evidence on **provisions for Opposition** in relation to:

1) Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity.

In particular, the Committee will take evidence on whether:

a) Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties;

b) Arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition; and

c) Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.

Phase 2 – Consideration and Report

The Committee will consider all evidence received in relation to d'Hondt, community designation, and provisions for Opposition and report and make recommendations to the Assembly on these matters by early June 2013.

Matters Outside the Scope of the Review

2.3. The Committee has agreed that the following issue is outside of the scope of the Review:

- Alternative electoral systems/models; for example, additional member system or alternative vote.

Section 3

BACKGROUND

This section provides some background information on the issues being considered by the Committee as part of this Review.

3.1. The following sections provide information relating to:

- D'Hondt;
- Community designation; and
- Provisions for Opposition in the Northern Ireland Assembly and related factors.

3.2. The Northern Ireland Assembly can bring about some changes to how the Assembly operates. For example, some changes might require amendments to the Standing Orders of the Assembly and it is for the Assembly to agree any such changes on a cross-community basis. However, it can only legislate on matters that have been transferred to the Assembly by the UK Parliament, or with the consent of the Secretary of State for Northern Ireland in relation to reserved matters or excepted matters that are ancillary to other provisions dealing with reserved or transferred matters. In other areas, the UK Parliament has the power to introduce legislative change — that is, excepted matters.

3.3. In August 2012, the then Secretary of State for Northern Ireland launched a consultation entitled, *'**Consultation on measures to improve the operation of the Northern Ireland Assembly**'*, one of the key areas of which was *"**Government and Opposition**"*. The consultation highlighted that the Northern Ireland Executive currently operates as a five-party coalition, as this has been important in ensuring that all parts of the community are adequately represented in government. The Secretary of State pointed out that the present structure of government is derived from the 1998 Act, which recognised that inclusive power-sharing is essential in Northern Ireland.

3.4. The Secretary of State's consultation paper went on to say that there are obvious flaws in a system where there is no effective alternative government and highlights that the UK Government has regularly expressed a wish at some stage to see a move to a more normal system that allows for inclusive government but also opposition in the Assembly. The consultation paper stressed that moves to a recognised opposition must be consistent with the principles of inclusivity and power-sharing that are central to the 1998 Act.

3.5. The consultation closed on 23 October 2012. On 11th February 2013, the Secretary of State published the consultation responses, along with draft legislation to make provision on the following issues: donations and loans for political purposes; dual mandates; electoral registration and administration; appointment and tenure of the NI Justice Minister. The 'Publication of Draft Legislation Northern Ireland (Miscellaneous Provisions)' (Cm 8563) is available online (http://www.nio.gov.uk/getattachment/Publications/Publication-of-Draft-Legislation/27250-Cm-8563-v4.pdf.aspx).

3.6. The introduction to the draft legislation refers to "Government and Opposition" and states:

> "While the Government would welcome moves towards a system of government and opposition, we remain clear that such changes could only come about with the agreement of parties in the Assembly. In addition, such moves must be consistent with the principles of inclusivity and of power-sharing that are central to the Belfast Agreement. We do not believe that there is sufficient consensus for statutory change at present which is why the draft Bill includes no provision on this issue.
>
> However, the consultation document also drew attention to the possibility of procedural change within the Assembly aimed at providing for a more effective opposition. The Government notes that the Assembly and Executive Review Committee is examining these questions, amongst other institutional issues. The Assembly Research and Information Service produced a Briefing Paper entitled 'Opposition, Community Designation and d'Hondt' in November 2012. Procedural developments are of course matters for the Assembly itself and not for the Government to seek to impose."

3.7. The Secretary of State has asked the Northern Ireland Affairs Committee to undertake scrutiny of the draft legislation, and that Committee will issue a call for evidence very shortly. The Secretary of State is seeking to introduce this Bill in the Third Session of Parliament.

3.8. **The following sections provide an overview of the issues that the Committee has identified as key to this Review. For further detail, please refer to the Assembly Research and Information Service paper *'Opposition, Community Designation and d'Hondt'*.**

D'HONDT

3.9. Political Parties are entitled to seats in the Northern Ireland Executive based on their level of representation in the Northern Ireland Assembly. The process used to allocate Ministerial offices, and thereby fill seats in the Executive, is called the d'Hondt mechanism and is outlined in section 18 of the Northern Ireland Act 1998 (the 1998 Act). Through the use of d'Hondt, membership of the Executive is automatically determined based on electoral strength, rather than negotiations between Parties following an election. This particular application of d'Hondt appears unique to Northern Ireland.

3.10. However, there is nothing that requires Parties to take a seat in the Executive — they can refuse and the seat will be offered to the next eligible Party. In effect, there is no legislative barrier to Parties not taking their allocated seat following an election or withdrawing from the Executive if they wish. The question then arises as to what extent will those Parties be afforded the traditional role and resources allocated to Opposition Parties.

3.11. The position of Chairpersons and Deputy Chairpersons of Committees in the Northern Ireland Assembly are also allocated using the d'Hondt formula. This is provided for under Assembly Standing Orders, as required under section 29 of the 1998 Act. Again, should an eligible Party choose not to take the position to which it is entitled, the position will be offered to the next eligible party.

3.12. Amendments to section 18 and/or section 29 of the 1998 Act could only be made by legislation passed by the UK Parliament. The Assembly, does, however, have the power to amend the Standing Orders dealing with d'Hondt provided that they remain consistent with the requirements of the 1998 Act.

3.13. The Assembly Research paper *'Opposition, Community Designation and D'Hondt'* refers briefly to the Sainte-Laguë allocation mechanism. This is another divisor method that has been found to produce more advantageous results for small parties, both in terms of allocations (the number of seats) and in terms of sequencing, so that smaller parties can get a higher "pick" in the allocation of Ministerial portfolios or Committee Chairs.

COMMUNITY DESIGNATION

3.14. The 1998 Act and Assembly Standing Orders make provision for Members of the Assembly to designate themselves as "Nationalist", "Unionist" or "Other" at the first meeting of the Assembly after an election.

3.15. The 1998 Act details a number of key decisions in the Assembly for which cross community support is required. To obtain this cross community support under the 1998 Act, there must either be the support of a majority of the members voting, including a majority of the designated Nationalists and designated Unionists voting or the support of 60 per cent of the members voting including 40 per cent of the designated Nationalists voting and 40 per cent of the designated Unionists voting. Votes for which cross-community support is required are detailed in the Assembly Research and Information Service paper *'Opposition, Community Designation and D'Hondt'*, (p. 17).

3.16. One of the instances in which cross-community support is required is in the event of a Petition of Concern. If 30 or more Members petition the Assembly expressing their concern about a matter that is to be voted on by the Assembly, the vote on that matter requires cross-community support.

3.17. A system of community designation is also used in Belgium, where there is an "alarm bell" procedure, used when one of the language groups believes that the provisions of a Bill are likely to be seriously detrimental to relations between the two language communities. Although the procedure is similar to that operating in the Northern Ireland Assembly, the threshold appears to be set higher and applies only to legislation, rather than ordinary motions (see the Assembly Research and Information Service paper '*Opposition, Community Designation and D'Hondt*', p. 19).

3.18. A range of provisions governing the operation of the Assembly would be affected by changes to the political designation mechanism. One key area that could be affected by any changes to political designation is the appointment of the First Minister and

deputy First Minister. Under current legislative provisions the largest Party of both the largest and second largest political designations are given the opportunity to appoint the First Minister and deputy First Minister respectively.

PROVISIONS FOR OPPOSITION

3.19. In the traditional Westminster model, the Party with the most non-government members in Parliament becomes the Official Opposition and its leader becomes the Leader of the Opposition. In broad terms, the role of the Opposition, as its name suggests, is to oppose the Government and form an "alternative government" if the existing government loses the confidence of the House. This is the model most often cited when highlighting the perceived lack of an Opposition within the Assembly. However, the Scottish Parliament and National Assembly for Wales more commonly refer to non-Executive or non-Government Parties, and there is no recognition of an Official Opposition in those legislatures, although there is proportionate provision for non-Government Parties in relation to parliamentary time and funding to carry out their functions.

3.20. The Assembly and Executive Review Committee has agreed that any consideration of the recognition of an Opposition in the Northern Ireland Assembly must recognise the consociational framework and the principles of inclusivity and power-sharing that underpin the workings of the Assembly and the Executive.

3.21. The Northern Ireland Act 1998, which sets out how the Assembly and Executive would operate, makes no reference to an Opposition.

3.22. Under the 1998 Act, Parties that have not reached a certain threshold in terms of elected Members do not have the opportunity to select a Ministerial office under the d'Hondt system. It is arguable that the Parties not currently in the Executive are an "Opposition". Furthermore, as highlighted earlier, there is nothing that requires Parties to take a Ministerial office and, thereby, a seat in the Executive — they can refuse and the seat will be offered to the next eligible Party. In effect, there is no legislative barrier to Parties withdrawing from the Executive if they wish.

Factors related to Provisions for Opposition:

3.23. It is usual practice that non-Executive or non-Government Parties are granted certain rights within a legislature to assist them in holding the Government/Executive to account. If there were agreement to formally recognise an Opposition within the Assembly, some or all of the following would need to be taken into account:

Financial Assistance

3.24. In most jurisdictions, Political Parties with non-Executive or non-Government roles are usually allocated additional financial resources to assist in their Parliamentary/Assembly duties. All Political Parties represented in the Northern Ireland Assembly already receive funding under the Financial Assistance to Political Parties (FAPP) scheme, irrespective of whether they have a seat in the Executive. In the context of a move to formally recognise Opposition, consideration may need to be

given by the Assembly Commission to reviewing the scheme to ensure that non-Executive Parties are appropriately funded.

3.25. Should the Assembly wish to provide allowances or additional salaries to individual Members of the Assembly in key positions in an Opposition, this may not require legislation, as the Independent Financial Review Panel (IFRP), which was set up following the passing of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011, could issue a Determination providing for this. This would be entirely a matter for IFRP.

3.26. The specific financial arrangements in place for the Opposition or non-Executive Parties in the House of Commons, the Scottish Parliament, the National Assembly for Wales and Dáil Éireann are outlined in the Assembly Research and Information Service paper *'Opposition, Community Designation and D'Hondt'*, p. 6-9.

Committee Chairpersons

3.27. It has been suggested that the Committee structure in the Northern Ireland Assembly performs an important scrutiny role that is perhaps lacking in more traditional Government-Opposition models. The Chairpersons and Deputy Chairpersons of Committees in the Northern Ireland Assembly are currently selected by Parties via the d'Hondt method, as is the case in the Scottish Parliament for convenors (Chairs). In the House of Commons, the Government is allocated the majority of Chairs. Nevertheless, in the context of a move to formally recognise Opposition in the Northern Ireland Assembly, there is an argument that the Opposition Parties/Non-Executive Parties should be offered the Chair or Deputy Chair of more Committees, rather than the allocation of these Chairs continuing to be made on a proportional basis.

3.28. The 1998 Act prevents Statutory or Departmental Committees being Chaired or Deputy Chaired by Ministers or junior Ministers. Furthermore, arrangements for the allocation of Chairpersons and Deputy Chairpersons for these Committees provide that Parties shall "prefer" to select other Committees than those for which the Party holds Ministerial Office.

3.29. The arrangements in place in relation to the composition of Committees in the House of Commons, the Scottish Parliament, the National Assembly for Wales and Dáil Éireann are outlined in the Research paper *'Opposition, Community Designation and D'Hondt'*, p. 9-10.

Parliamentary/Assembly Time

3.30. A key consideration with respect to the formal recognition of Opposition would be the guarantee of time to raise and debate non-Executive business — including priority speaking rights in response to Ministerial Statements and in Question Time. The House of Commons, Scottish Parliament and National Assembly for Wales guarantee time for non-Government business (see Research paper *'Opposition, Community Designation and D'Hondt'*, p. 10-13).

3.31. In the Northern Ireland Assembly, Standing Order 17(5) states:

> "The Speaker shall determine the order of speaking and the number of speakers in any debate having due regard to the balance of opinion on the matter, the party strengths in the Assembly and the number of members who have indicated a desire to speak."

Standing Order 17(4) places a responsibility on the Business Committee to consult with the Speaker on these arrangements. These are the requirements that apply to the Assembly as it is currently constituted.

3.32. The speaking list agreed by the Business Committee in 2006 provides for the five largest parties to be called, in order, for the first 'round' of speakers. Subsequent rounds are based on party strength – identified by applying the d'Hondt formula to current party strengths. It should be noted that the threshold for inclusion in the first round of speakers was agreed as "parties with two or more members".

3.33. The Business Committee reconsidered this arrangement in September 2011 in the context of a request to allow the single member parties and the, then, single independent Member more opportunity to speak. It was agreed that the current arrangements did not need to be reviewed.

3.34. The Speaker uses the speaking list only for calling Members to speak in debates and for questions following Ministerial Statements. While not all Members may be called to speak in debates on private Members' motions in the time available, there is no similar constraint on debates on legislation. All who wish to do so may speak. It is rare for Members on the list not to be reached for questions to Ministerial Statements.

3.35. The following items of business operate outside the speaking list arrangements – Matters of the Day; Question Time; and Urgent Oral Questions. For these items, Members are required to rise in their places to indicate to the Speaker that they wish to be called. In using his discretion to call Members from among those standing, the Speaker will consider issues of cross-party balance, any relevant constituency interests, and giving priority to Committee Chairpersons. It should be noted that the selection of questions for oral answer during Question Time is done by random computer selection.

3.36. A Committee Chair may be given priority in the order of speaking if the relevant Minister is making a Statement or if legislation relating to that Committee is being debated. Regarding Ministerial Statements, while the speaking list order applies in broad terms, priority is given to those who have been present for the entire Statement. Members who have only been present for part of the Statement will be called last, which may result in a departure from the order in which parties are normally called.

3.37. Business in the Northern Ireland Assembly is currently already allocated on a proportional basis. A debate cycle rota is in place, calculated by applying the d'Hondt formula to current party voting strengths on the Business Committee. The Business Committee agrees the number of slots available for private Members' business after Executive and Committee business has been scheduled each week. Parties next due

to have motions scheduled, as per the debate cycle rota, put forward their chosen motion(s) to fill the slots agreed as available. The Business Committee agrees scheduling (e.g. running order) and timing issues in relation to the motions put forward.

3.38. The Business Committee reviews and agrees the order of all the business scheduled. Up to 10 additional slots are reserved in each Assembly session for cross-party motions, or for motions tabled by Parties/Members not represented on the Business Committee. In the latter case, the co-operation of a member of the Business Committee would have to be sought to put forward the motion. Use of these 'other' slots could be proposed at any time, but would be subject to the specific agreement of the Business Committee. The same arrangement, with a separate rota, is in place for the selection of topics for Adjournment debates.

Other Measures to Strengthen Accountability

3.39. In addition to the provision of resources for Opposition Parties/Non-Executive Parties, which may, in itself, strengthen accountability within the institutions of Government, the Assembly and Executive Review Committee has raised the issue of what other specific measures could strengthen accountability within the institutions.

3.40. For example, the Assembly Research paper *Opposition, Community Designation and D'Hondt'* highlights the fact that Westminster, Dáil Éireann, the Scottish Parliament and the Welsh Assembly all provide for a vote of no confidence in the current Government. In Scotland, if such a motion is passed, all Members of the Executive must resign. This does not automatically result in a general election, but will do so if a new First Minister is not nominated within 28 days. There is no provision in the Northern Ireland Assembly for a vote of no confidence in the Executive.

3.41. As well as provision for a vote of no confidence in the Government, the Belgian Parliament has an instrument called an interpellation, which is a question for explanation from an MP and aimed at a Government Minister. The Minister's response is followed by a vote, which can either be on a motion of no confidence in the Government or, more probably, on a "simple motion" agreeing that normal activities be continued. The latter is an implicit vote of confidence. This mechanism can be used in plenary sessions of the Parliament or, more commonly, in the parliamentary commissions. It is used for serious and important matters, mainly by the Opposition.

Further Information

3.42. Stakeholders will wish to refer to a detailed Research and Information Service (RaISe) paper, produced for the Committee in respect of this Review. The Research Briefing paper, titled *'Opposition, Community Designation and D'Hondt',* can be accessed on the Assembly and Executive Review Committee's webpage: http://www.niassembly.gov.uk/Assembly-Business/Committees/Assembly-and-Executive-Review/Research-Papers-2012/

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'HONDT

(1) Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

(This box will expand as you type)

COMMUNITY DESIGNATION

(1) Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?
- Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

(This box will expand as you type)

PROVISIONS FOR OPPOSITION (1) Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity.
Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly? What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland? Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.
(This box will expand as you type)
PROVISIONS FOR OPPOSITION a) In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties.
What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties? How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members? Please offer supporting evidence for your views.
(This box will expand as you type)

PROVISIONS FOR OPPOSITION
b) In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition.
What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition? If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs? Please offer supporting evidence for your views.
(This box will expand as you type)

PROVISIONS FOR OPPOSITION
c) In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.
Do the current arrangements provide adequate time and speaking rights for Opposition Parties/Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured. Please offer supporting evidence for your views.
(This box will expand as you type)

Section 5 **Additional Information**
Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.
(This box will expand as you type)
Section 6 **Contact Details**
All responses should be sent by email please to: The Committee Clerk Assembly and Executive Review Committee Room 375 Parliament Buildings Ballymiscaw Belfast BT4 3XX **Tel:** 028 90521787 or 028 90521928 **To arrive no later than 27th March 2013** **Email:** committee.assembly&executivereview@niassembly.gov.uk
Thank you for your submission

Appendix 4

Stakeholder Submissions

Key Points Table of Stakeholder Submissions

KEY POINTS OF WRITTEN SUBMISSIONS TO AERC REVIEW

Issues as set out in the 'Call for Evidence' paper	(1) D'Hondt	(2) Community Designation	(3) Provisions for Opposition	(4) Provisions for Opposition – financial resources	(5) Provisions for Opposition – allocation of Chairs/Deputy Chairs	(6) Provisions for Opposition – additional debating time and priority speaking rights	Additional information
Issues as set out in the 'Call for Evidence' paper (in full)	(1) Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons.	(2) Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly.	(3) Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity.	(4) Whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties.	(5) Whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition.	(6) Whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.	Additional information which you believe will be of assistance to the Committee during the course of the Review.
PARTIES AND INDEPENDENT MEMBERS OF THE NI ASSEMBLY							
Alliance Party	"Alliance does not support the use of d'Hondt in the current format for the allocation of Ministerial Offices and/or Committee Chairs." "Alliance's preference is for an Executive of a voluntary coalition..., with an agreed Programme for Government..." "In the current context of mandatory coalition a system such as St Lague rather than d'Hondt would be a more proportional and fair method of proportional allocation...." "The present system also significantly favours the larger parties"	"Alliance does not support the retention of community designation." "Alliance would prefer the introduction of an Assembly voting system for cross-community matters based on a weighted majority." "Alliance would welcome a method of defining those issues on which a Petition of Concern can be used, as a way of ensuring this mechanism is not open to misuse."	"...Under a voluntary coalition system there will be an opposition of one or more parties." "The second context is under mandatory coalition where parties either don't qualify for places on the Executive or opt not to take them or to withdraw."	"In either situation we would support... access to additional resources – this would need to be proportional in relation to the scale of the party or parties in opposition."	"With regard to the selection of Committee Chairpersons and Deputy Chairpersons we would prefer the introduction of a Single Transferable Vote (STV) election among Assembly Members."	"In either situation we would support more formalised speaking and questioning rights... – this would need to be proportional in relation to the scale of the party or parties in opposition. The recognition of opposition and additional speaking privileges should not be restricted only to the largest Party not in the Executive but to all who are in that context, relative to size."	

KEY POINTS OF WRITTEN SUBMISSIONS TO AERC REVIEW

Issues as set out in the 'Call for Evidence' paper	(1) D'Hondt	(2) Community Designation	(3) Provisions for Opposition	(4) Provisions for Opposition – financial resources	(5) Provisions for Opposition – allocation of Chairs/Deputy Chairs	(6) Provisions for Opposition – additional debating time and priority speaking rights	Additional information
Democratic Unionist Party (DUP)	"After the last election [d'Hondt] was run informally between the Parties in advance of the formal process in the Assembly. An extension of this arrangement would be to seek to agree an Executive through discussion and negotiation. If such agreement could be reached, it could then be formalised through the running of d'Hondt on an agreed basis in the Assembly. It has also been suggested that a Programme for Government be agreed before the Executive is established. While this idea has merit in principle, we should be conscious of the limited time afforded by statute to establish the Executive and the challenges of obtaining agreement by five Parties. … high level agreement should be sought on a Programme for Government, however it would be absurd to make agreement a pre-requisite to the formation of an Administration." (see(2))	"We propose the abolition of community designation in the Assembly." "… in the long-term, the best means of governing Northern Ireland would involve a voluntary coalition Executive and weighted majority voting of around 65% in the Assembly, resulting in an end to community designation." "Where a cross-community vote is required by legislation or triggered by a Petition of Concern, a proposal would require the support of 65% of Assembly Members present and voting to pass." "It would also allow differing coalitions to pass proposals on different issues without any single group holding the Assembly to ransom."	"One of the flaws of the present system of government is the lack of a formal Opposition. … There is however no obligation on a Party to take up its place in the Executive - any party is entitled to forgo this and form an Opposition. However, pending changes to the present configuration, the Departmental Committees have an important role to play in holding Ministers and Departments to account." (See also(2))				See full submission for proposals for reform on: • All-party Commissions; • Voting in the Executive; and • Resignation of Ministers.

KEY POINTS OF WRITTEN SUBMISSIONS TO AERC REVIEW

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Green Party (GPNI)	"The Green Party does not believe that d'Hondt is a satisfactory mechanism for deciding the Government. Our preferred alternative is that the Executive should be formed by post-election inter-party negotiations that should also agree a Programme for Government. In such a scenario, both the Executive Ministers and the Programme for Government should be subject to endorsement by the Assembly by a 66% majority of elected Members present and voting."	"The Green Party is opposed to community designation… decisions should require a weighted majority of Assembly members which would be set at an appropriate level (e.g. 66%) as to require the support of MLAs from both unionist and nationalist communities. In the event that a weighted majority is not adopted, the Green Party believes that there ought to be changes to the rules governing petitions of concern to ensure that the use of petition of concern is restricted to key cross community decisions."	"The Green Party supports the establishment of an official opposition in the NI Assembly and believes that this would enhance the accountability and effectiveness of the Assembly." "Moreover this [as set out at (1)] would facilitate the establishment of an opposition …"	"The Green Party supports the provision of additional financial assistance to opposition/Non-Executive parties."		"The Green Party supports the guarantee that opposition parties should be granted additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time."	

KEY POINTS OF WRITTEN SUBMISSIONS TO AERC REVIEW

Issues as set out in the 'Call for Evidence' paper	(1) D'Hondt	(2) Community Designation	(3) Provisions for Opposition	(4) Provisions for Opposition – financial resources	(5) Provisions for Opposition – allocation of Chairs/Deputy Chairs	(6) Provisions for Opposition – additional debating time and priority speaking rights	Additional information
Social Democratic Labour Party (SDLP)	"Power-sharing and its provisions, as an essential element of the Good Friday Agreement should endure. … This means that FM/DFM are elected by cross-community vote, that all ministerial offices and Committee Chairpersonships and Deputy Chairpersonships are allocated on the basis of democratic mandate and the principle of d'Hondt."	"The SDLP supports the retention of community designation and the right of parties to their d'Hondt entitlement under powersharing arrangements if a party chooses to claim that entitlement."	"…the SDLP concludes that an opposition option should be built into the structures of the Assembly in a future mandate. It would not be 'mandatory'; that an opposition is formed. Parties would be guaranteed their d'Hondt entitlement under powersharing arrangements if a party chooses to claim that entitlement. FM/ DFM would be elected by cross community vote to ensure a government of the political traditions. The SDLP believes that any future powersharing coalition who form a Northern Ireland Executive under the non-compulsory arrangements outlined above should be required by legislation to publish a Programme for Government prior to formation."				
Sinn Féin (SF)	"Sinn Féin support the continued use of the d'Hondt system to fairly allocate chairs/vice chairs and membership of committees and to elect Ministers on the basis of party strength."	"Sinn Féin support the continued use of community designation for the purposes of measuring cross-community support in Assembly votes."	"Sinn Féin support a party's right to decline their membership of the Executive and are content that an opposition platform is already automatically available to those who wish to 'opt-out' of the Executive."				

KEY POINTS OF WRITTEN SUBMISSIONS TO AERC REVIEW

Issues as set out in the 'Call for Evidence' paper	(1) D'Hondt	(2) Community Designation	(3) Provisions for Opposition	(4) Provisions for Opposition – financial resources	(5) Provisions for Opposition – allocation of Chairs/Deputy Chairs	(6) Provisions for Opposition – additional debating time and priority speaking rights	Additional information
Traditional Unionist Voice (TUV)	"TUV is opposed to the use of the d'Hondt mechanism to allocate Ministries." "…Absurd mechanism of mandatory coalition,…" "For any system to work and give durable and workable government it must restore respect for the fundamental democratic imperatives of the electorate being permitted to change their government - which d'Hondt denies - and being permitted to have within the Assembly an Official Opposition."	"TUV is opposed to community designation…" "TUV is opposed to Petitions of Concern. We believe that they are a perverse instrument which is open to abuse…" "…The Government should be able to demonstrate that it has cross-community support by obtaining a weighted majority of 60% to approve its Programme for Government. Other parties should form the Opposition."	The 1998 Act needs to be radically amended so that after each election those parties who can agree a programme for government and command the requisite majority in the Assembly, form the government, and those who cannot fulfil the vital role of Opposition. (See (1)) "Committees are not an adequate substitute. … the job of committees is to "advise and assist" Ministers, not hold them to account."	"Stormont should follow the Westminster model with appropriate financial assistance being provided to non-executive parties in order to aid them in the formation of alternative policy and in their scrutiny of the government of the day. Financial assistance should be allocated to Opposition parties in proportion to how many elected MLAs they have."	"TUV believes that Committee Chairs should be allocated on the basis of party strength as is the practice in the House of Commons. TUV believes that it is essential that, in keeping with standard practice elsewhere, the Chair of the Public Accounts Committee should be filled by an MLA from outside the government parties."	"…It is essential that non-executive parties are guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time." "It is also the case that opposition MLAs currently find it almost impossible to get anything on the Assembly Order Paper."	
United Kingdom Independence Party (UKIP)	"The d'Hondt mechanism pertaining to Ministerial appointments is unnecessary in a voluntary coalition arrangement." (See (2)). "The only stipulation which should govern the make-up of that voluntary coalition is that it should be cross-community involving parties registering under a broad unionist designation and parties registering under a broad nationalist designation."	"Community designation should only be applied in the broadest possible terms – unionist, nationalist and other – so that any voluntary coalition should be cross-community – that is the coalition should include one nationalist party if the other party is unionist. Other parties may be included in a multi-party coalition though an all-party mandatory coalition should be abandoned."	"It would be sufficient that any government coalition would have to include at least one broadly unionist party and one broadly nationalist party. Such an arrangement would maintain a sufficient degree of power-sharing and inclusivity while introducing the sharpness and definition of scrutiny which the introduction of opposition would allow."	"…Since they [Opposition Parties] would hold all committee chair and deputy chair positions, the secretariat of the committees should be at [opposition parties'] disposal..." "Second, the amount of opposition support money each non-government party would receive should be related to the number of First preference votes they received in the preceding Assembly election"	Committee Chairs and deputy Chairs should be allocated to non-government parties who do not hold Ministerial office. "The overall make-up of the committees would still reflect all parties in the Assembly…,"	"Opposition speaking time should be built into all debates on government measures according to the size of the opposition party. The same should apply to all questions and Ministerial statements, especially to Questions to the First Minister and Finance Minister. Time should also be allocated to opposition parties to introduce substantive measures, confidence motions and private member's bills. "	

KEY POINTS OF WRITTEN SUBMISSIONS TO AERC REVIEW

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Ulster Unionist Party (UUP)	"…There should be a mechanism in place to ensure that Ministerial offices and Chairpersons and Deputy Chairpersons of Committees are allocated on a fair and equitable basis." "A decision on d'Hondt or a replacement is dependent on other factors, such as the introduction of an official opposition."	"….The Assembly should be seeking to move away from community designation and towards weighted majority voting to reflect the normalisation of politics here. The Petition of Concern mechanism is being used on an increasingly frequent basis and we would welcome a review of the occasions it has been used and the reasons why, with particular reference to the original intent of providing this mechanism."	"…The best form of government is one which is held to account by a formal and officially recognised Opposition, offering real choice to the voter. The creation of an Opposition should not come at the expense of a Coalition, cross-community government. The nature of an Opposition (single or multi party) should be a matter for negotiation."	"…It is unhelpful to discuss Opposition in terms of finance. Rather, it is a question of what resources, functions and provisions are necessary to empower and make effective an Opposition. We believe focus should be put on issues such as Speaking Rights, Supply Days, and ring-fenced access to research and library resource."	"…The allocation of Committee Chairs and deputy Chairs should be taken into account should the creation of a formal Opposition become reality." "The formula for allocating Chairs etc should be consistent with any agreement of Speaking Rights and the other issues mentioned previously."	See (4) "…..Focus should be put on issues such as Speaking Rights, Supply Days, and ring-fenced access to research and library resource."	"The Ulster Unionist Party notes that this review, being conducted by the Assembly and Executive Review Committee, is occurring alongside the draft Northern Ireland Bill brought forward by the Secretary of State as well as discussions at Party Leaders level."

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Mr John McCallister and Mr Basil McCrea, Independent Members	"… the d'Hondt mechanism for the allocation of Ministerial positions should be replaced. Legislation should require an Executive to achieve the support of a weighted majority (of not less than 65%) in the Assembly, thus securing cross-community consent. Allocation of Ministerial places should occur on the basis of negotiations between the various coalition parties …"	"…community designation as currently operated should not be retained." "Community designation should be abolished, replaced by a weighted majority vote on the matters presently designated as requiring a cross-community vote. The Petition of Concern mechanism has outlived its usefulness and has also been consistently misused in a manner undermining progress towards a mature parliamentary culture."	"The introduction of provisions to formally recognise Opposition - within the context of power-sharing and inclusivity - is essential if authentic democratic, parliamentary accountability is to emerge in Northern Ireland." "…it would be appropriate to designate - as in the South African model - the leader of the largest non-Executive party as 'Leader of the Opposition', with relevant parliamentary rights." "Only a formal, recognised Opposition would provide for the accountability essential in any parliamentary context."	"In both Scotland and Wales, the number of Members within Opposition Parties chiefly (even if not solely, in light of the Welsh provision for support of Leaders without an executive role) determines the financial assistance received. Northern Ireland should follow this approach."	"It would be appropriate to ensure that a not insignificant proportion (perhaps 50%) of Chairs were Members of Opposition Parties, with Deputies from Executive Parties and vice-versa. This provision would operate alongside removing the d'Hondt mechanism for such appointments, while requiring a weighted majority vote in the Assembly."	"The Westminster model of allotting a number of days each session to the Opposition and providing for a role for the Leader of the Opposition at PMQs would be appropriate."	
KEY STAKEHOLDERS – Clerks of relevant Parliaments							
Chief Executive/Clerk to the Scottish Parliament			Factual information provided on arrangements in Scottish Parliament				
Chief Executive/Clerk to the Welsh Assembly			Factual information provided on arrangements in Welsh Assembly				

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KEY STAKEHOLDERS – Academics							
Birrell, Derek (Professor) – University of Ulster	On implications of d'Hondt for opposition – opting out. "Parties interested in becoming non-Executive parties can operate while d'Hondt is retained by either declining post(s) from d'Hondt procedure or resigning from the Executive or deciding not to participate in d'Hondt process."	"…Community designation is part of the system of checks and balances…" "Alternatives would possibly not receive widespread acceptance." "Suggestions for less availability of petitions of concern would relate to requirement for support by a higher proportion of MLAs (50%). Any restriction on content, for example, only primary legislation or only Executive supported petitions, would be difficult to implement."	On a Model of opposition for NI: "Smaller parties opting out of d'Hondt and all-party government is most viable option. Still a possible problem of a small party (parties) forming the opposition, size may limit role they can play." "A major implication is for the current absence of the principle of collective responsibility in the Northern Ireland Executive. Opposition would work best opposing what is clear government policy and what is in the programme for government. System could simply be incongruous if there are different levels of opposition, the majority party in Executive able to disagree with minority party (parties) plus a second level of opposition between government and non-government parties." "System could simply be incongruous if there are different levels of opposition ..."	"The funding for opposition parties in Westminster has three components: • Funding to assist an opposition party in carrying out its parliamentary business. • Funding for opposition parties' travel and associated expenses, based on seats and votes • Funding for the running costs of the leader of the opposition's office, only payable to main opposition party. • Regarding the N. I. Assembly this could be applied but should all opposition party leaders receive running costs?""	"…It is unlikely the designation of opposition parties would require or justify any different allocation." "Moving to a Government and Opposition model would mean deciding if it was acceptable to have Chairs and ministers from the same Executive party as Committee chair and minister in relation to the same department. This would be accepted practice in UK, but may be seen as moving away from checks and balances in the Assembly." "The chair and deputy chair of the Public Accounts Committee by convention where there is a government and opposition model should always be from opposition parties."	"Opposition party leaders can be given a special role at the Question Time for First Minister. … In Northern Ireland such procedures might apply as well to the Deputy First Minister at Question Time. … They can be interpreted as a major way for the Opposition to demonstrate it is holding the Government to account. Time would be allocated to give a balance between government and Opposition in Standing Orders"	"Political realities in Northern Ireland make a transition to a partisan "Government versus Opposition" culture unlikely. It would be necessary for a party of a significant size to become an opposition party not represented in the Executive." "With opposition parties the Assembly would be operating on the basis of a double opposition and confrontational scenario, between the parties in government and between government and opposition parties."

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Cochrane, Feargal (Professor) – University of Kent	"The d'Hondt mechanism does not, in my view, require legislative reform and should be retained in more or less its current form for the allocation of Ministerial positions and for the allocation of Committee Chairmanships and Deputy Chairmanships."	"...Its blunt utility (or something akin to it) may be required for the maintenance of cross-community consent in the specified areas." "A … more substantive reform would be to replace the cross-community threshold with a weighted majority –at a level that would be robust enough to ensure cross-community support without calling it that perhaps." "...I would not favour any great changes to the current rules governing Petitions of Concern."	"I would tend to agree with the statement that the accountability and effectiveness of the Assembly and Executive could be improved through provisions to formally recognise an Opposition." "It is not an ideal situation that the committee system is being used as a surrogate for a co-ordinated system of opposition." "There are currently insufficient incentives available for political parties to consider opposition as a credible strategy and more could be done in my view to encourage it."	"Appropriate resourcing of an official opposition would be required to facilitate it operating effectively." "If it is adequately incentivised and financed (while avoiding the risks over over-incentivisation that may create an 'opposition-ghetto') moving to a formal Opposition could conceivably make a significant improvement to the quality of governance within the devolved institutions…"	"Given the previously highlighted concern about the risks of over-incentivisation of potential opposition parties, I am not convinced that the existing arrangements for the allocation of Chairs and Deputy Chairs need to be changed to take account of formal opposition."	"...This is very much a matter of scale and a political judgement to be made or negotiated…" "An obvious way forward again would be a minimum threshold requirement, or perhaps a series of thresholds."	

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Galligan, Yvonne (Professor) – Queen's University Belfast	"There is a risk in changing the designation rules of moving from a community veto to a party veto" "The d'Hondt system … has operated effectively to secure proportional power-sharing … and so changing from it should only be considered if there is consensus to do so, and if there is a more fair and inclusive formulation available." "D'hondt mechanism is an important factor in the behind-scenes negotiations that take place between parties…" [prior to running d'Hondt}	"There is some disagreement as to the extent to which the practice of employing Petitions of Concern has conformed to the underpinning intention of the provision. There is merit in designing a mechanism, either through Standing Orders or by means of a determination of the Speaker (on advice), whereby the use of Petitions of Concern is more regulated and the content conforms to an agreed understanding of what constitutes a 'key decision'."	"Under formal opposition arrangements, the non-Executive parties could not expect to hold any more chair and deputy chair positions than the current distribution."	"If there was consensus on introducing a formal opposition, then this move would require appropriate funding …"	"Should an opposition emerge, either by design or default, then the allocation of committee chairs and deputy chairs would have to take this development into account. The d'Hondt system could still work in this scenario …" "The Public Accounts Committee is one where convention followed elsewhere dictates that the chair and deputy chair positions are held by representatives from non-governing parties."	"It is reasonable to expect an opposition comprising non-executive parties and party groups to be given additional time to raise and debate non-Executive business." "Opposition spokespersons should have priority at Ministerial Question Time and in responding to Ministerial Statements. The order of priority would be determined by the size of the party, or party grouping, represented by these MLAs."	
Loizides, Neophytos (Dr) – University of Kent	"The d'Hondt mechanism should be retained but the divisor method could be reconsidered and if possible changed to Sainte-Laguë which is more proportional and favourable to smaller parties."	"D'Hondt or Sainte-Laguë as well as other alternatives such as cross-voting might require (or be supplement) with institutional arrangements that require community designations. Those might be unavoidable in divided societies because of historic agreements to protect community (not just individual) rights."					

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McCrudden, Chris (Professor), University of Oxford; McGarry, John (Professor), Queen's University, Canada; O'Leary, Brendan (Professor), University of Pennsylvania; Schwartz, Alex (Professor), Queen's University, Canada.	"The use of the d'Hondt system for executive formation in Northern Ireland should be preserved." "The executive is fairly composed of those parties with a sufficient mandate, and the decision to take up executive portfolios is voluntary, though that is sometimes forgotten." "… none of us see any strong current case for changing the divisor formula for executive formation from d'Hondt to Sainte-Lagüe."	"We … caution strongly against any precipitate change to the rules which have so far served Northern Ireland and its generally-successful peace agreement very well." "We cannot identify an equilibrium-qualified majority decision-making rule likely to be agreed by a majority among nationalists, unionists and others respectively." [re. Petitions of Concern] "… we would encourage the Assembly to consider ways in which it might give its Presiding Officer in conjunction with a suitably composed committee of the Assembly means to inhibit what we might call pseudo-petitions of concern."	"the d'Hondt system does not oblige an all-party, comprehensive, or "grand coalition." Any party is free to choose to go into opposition. The fact that there are five parties in the current executive is a choice, not one that is forced by the rules." "We are … not persuaded that Northern Ireland suffers from a lack of a powerful Opposition because of the rules and institutional design of the Northern Ireland Act 1998, as amended."	"We … see no clear need for enhancing the resources (whether in money, time or positions) for exclusively opposition parties (i.e. those not in the executive) as opposed to enhancing the research and information-processing capabilities of all MLAs …" "We suggest, in short, that non-executive parties in opposition should have no more call on public resources than a consistent proportionality rule would suggest …"	"… the existing institutional design permits a party that does not take up its entitlement to executive portfolios to nominate its members to chair and deputy-chair committees in the relevant d'Hondt sequential order. This system certainly does not punish a decision to go into opposition, and has no counterpart in the Westminster model."	"… the recent Northern Ireland experience reflects the successful determination of the Assembly to obtain more substantive answers from ministers through procedural reforms that decreased the number of questions and expanded the time available for Ministers to answer." "… time for non-executive business should be proportionally linked to the size of non-executive parties, but no more."	

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O'Malley, Eoin (Dr) – Dublin City University	"Ministerial places are divided according to the d'Hondt formula and there may be good reasons to retain this, but it does mean that cabinets are formed in ways that are not the case in 'normal' democracies." "This means that one place where accountability could take place – in cabinet – probably does not happen as it should, as it appears ministers have a great deal of autonomy within their own system."			"A better way to provide the Assembly with better resources to observe and interrogate executive proposals and to make alternative proposals would to be provide direct support in the areas that one would expect them to want support if they were acting as if they were an opposition. That is to provide policy making capacity and support for legislative proposals. The most logical way to do this would be to enhance the research service provided to MLAs and to committees."	"I also understand that there is some effort made to ensure that the chairs and deputy chairs of committees are not from the same party. This could be guaranteed if the assumption of proportionality were removed from the allocation of committee chairs."	"Parliament too should be a place that politicians fear. Allowing those asking PQs to ask more supplementary questions would help, as would clearer censures for misleading or refusing to answer the questions." "Separating the Executive and the Assembly will mean that the village atmosphere that exists there will be weakened and a culture where MLAs feel able to question their own party's ministers will ensue. It will strengthen the motive for the Assembly to be a proper overseeing body."	

KEY POINTS OF WRITTEN SUBMISSIONS TO AERC REVIEW

Issues as set out in the 'Call for Evidence' paper	(1) D'Hondt	(2) Community Designation	(3) Provisions for Opposition	(4) Provisions for Opposition – financial resources	(5) Provisions for Opposition – allocation of Chairs/Deputy Chairs	(6) Provisions for Opposition – additional debating time and priority speaking rights	Additional information
Wilford, Rick (Professor) – Queen's University Belfast	"… it can be argued that d'Hondt's apparent advantage—dispensing with need for inter-party bargaining over inclusion in the Executive—entails the postponement of, inter alia, discussions and negotiations designed to agree the programme for government … In the best of all possible worlds … such negotiations could occur in a pre-election period … They could, however, occur in the post-election context, enabling parties to agree a PfG prior to the formal act of nominating the Executive." "Should there be at some point a reduction in both the total number of MLAs and of Executive Departments (that is, after 2015), the parties might then be persuaded to change the proportional allocation formula to one that carries more potential for smaller parties in order to sustain the inclusivity principle that underpins the process of Executive formation, pending electoral outcomes of course."	"… community designation … is a device designed to test cross-community support for policy, legislation and other matters, including procedural matters. … it is a rather blunt tool and can be deployed to block certain proposals or measures *via* the Petition of Concern procedure." "… a move to qualified majority voting – at say 65% of members present and voting – would in itself be an assurance that no key decision could be taken in the face of significant opposition: on that basis, there may be an arguable case for abandoning the PoC procedure." "Perhaps the key issue is whether the 30 signatures currently required to trigger a petition is the appropriate threshold."	"Executive parties can and do adopt an oppositional role in the current Assembly …" "… should there be a minimum number of MLAs (from one or more parties) below which they would be denied the formal Opposition role?" "I am not persuaded that the Opposition should be necessarily coalitional …" "… provision for an Opposition would enhance Executive accountability and in theory at least enable a party or coalition of parties to develop an alternative programme for government in order to widen its electoral base." "… if there is to be provision for an Official Opposition which … acts as a potential partner in government rather than *the* alternative government, then consideration needs to be given to creating the procedural opportunity for a censure motion …Perhaps this could be afforded by way of an amended PoC procedure."	"… additional financial assistance: this would be justifiable and in all likelihood, relatively inexpensive, especially were there to be a reduction in both the total number of MLAs and of Executive departments."	"I am disposed to retain the proportional allocation of Chairs/Deputy Chairs via either d'Hondt or St Lague." "In the best of all possible worlds, Committees should generally be nests of consensus: the value placed on consensus could be reduced where, for instance, shadow ministers occupied a chair/deputy chair role." "**Re Committee Chairs/Deputy Chairs**: Here, I would follow the same line of thinking: that is, a change in the allocation formula should be influenced (but not determined) by a reduction in both the number of MLAs and of Departments. For the sake of consistency, such a change, to say St Lague for Executive formation, should also be adopted for the allocation of chairs and deputy chairs."	"I do think that an Opposition party/parties should have time available when it determines plenary business, i.e. 'supply days', whether full or half-days." "I also support the proposition that the Leader of the Opposition (or Opposition spokespersons as appropriate) should have priority at Ministerial QT and in response to Ministerial statements. Equally, if a second smaller party meets the threshold of what constitutes an Opposition party (i.e. in terms of the minimum number of seats it holds), then its leader should be accorded second order priority, both at QT and in respect of Ministerial Statements."	

KEY POINTS OF WRITTEN SUBMISSIONS TO AERC REVIEW

Issues as set out in the 'Call for Evidence' paper	(1) D'Hondt	(2) Community Designation	(3) Provisions for Opposition	(4) Provisions for Opposition – financial resources	(5) Provisions for Opposition – allocation of Chairs/Deputy Chairs	(6) Provisions for Opposition – additional debating time and priority speaking rights	Additional information
KEY STAKEHOLDERS – Political parties registered in Northern Ireland							
The Labour Party in NI	"The Labour Party in Northern Ireland disagrees with the d'Hondt system, in its present guise, for executive nomination and calls for a review of its structures …"	"The Labour Party in Northern Ireland fundamentally disagrees with the community designation system … We desire a full and proper review to facilitate any needed change …" "… below are several options for reform; • Major parliamentary decisions could simply require a super majority of 75% in order to be passed. … • All legislation could simply require a basic majority but be subject to review by equality proofing. … • the power to legislate could reside within committees, similar to statutory committees presently installed within Stormont."	"… it is our belief that democracy is being undermined in the Assembly as a direct consequence of the lack of an effective parliamentary opposition. We believe an opposition needs to be established urgently if there is to be any chance of democratic accountability in Northern Ireland." "Opposition can be created in several ways but the easiest way, as previously outlined in the d'Hondt section, would be to remove the d'Hondt system of Executive allocation and replace it with mandatory coalitions that can be limited to two parties, one unionist and one nationalist."	"In order for an opposition to work effectively it requires financial resources, at the state level." "… although our party disagrees with the community designation system, if it were to be retained the largest opposition parties on both the nationalist and unionist side could receive equitable sums of money, irrelevant of party size." "Opposition parties could alternatively receive money relative to the number of MLAs that they have …" "Another system could be that only larger opposition parties, numbering between 5-8 MLAs+, could receive financial assistance. This system could either give all parties that meet the size quotient equitable aid or a top-up relative to additional size."	"Membership of committees should be completely proportional to party strength in the Assembly but, where possible, chairmanships, and indeed Deputies, should not come from governing parties."	"Should the ideas we have submitted in 'Provisions for Opposition: B.' be put forward, we believe that Committee Chairs should be given priority speaking rights in Question sessions with their respective Executive minister."	"… the Labour Party in Northern Ireland believes that a wide-ranging review, and only a review, is required to kick-start the process of parliamentary reform. Such a review would need to be carried out by an authoritative and independent group. The proposed model is that of 1992's Opsahl Commission."

KEY POINTS OF WRITTEN SUBMISSIONS TO AERC REVIEW

Issues as set out in the 'Call for Evidence' paper	(1) D'Hondt	(2) Community Designation	(3) Provisions for Opposition	(4) Provisions for Opposition – financial resources	(5) Provisions for Opposition – allocation of Chairs/Deputy Chairs	(6) Provisions for Opposition – additional debating time and priority speaking rights	Additional information
KEY STAKEHOLDERS – Others							
Centre for Opposition Studies	"We consider that the Assembly should look seriously at alternatives to d'Hondt that would achieve the central aims of delivering a cross-community, inclusive executive, whilst being less prescriptive."	"The need to ensure cross-community support for certain measures is a key feature of the 1998 Act, and designation provides a clear (albeit rather blunt) instrument for achieving this result. However, an alternative system such as qualified majority voting, which would allow for the removal of formal designations, is clearly more desirable in the longer term." "It would seem appropriate to look at restricting [the use of petitions of concern] by raising the number of petitioners required, or adopting specific criteria which a petition should meet to be accepted by the Speaker."	"We are strongly of the view that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions formally to recognise Opposition, whilst retaining the principles of power-sharing and inclusivity." "… there should be official recognition of non-executive parties as opposition parties. Beyond this, and to maintain the principles of inclusivity and power-sharing, it may be possible to devise a mechanism by which recognition of an Official Opposition is conditional on it having a cross-community composition."	"… we believe it is a natural and desirable development for opposition parties to be allocated financial resources for their role in scrutinising the executive." "… there should in our view be additional resources available to the designated Official Opposition (where one chooses to constitute itself), with a salary for its Leader and Deputy Leader, and some additional resources for the running of their office (on top of the 'Short Money' formula)."	"With regard to allocating Committee Chairmanships, the same arguments apply. However, there is at present no clear linkage between allocation of ministerial positions and entitlement to chairmanships- they simply use the same system, separately. It would seem sensible in looking to review the arrangements to consider how more of a linkage might be made, for example by introducing a system where a party that chooses not to take up its ministerial allocations would gain extra entitlement to Chairmanships."	"The development of a greater role for opposition and the potential for an Official Opposition will clearly require changes in the way speaking rights are managed. Whether mandated by Standing Orders or regulated by the Speaker, the expectation should be that representatives of the Official Opposition are given greater privileges in debate and questioning of Ministers."	

KEY POINTS OF WRITTEN SUBMISSIONS TO AERC REVIEW

Issues as set out in the 'Call for Evidence' paper	(1) D'Hondt	(2) Community Designation	(3) Provisions for Opposition	(4) Provisions for Opposition – financial resources	(5) Provisions for Opposition – allocation of Chairs/Deputy Chairs	(6) Provisions for Opposition – additional debating time and priority speaking rights	Additional information
The de Borda Institute	"The de Borda Institute recommends the d'Hondt procedure should be replaced by the matrix vote."		"In any power-sharing administration, there can be and will be constructive opposition, as long as topics are considered as suggested above [see p.5 of submission], in a multi-optional manner."	"No especial funding is necessary."	"This too can be done by a matrix vote."	"In an inclusive political structure, the question would not be relevant."	The de Borda Institute's analysis of the latest matrix vote experiment is published in the Open Journal of Political Science, April 2013
Platform for Change	"The d'Hondt mechanism for allocating ministerial positions should be replaced for several reasons …" "… a better means of executive formation needs to be found, which uses the foundation of collective responsibility to foster a sense of interdependence among Ministers drawn from the two sides of the sectarian divide …" "… what is needed is a *mandatory* requirement after an Assembly election for an inter-party coalition to be agreed …"	"Communal designation should be abolished …" "A more effective mechanism for minority protection would be, as already mentioned, the enactment of a Northern Ireland Bill of Rights, which would replace the 'petition of concern'." "Alternative or additional protection could be provided by a requirement for a super-majority vote in the Assembly. This, however, should be confined to issues of strategic significance, so that the procedure could not be abused in an opportunistic manner as indicated."	"The key problem at the moment is that, with all main parties in government, there is no significant party to represent alternative perspectives in the Assembly …" "… the committees do not play properly their day-to-day scrutiny role, because every committee has, in effect, an overwhelming government majority." "Were the changes advocated in the two preceding sections to be introduced, those parties not joining an Executive after an election would, *de facto*, become the non-governing parties. Once government formation is transformed and communal designation replaced, in other words, the question of an opposition resolves itself."	"Parties should be publicly resourced according to their Assembly strength."	"It is … perfectly correct to retain d'Hondt as a mechanism for distributing Assembly committee chairs and vice-chairs." "The current arrangement for the proportionate distribution of committee positions should be retained."	"Time in the Assembly should also be allocated in proportion to party strength."	"It is time for a change towards more flexible and fit-for-purpose arrangements, without throwing out the baby of power-sharing and equality of citizenship with the bathwater of departmental autonomy and mutual vetoes."

The Alliance Party

Assembly and Executive Review Committee
Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

<table>
<tr><td>Stakeholder Name</td><td colspan="4">Telephone Number</td></tr>
<tr><td>Alliance Party</td><td colspan="4">(029) 9052 1314</td></tr>
<tr><td>Stakeholder Address</td><td colspan="4">Stakeholder Type (Include one or more X)</td></tr>
<tr><td rowspan="5">Room 220
Parliament Buildings</td><td>Registered Political Party</td><td>x</td><td>Local Government</td><td></td></tr>
<tr><td>Academic</td><td></td><td>Government</td><td></td></tr>
<tr><td>Legislature</td><td></td><td>Non-Government</td><td></td></tr>
<tr><td colspan="3">Other (Please Specify)/ Member of the Public</td><td></td></tr>
<tr><td colspan="4"></td></tr>
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Please provide some background information on your role as a stakeholder

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

(1) **Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons**.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

Alliance does not support the use of d'Hondt in the current format for the allocation of Ministerial Offices and/or Committee Chairs.

Firstly, Alliance believes that the appointment of First Minister and Deputy First Minister should be through a cross-community vote in the Assembly. Such collective legitimisation would contribute to the authority of the incumbents.

Alliance's preference is for an Executive of a voluntary coalition. formed through negotiation in this context a formula such as d'Hondt is not necessary.

In the current context of mandatory coalition a system such as St Lague rather than d'Hondt would be a more proportional and fair method of proportional allocation – there are heightened risks of anomalous or disproportionate outcomes under d'Hondt.

With regard to the selection of Committee Chairpersons and Deputy Chairpersons we would prefer the introduction of a Single Transferable Vote (STV) election among Assembly Members. We believe this to be the fairest system of allocating committee Chairs and Vice-Chairs. Under this system, a succession of counts of a STV ballot would be conducted among MLAs to determine a rank order of party choices of posts.

The D'Hondt system is flawed as a proportional representation system. Thus the current D'Hondt mechanism for the allocation of places in the Executive, and Committee Chairs and Vice-Chairs, is unrepresentative. The greater the numbers of Parties involved, the more likely it is that distortions will occur. The present system also significantly favours the larger parties.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

Alliance does not support the retention of community designation.

The current system institutionalises sectarian division within the Assembly and leads to the inequality of votes of between elected MLAs. Other problems with this system are the inability to adjust to changing demographics and political circumstances as well as the ability of minorities to hold the process to ransom.

Alliance would prefer the introduction of an Assembly voting system for cross-community matters based on a weighted majority. The introduction of a system of weighted majority voting ensures cross-community support while avoiding these difficulties.

Alliance would welcome a method of defining those issues on which a Petition of Concern can be used and as as a way of ensuring this mechanism is not open to misuse.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you

agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

There are two contexts for discussing opposition.

As previously noted the Alliance Party's preference is for the creation of a power-sharing Executive formed through negotiation. It is possible for parties to negotiate a balanced Executive, with an agreed programme for government, based on collective responsibility. It would be necessary to achieve a cross-community weighted-majority vote in the Assembly in order to come into effect.

Notably, in almost every democracy, like-minded parties, or at least those prepared to co-operate together, form a voluntary coalition to govern that has either a simple, or weighted, majority support within the legislature and operating on the basis of collective responsibility. Involuntary coalitions in which parties are allocated portfolios on the basis of their comparative strength in the Assembly, irrespective of their political compatibility, risk political deadlock and policy paralysis. In such circumstances, parties not in government would have a formal opposition status. Alliance would be supportive a similar process within the Assembly.

Consequently to this under a voluntary coalition system there will be an opposition of one or more parties

The second context is under mandatory coalition where parties either don't qualify for places on the Executive or opt not to take them or to withdraw.

In either situation we would support more formalised speaking and questioning rights and access to additional resources – this would need to be proportional in relation to the scale of the party or parties in opposition.

The recognition of opposition and additional speaking privileges should not be restricted only to the largest Party not in the Executive but to all who are in that context, relative to size.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition

Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/ Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

DUP

DUP POLICY PROPOSALS

www.dup.org.uk

REFORMING GOVERNMENT – **STREAMLINING** STORMONT

MAKING STORMONT WORK BETTER

Details on how you can respond to these proposals can be found on the back page

DUP: MAKING STORMONT **WORK BETTER** [2]

The Assembly elected in 2007 is the first to complete a full term of devolved government for over 40 years. This is a considerable achievement in light of the failure of previous attempts to establish devolution.

However, in the next four years it will be tangible delivery by the Executive, rather than mere survival, on which we will be judged.

We believe that reforming and streamlining Stormont can help us deliver for the people of Northern Ireland.

DUP – THE CHAMPION OF REFORM

In 1998 the DUP opposed the arrangements provided for by the Belfast Agreement and when we won a mandate for change in 2003 we insisted on a number of fundamental amendments before we would agree to form an Administration. These amendments were negotiated at St Andrews and legislated for at Westminster.

As a first step these have operated effectively but further changes would be beneficial. At St Andrews in 2006 it was agreed and subsequently enshrined in legislation that there would be a review of the Devolved Institutions by 2015. This will be a key task for the next Assembly and that work should be completed in the early part of the term.

In the first days of the new Assembly we believe that Party Leaders should meet to map out how this work can best be taken forward in conjunction with the Assembly and Executive Review Committee.

While the present arrangements have proven durable, no one could credibly suggest that the existing Institutions are best devised to provide the best government for Northern Ireland. Indeed, even the authors of the Belfast Agreement accepted that it was an interim structure rather than a long-term solution. The challenge for us now will be to agree changes which can command support across the community and which will deliver better government.

The DUP has always been the champion of political reform in Northern Ireland. While the current framework is a marked improvement on the Belfast Agreement, it is still far from the best means of operation. We are committed to bringing about change to the existing arrangements, but in so doing, we will not risk the future of devolution altogether. Instead, we will work to build political consensus to bring about change.

OUR AGENDA FOR CHANGE

We have a clear long-term goal to normalise the political arena in Northern Ireland. Indeed, we are the only Unionist party that is in any position to help bring this about. Improved political arrangements can help to enhance the functioning of devolution, but we must remember that for most, the key concern is how devolution can help them, rather than the detail of how it is structured. Ultimately the willingness of political parties to operate government will have as much to do with the success of devolution as the precise nature of the arrangements themselves.

The political reality is that change to the way in which devolution operates in Northern Ireland will only come about by agreement. It has been suggested that the only way to change the present arrangements is to refuse to operate them and then force a renegotiation. This would be a recipe for constitutional instability, inevitably leading to a breakdown of the Institutions and years of Direct Rule with Dublin interference. It would be deeply damaging to Northern Ireland and would also set a dangerous precedent in that whenever a Party wanted some future change, it would threaten the collapse of devolution. Such circumstances would not be good for the short or long-term operation of Government in Northern Ireland.

Nevertheless, it is clear that there is an emerging consensus for change to the current structures. While it will require widespread agreement to bring about change in the devolved arrangements, it is also the case that cross-community agreement will be required to replace existing All-Island Implementation Bodies or to amend the present responsibilities of the North South Ministerial Council. We believe that with some goodwill, changes can be made which are to the benefit of all the people of Northern Ireland.

Whilst there will need to be widespread agreement to normalise politics in Northern Ireland, no single Party should have a veto on progress. In terms of the long-term arrangements we believe that, on the basis of the Assembly and Executive Review Committee's report and the level of support that each proposal was able to attract, the UK Government should bring forward legislation to normalise politics in Northern Ireland before the 2015 Assembly election.

ST ANDREWS CHANGES – HOW THEY HAVE OPERATED

Ministerial Accountability

The amendments to the Northern Ireland Act brought about by the Northern Ireland (St Andrews Agreement) Act 2006 and the creation of a statutory Ministerial Code have transformed the way decisions are taken in Northern Ireland. Instead of a Minister being able to take decisions regardless of the view of the Executive, Executive approval is now required for all important decisions.

While, on occasion, this has made taking decisions more difficult, it has ensured that all important decisions have commanded cross-community support and Ministers are not free to do as they wish. Though it has taken some time for the new arrangements to bed down, they have proven effective and have been upheld by the courts in Northern Ireland.

Election of First Minister and deputy First Minister

The mechanism to appoint the First Minister and deputy First Minister, as agreed at St Andrews, was not faithfully implemented in the ensuing legislation. Pending more fundamental changes to the operation of OFMdFM we will continue to press for the effecting of arrangements as per the St Andrews Agreement, namely that the nominee of the largest Party from the largest Designation should become First Minister. The arrangements provided for in the Belfast Agreement are merely a recipe for an impasse following an election.

HILLSBOROUGH CASTLE AGREEMENT

Arising out of the Hillsborough Castle Agreement an Executive sub-committee was set up to propose improvement to the functioning of the Executive. As a result of this process, the Executive has now agreed that a Minister can insist on a paper being tabled for consideration by the Executive. It was also agreed that Party Leaders would meet following the election to discuss and seek to agree a Programme for Government.

PROPOSALS FOR REFORM

Since 1998 we have tabled proposals for how the devolution processes could be improved. Many of these were addressed through the St Andrews Agreement while others will be considered over the next Assembly mandate. For that reason many of the proposals tabled in this paper are not new. However, the review of the arrangements provided for in the Northern Ireland (St Andrews Agreement) Act 2006 will provide the ideal opportunity for these to be considered.

LONG-TERM ARRANGEMENTS – MOVING TOWARDS A VOLUNTARY COALITION

We believe that in the long-term, the best means of governing Northern Ireland would involve a voluntary coalition Executive and weighted majority voting of around 65% in the Assembly, resulting in an end to Community Designation. This system could provide for both an Executive and an official Opposition which would be consistent with normal democratic institutions while accepting the particular circumstances of Northern Ireland.

This should be the long-term goal of all of the Parties in Northern Ireland. However, we must be realistic about the ability to achieve it in the short-term. While voluntary coalition would undoubtedly improve the performance of devolution in Northern Ireland, it would be a mistake to assume it is a panacea to all of the problems that we face.

WORKING BETTER TOGETHER

These proposals are based upon working better together under the present legal arrangements and could be implemented from the start of the new Assembly mandate. We believe that people want to see politicians working together and not scoring party-political points. Our proposals are founded upon this goal. Some of them will require the support of other Parties while others can be effected unilaterally. For arrangements to work, the goodwill of all Parties involved will be required. Self evidently if the level of partisan politics demonstrated in the run up to the Assembly election characterised the next Assembly, it would not be possible to maximise the benefits from these proposals.

EXECUTIVE FORMATION

Under the present arrangements Departments are allocated on the basis of the d'Hondt formula. This determines both the number of Departments to which each Party is entitled and also the order of selection. After the last election this process was run informally between the Parties in advance of the formal process in the Assembly. An extension of this arrangement would be to seek to agree an Executive through discussion and negotiation. If such agreement could be reached, it could then be formalised through the running of d'Hondt on an agreed basis in the Assembly.

It has also been suggested that a Programme for Government be agreed before the Executive is established. While this idea has merit in principle, we should be conscious of the limited time afforded by statute to establish the Executive and the challenges of obtaining agreement by five Parties. We believe that, consistent with our proposals, high level agreement should be sought on a Programme for Government, however it would be absurd to make agreement a pre-requisite to the formation of an Administration.

ALL-PARTY COMMISSIONS

Under the present structure of a mandatory coalition, it is desirable that decisions command the greatest possible support and authority across the Executive. This is tempered only by the temptation of 'minority parties' to seek to impede Executive business for perceived party-political advantage. Striking the appropriate balance will not always be easy, but where possible, consensus should be sought in the Executive.

In the present Assembly a number of significant policies have not proceeded due to a lack of widespread support from other Parties in the Executive. Those Ministers who have been prepared to engage in discussion and compromise have proven the most successful at delivering on their political and Departmental agendas. It is important that the necessary support is garnered before matters are brought before the Executive or Assembly.

One potential way to deal with the most difficult and controversial issues is to establish Cross-Party Commissions augmented with experts to address particular matters. This would allow for serious and informed considerations of some of the most contentious issues away from the public spotlight and on the basis of buy-in from all significant interests represented in the Assembly.

These Commissions could be established without the requirement of any formal change to the present arrangements.

One obvious example where a Commission could look at long-term solutions away from media attention is in the area of shared education provision.

GREATER SCRUTINY THROUGH COMMITTEES

One of the flaws of the present system of government is the lack of a formal Opposition. This is primarily because any Party with over 10 MLAs is likely to be entitled automatically to a seat in the Executive. There is however no obligation on a Party to take up its place in the Executive - any party is entitled to forgo this and form an Opposition.

However, pending changes to the present configuration, the Departmental Committees have an important role to play in holding Ministers and Departments to account.

VOTING IN THE EXECUTIVE

We believe that the Executive and Assembly operate best when Parties operate together and on the basis of unanimity. For various reasons, this has not always proven possible. However every effort should be made to rectify this position.

Until there are long-term changes to the arrangements, we believe that steps can still be taken to make the Executive more inclusive and which do not require any formal changes to the rules. Subject to the outcome of the election and based on the good faith of all Parties involved we are prepared to make the following proposal:

In circumstances where other Executive Parties behave responsibly and constructively, the DUP will not normally force a vote against the wishes of another Executive Party. Instead, we will defer any such vote pending further consideration of the issue. However, in return for such a deferral we would expect that those opposed to a proposal would set out their specific objection and proposed amendments to the paper. This offer is only sustainable where it is not used for party-political advantage or to frustrate decisions.

JUSTICE ARRANGEMENTS

Before Policing and Justice powers were devolved there were key changes to how they were to be exercised. In particular, any political role in the appointment of the judiciary has been removed; cross-community agreement is required for the election of the Justice Minister; and quasi-judicial decisions do not require Executive agreement. The structures in relation to the Department of Justice have operated well since the devolution of justice powers in April 2010, but these will expire in 2012.
We believe that any change to the current framework should only be considered in the context of a wider review of the devolution arrangements, whether before 2012 or 2015.

CIVIC FORUM

The Civic Forum has not been restored since 2007 and we see no case for its reintroduction. Nevertheless, where possible, we should seek to involve people from wider civic society where they can add value to decision-making.

NUMBER/REORGANISATION OF DEPARTMENTS

We propose that the number of Departments should be reduced to 6-8 and propose the following structure.

OFMdFM would be reconstituted as the Executive Office with its concentration on dealing with Executive business and including responsibility for many of the central or cross-Governmental functions.

In addition there would be seven ordinary Departments.

- A Department of the Economy and Business with responsibility for all economic issues including skills, sport and culture.
- A Department for Education with responsibility for young people, schools and higher education.
- A Department of Health and Social Services.
- A Department for Regional Development with responsibility for roads, water, transport as well as planning and urban regeneration.
- A Department of Justice
- A Department of Communities and Social Welfare with responsibility for Local Government, Housing, Land and Property Services and the Social Security Agency.
- And a Department of Agriculture, Environment and Rural Development which would also have responsibility for the Northern Ireland Environment Agency.

NUMBER OF MLAS

We propose that the number of MLAs should be reduced to 4 or 5 per constituency and a maximum of 80 from the 2015 Assembly election.

NORTH-SOUTH ARRANGEMENTS

Relations between Northern Ireland and the Republic of Ireland have never been better. With the changes arising out of the St Andrews Agreement, the present north-south Institutions present no constitutional threat to Northern Ireland. The extent to which they represent good value for money is a separate issue. While we strongly oppose politically motivated Cross-Border Bodies, we will support co-operation which is in the interests of Northern Ireland.

RESIGNATION OF MINISTERS

Provision already exists for the removal of Ministers within the Northern Ireland Act. However, in effect, this provision is significantly limited by the requirement that any vote of the Assembly to remove a Minister requires a cross-community majority as defined by the Act. In practice it therefore is not possible for the Assembly to remove a Minister from either of the two largest Parties in circumstances where the Minister continues to command the support of his Party's Nominating Officer. This is a severe limitation on the application of the relevant provision.

As an alternative in the short-term, consideration should be given to a non-binding motion of no confidence in a Minister which, while lacking formal legal effect, could have considerable political effect and, for which, there would be no automatic requirement for a cross-community vote. Indeed, the Assembly should establish a convention whereby Petitions of Concern are not used in relation to votes of confidence.

Following the passing of a vote of no confidence in a Minister it would be a matter for the individual or the Party's Nominating Officer to determine the future of that Minister. It would be a matter for the public as to whether the vote of no confidence was legitimate or a party-political stunt or whether the failure of a Minister to resign or be dismissed by their Nominating Officer was an improper failure to recognise the authority of the Assembly.

While this proposal falls short of an ideal situation, it may strike the balance between the opportunity for the Assembly to speak its mind and the protection of Ministers from purely party-political attacks.

This alternative also has the advantage of not requiring any formal change to legislation or the rules of the Assembly.

PROPOSALS FOR ST ANDREWS REVIEW – BREAKING DOWN DIVISION

In the medium-term it is essential that we seek to break down the institutional arrangements which entrench division and divide the community. Our proposals for the St Andrews review will be designed with this aim in mind.

DESIGNATION

We propose the abolition of community designation in the Assembly. Community designation is not only fundamentally undemocratic as it does not provide equality for all Assembly Members' votes, but it also entrenches community division and hinders the development of normal politics in Northern Ireland. As a result of the abolition of community designation new arrangements will be required for the Assembly and Executive.

VOTING ARRANGEMENTS

Where a cross-community vote is required by legislation or triggered by a Petition of Concern, a proposal would require the support of 65% of Assembly Members present and voting to pass.

The 65% threshold means that a proposal would need to have widespread support across the community but would not permit a small minority to block decision-making. It would also permit various combinations of parties to pass a particular proposal with no single party holding a veto. It would also allow differing coalitions to pass proposals on different issues without any single group holding the Assembly to ransom. This arrangement would also encourage greater co-operation and compromise in the Assembly to obtain sufficient support for proposals to pass.

In the Executive analogous voting arrangements would also be introduced to require the support of parties representing 65% of Assembly Member voting in favour to pass.

DUP

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MAKING STORMONT WORK BETTER

DUP
www.dup.org.uk

MAKING STORMONT WORK BETTER

The DUP values the views of members of the public. We are keen to hear your opinions. If you have any views on our proposals that you would like to contribute as we develop our strategy further, please email consultation@dup.org.uk or write to: DUP Policy Unit, 91 Dundela Avenue, Belfast BT4 3BU.

www.dup.org.uk

Party Headquarters: 91 Dundela Avenue, Belfast. BT4 3BU Tel: 028 9047 1155
Stormont Office: Room 207, Parliament Buildings, Stormont, Belfast BT4 3XX
European Office: Garvey Studios, Longstone Street, Lisburn, Co. Antrim BT28 1TP
Westminster Office: DUP Whip's Office, House of Commons, London SW1A 0AA

Green Party

Assembly and Executive Review Committee
Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

Stakeholder Name	**Telephone Number**			
Green Party in NI	02890 521467			
Stakeholder Address	**Stakeholder Type (Include one or more X)**			
Room 259, Parliament Buildings	Registered Political Party	x	Local Government	x
	Academic		Government	
	Legislature	x	Non-Government	
	Other (Please Specify)/ Member of the Public			

Please provide some background information on your role as a stakeholder

UKIP is a registered political party operational in all parts of the United Kingdom. I am the Leader of UKIP in the Northern Ireland Assembly and an MLA for Strangford. UKIP is currently represented in the NI Assembly, the European Parliament and in local government.

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

(1) **Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons**.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

The Green Party believes that we do need to review the mechanisms by which the Government is decided but that such a review should be conducted alongside a much broader civic conversation. Any such changes to the Agreement should be ratified by the people

through a referendum. As such, the Green Party has recently submitted the following motion to the Assembly for debate:

> *That this Assembly calls on the First Minister and deputy First Minister, in conjunction with the Secretary of State, to initiate a civic conversation involving politicians and citizens in a time bound process to review and recommend reforms to the Belfast Agreement, to address unresolved issues from the Belfast Agreement including a shared future strategy, a bill of rights and a civic forum as well as proposed changes to the outworkings of the Agreement including a voluntary coalition, reduction in the numbers of MLAs and the removal of community designation.*

The Green Party does not believe that d'Hondt is a satisfactory mechanism for deciding the Government. Our preferred alternative is that the Executive should be formed by post-election inter-party negotiations that should also agree a Programme for Government. In such a scenario, both the Executive Ministers and the Programme for Government should be subject to endorsement by the Assembly by a 66% majority of elected Members present and voting. Moreover this would facilitate the establishment of an opposition. Such an arrangement would facilitate better scrutiny of government policies and would also offer voters a clearer choice. It would also make the system easier for the general public to understand.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

The Green Party is opposed to community designation in the NI Assembly as we believe that it entrenches sectarianism in the institutions. We propose that decisions should require a weighted majority of Assembly members which would be set at an appropriate level (e.g. 66%) as to require the support of MLAs from both unionist and nationalist communities.

In the event that a weighted majority is not adopted, the Green Party believes that there ought to be changes to the rules governing petitions of concern to ensure that the use of petition of concern is restricted to key cross community decisions.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

The Green Party supports the establishment of an official opposition in the NI Assembly and believes that this would enhance the accountability and effectiveness of the Assembly.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

The Green Party supports the provision of additional financial assistance to opposition/Non-Executive parties.

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

The Green Party supports the guarantee that opposition parties should be granted additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.

We do not believe that the current arrangements provide adequate time and speaking rights for Opposition Parties/Non-Executive Parties to raise and debate non-Executive business and questions Ministers.

There have been many instances when time has permitted only parties in Government to speak on a motion tabled by one of the Governing parties. E.g. a motion on the Green economy. We do believe that the exclusion of dissenting voices in such circumstances negates healthy scrutiny of the Government.

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

SDLP

SDLP Response to the Assembly and Executive Review Committee Review of D'Hondt, Community Designation and Provision for Opposition.

May 2013

In assessing how to deepen democracy, strengthen the quality and character of government, the SDLP refers to its submission to the Assembly and Executive Review Committee review of parts III and IV of the Northern Ireland Act 1998 and the SDLP response to the NIO consultation on measures to improve the operation of the Northern Ireland Assembly "Deepening democracy in Ireland." In both documents we put forward a set of principles which should govern any changes to governance in Northern Ireland.

- "Powersharing. Government in Northern Ireland should always be representative and reflective of both communities.
- Reconciliation must be the principal and overriding objective of all administrations in Northern Ireland.
- Equality is the foundation stone on which the new Northern Ireland is built. It must be embedded in government and across our society.
- Partnership is the engine which will drive the transformation of our society.
- Prosperity. Making our region and this island more prosperous should be a primary objective of all future government in Northern Ireland.
- Accountability. Future structures of government must be and feel fully accountable to our people. As republicans we believe that power lies fundamentally with the citizen. It is important that our citizens have the power to change governments and hold Ministers fully accountable."

D'Hondt

Power-sharing and its provisions, as an essential element of the Good Friday Agreement should endure. The analysis outlined the SDLP document "Deepening democracy in Ireland" confirms why this approach is necessary and right in the current, more volatile environment. This means that FM/DFM are elected by cross-community vote, that all ministerial offices and Committee Chairpersonships and Deputy Chairpersonships are allocated on the basis of democratic mandate and the principle of d'Hondt.

Community Designation

The SDLP supports the retention of community designation and the right of parties to their d'Hondt entitlement under powersharing arrangements if a party chooses to claim that entitlement.

Provisions for Opposition

In assessing the issue of opposition, the SDLP does so consistent with the core values of and requirements of the Agreement, and does so in order to work through how best to serve the community and its pressing needs.

It is in this context that the SDLP concludes that an opposition option should be built into the structures of the Assembly in a future mandate. It would not be 'mandatory'; that an opposition is formed. Parties would be guaranteed their d'Hondt entitlement under

powersharing arrangements if a party chooses to claim that entitlement. FM/ DFM would be elected by cross community vote to ensure a government of the political traditions.

The SDLP believes that any future powersharing coalition who form a Northern Ireland Executive under the non-compulsory arrangements outlined above should be required by legislation to publish a Programme for Government prior to formation.

Agreement on a programme for government would demonstrate unity of purpose and commitment to delivery by the Parties involved alongside the provision of measureable targets available for scrutiny by the Assembly and through public consultation.

Such action would follow the examples of best practice set by coalition governments in both the Republic of Ireland and the United Kingdom. The most recent examples of such practice are the May 2010 Conservative – Liberal Democrat document "The Coalition: our programme for government" and the March 2011 Fine Gael – Labour document "Towards Recovery: Programme for a National Government 2011 – 2016?.

The SDLP believes that this approach and related provisions both protect the architecture and requirements of the Agreement and enable the evolution of democratic politics in a balanced manner going forward.

Sinn Féin

Assembly and Executive Review Committee
Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

<table>
<tr><th>Stakeholder Name</th><th colspan="4">Telephone Number</th></tr>
<tr><td>Sinn Féin</td><td colspan="4">02890 347350</td></tr>
<tr><td>Stakeholder Address</td><td colspan="4">Stakeholder Type (Include one or more X)</td></tr>
<tr><td rowspan="5">52 Falls Road
Belfast
BT12 4PD</td><td>Registered Political Party</td><td>x</td><td>Local Government</td><td></td></tr>
<tr><td>Academic</td><td></td><td>Government</td><td></td></tr>
<tr><td>Legislature</td><td></td><td>Non-Government</td><td></td></tr>
<tr><td colspan="3">Other (Please Specify)/ Member of the Public</td><td></td></tr>
<tr><td colspan="4"></td></tr>
</table>

Please provide some background information on your role as a stakeholder

Sinn Féin is the second largest party in the Assembly and the only All-Ireland political party. Sinn Féin has 29 MLAs, 5 MPs, 1 MEP, 14 TDs, 3 Senators and over 300 councillors elected across Ireland.

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

(1) **Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons**.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

Sinn Féin support the continued use of the d'Hondt system to fairly allocate chairs/vice chairs and membership of committees and to elect Ministers on the basis of party strength.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

Sinn Féin support the continued use of community designation for the purposes of measuring cross-community support in Assembly votes.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

Sinn Féin support a party's right to decline their membership of the Executive and are content that an opposition platform is already automatically available to those who wish to 'opt-out' of the Executive.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/ Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

TUV

Assembly and Executive Review Committee
Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

<table>
<tr><td>Stakeholder Name</td><td colspan="4">Telephone Number</td></tr>
<tr><td>Traditional Unionist Voice</td><td colspan="4">02890521461</td></tr>
<tr><td>Stakeholder Address</td><td colspan="4">Stakeholder Type (Include one or more X)</td></tr>
<tr><td rowspan="5">c/o Room 253
Parliament Buildings
Stormont</td><td>Registered Political Party</td><td>x</td><td>Local Government</td><td></td></tr>
<tr><td>Academic</td><td></td><td>Government</td><td></td></tr>
<tr><td>Legislature</td><td></td><td>Non-Government</td><td></td></tr>
<tr><td colspan="3">Other (Please Specify)/ Member of the Public</td><td></td></tr>
<tr><td colspan="4"></td></tr>
</table>

Please provide some background information on your role as a stakeholder

Traditional Unionist Voice is a political party formed in December 2007. We have four founding principles:

1. Wholly committed to the Union;
2. Desirous of devolution compatible with democratic principles and precedents prevailing elsewhere in the UK, thus causing us to reject the present undemocratic mandatory coalition model which puts Sinn Fein in government;
3. Adamant that the rule of law must prevail in every part of Northern Ireland and be administered without fear or favour and
4. Supportive of traditional family values.

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

(1) **Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons**.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

TUV is opposed to the use of the d'Hondt mechanism to allocate Ministries.

We note that in paragraph 3.20 – contrary to public affirmations by some that they continue to reject the Belfast Agreement – the entire committee has meekly endorsed its central architecture and is willing to only consider adjustments which maintain it.

The present arrangements are a reward for terrorism. Hence the absurd mechanism of mandatory coalition, whereby IRA/Sinn Fein is guaranteed a place in government for as long as it takes them to achieve their all Ireland Republic. Because of mandatory coalition, Northern Ireland is the only region in the EU where the voter is prohibited by law from voting a Party out of office. This undemocratic absurdity must be ended.

For any system to work and give durable and workable government it must restore respect for the fundamental democratic imperatives of the electorate being permitted to change their government - which d'Hondt denies - and being permitted to have within the Assembly an Official Opposition.

The 1998 Act needs to be radically amended so that after each election those parties who can agree a programme for government and command the requisite majority in the Assembly, form the government, and those who cannot fulfil the vital role of Opposition. In consequence the filling of ministerial posts by d'Hondt should be abandoned.

As anywhere else, parties who can agree negotiating a coalition, after an election, and those that can command the requisite majority in the Assembly form the government and the rest become a vibrant Opposition, offering an alternative government at the next election. This is how standard democracy works. If other Unionist parties want to partner IRA/Sinn Fein in government, then let them do it openly and honestly, instead of hiding behind mandatory coalition.

No party can be allowed a veto on government. If Sinn Fein is only operating the system so long as they are guaranteed a place in government, then we are being blackmailed as well as conned.

TUV believes that it is essential that, in keeping with standard practice elsewhere, the Chair of the Public Accounts Committee should be filled by an MLA from outside the government parties.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

TUV is opposed to community designation as we believe that it institutionalises sectarianism. We believe that it should be scraped and that all MLAs – including those who choose not to define themselves as "Unionist" or "Nationalist" – should have equal voting power in the Assembly.

TUV is opposed to Petitions of Concern. We believe that they are a perverse instrument which is open to abuse. A graphic illustration of this was when one was used to block an amendment to the Justice Bill which would have prevented abortions being carried out outside of the National Health Service.

This was an amendment which had wide support across the community in Northern Ireland and yet the amendment was not made, in spite of it receiving the backing of a majority of MLAs, a significant number of Nationalists joining with Unionist MLAs in supporting it.

With no party commanding a majority in the Assembly, TUV believes that the foundation stone of any good government is voluntary power-sharing with a vigorous Opposition to hold the Executive to account. This is the gold standard for a properly accountable government which effectively works on your behalf rather than simply pursuing the narrow and selfish interests of those within it.

We believe that the Government should be able to demonstrate that it has cross-community support by obtaining a weighted majority of 60% to approve its Programme for Government. Other parties should form the Opposition.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

For any country to be truly democratic its legislature must provide two essentials. Firstly, there must be an Opposition to hold the government to account. The absence of an Opposition – to highlight the flaws in government policy and puncture the arrogance of self-important politicians – has made Stormont a stale debating chamber and government policy is not subjected to the scrutiny which it would be in a truly democratic instruction.

TUV believes that, as outlined above, d'Hondt – the mechanism which guarantees that all sizable parties will be in government as of right - should be scrapped and that a government should be agreed voluntarily by those capable of commanding the requisite majority.

TUV does not believe that anyone should have an automatic right to a place in government and we therefore object to the use of language such as the principles of inclusiveness. No one would say that other devolved administrations in the UK and, indeed, governments across the democratic world, are exclusive because some minority parties do not hold seats round the Executive table.

In order to have ANY accountability it is essential that an official Opposition is provided for in legislation and in the Assembly's Standing Orders with Opposition MLAs given supply days and having precedence when it comes to asking oral questions on the floor of the Assembly.

Only those outside the Executive parties will have any real interest in showing up the flaws in how the government of the day is operating. Only they will have real motivation to suggest that it could be done both differently and better.

TUV believes that any supposed moves to strengthen the accountability of government in Northern Ireland short of providing for an Opposition will be merely cosmetic and for the optics.

Committees are not an adequate substitute. S29 (1) (a) of the 1998 Northern Ireland Act makes it clear that the job of committees is to "advise and assist" Ministers, not hold them to account.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

Stormont should follow the Westminster model with appropriate financial assistance being provided to non-executive parties in order to aid them in the formation of alternative policy and in their scrutiny of the government of the day.

Financial assistance should be allocated to Opposition parties in proportion to how many elected MLAs they have.

The absence of such financial assistance should not, in our view, be used as a rather mercenary excuse for parties to remain in an executive where, in truth, they have very little influence.

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

TUV believes that Committee Chairs should be allocated on the basis of party strength as is the practice in the House of Commons.

TUV believes that it is essential that, in keeping with standard practice elsewhere, the Chair of the Public Accounts Committee should be filled by an MLA from outside the government parties.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/ Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

As stated above, it is essential that non-executive parties are guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.

The current arrangements – where frequently only the voice of government MLAs is heard in debates even on vital issues such as the Programme for Government – is manifestly unfair and undemocratic.

It is also the case that opposition MLAs currently find it almost impossible to get anything on the Assembly Order Paper. The fact that the Business Committee is comprised exclusively of MLAs from the governing parties means that the voice of opposition and proper scrutiny is frustrated by the cabal of self-interested executive parties.

Even the modest proposition of a "technical group" was rejected by the DUP and Sinn Fein in the Procedures Committee

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

TUV is sceptical that this review is anything more than a paper exercise and believes that the self-interest of the political parties will prevent the implementation of the real change which Northern Ireland needs to see.

UK Independence Party

Assembly and Executive Review Committee
Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

Stakeholder Name	**Telephone Number**			
UK Independence Party				
Stakeholder Address	**Stakeholder Type (Include one or more X)**			
	Registered Political Party	x	Local Government	x
	Academic		Government	
	Legislature	x	Non-Government	
	Other (Please Specify)/ Member of the Public			

Please provide some background information on your role as a stakeholder

UKIP is a registered political party operational in all parts of the United Kingdom. I am the Leader of UKIP in the Northern Ireland Assembly and an MLA for Strangford. UKIP is currently represented in the NI Assembly, the European Parliament and in local government.

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

(1) **Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons**.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

The d'Hondt mechanism pertaining to Ministerial appointments is unnecessary in a voluntary coalition arrangement.

The division of Ministerial offices would be a matter for agreement between the parties involved in that voluntary coalition. The coalition agreement between the parties should

be published as it is, for example, in the case of the Christian Democrats and the Free Democrats in Germany. The coalition agreement should include a range of legislative proposals agreed by the partners in the coalition agreement.

The only stipulation which should govern the make-up of that voluntary coalition is that it should be cross-community involving parties registering under a broad unionist designation and parties registering under a broad nationalist designation. Parties who do not register under either of these broad designations could participate in government but, again, only with at least two other parties registering under broad unionist and broad nationalist designations.

Committee Chairs and deputy Chairs should be allocated to non-government parties who do not hold Ministerial office. The role of Committee Chair and deputy chair is one of critical scrutiny and it would, therefore, be inappropriate that such scrutiny is carried out by a government party. The role of Committee chair and deputy chair should be one of the key delivery mechanisms of opposition. While all MLAs should vote in selecting the Committee chair and deputy chair positions, only those from non-government parties could stand in that election. Election should be by simple majority until one candidate scored 50% plus one vote. The runner up should be deputy chair.

The relationship between the committees and the government should be one of critical scrutiny and not one of cosy co-existence. Committee agendas should be dominated by critical appraisal of government legislative proposals.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

Community designation should only be applied in the broadest possible terms – unionist, nationalist and other – so that any voluntary coalition should be cross-community – that is the coalition should include one nationalist party if the other party is unionist. Other parties may be included in a multi-party coalition though an all-party mandatory coalition should be abandoned.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

It is possible to maintain the principle of cross-community government while not having a situation where all the main parties participate in government.

It would be sufficient that any government coalition would have to include at least one broadly unionist party and one broadly nationalist party.

Such an arrangement would maintain a sufficient degree of power-sharing and inclusivity while introducing the sharpness and definition of scrutiny which the introduction of opposition would allow.

At present, the lack of forward momentum in government is due largely to the level of its inclusivity which leads to issues which cannot be agreed by all the coalition partners being sidelined.

In future, forward momentum in government programme delivery would be ensured by the coalition agreement which would be published, and be subject to critical scrutiny in the committees. Such scrutiny could not derail government proposals because the government parties would control the make-up of ordinary committee membership. The fact that the chair and deputy chair would be from non-government or opposition parties would ensure the level of scrutiny to produce better legislation.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

Financial assistance should be delivered in two ways to opposition parties.

First, since they would hold all committee chair and deputy chair positions, the secretariat of the committees should be at their disposal, though there would have to be limits to the uses to which such staff should be put.

Second, the amount of opposition support money each non-government party would receive should be related to the number of First preference votes they received in the preceding Assembly election as a proportion of all First preference votes cast in that election for what would emerge as the non-government parties. This would tie the money disbursed to the democratic process.

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

All departmental committees should have chairs and deputy chairs from non-government parties so that the committees could become a major delivery vehicle for opposition. While such officers could be elected by the entire membership of the Assembly, only candidates from non-government parties could stand in such elections. The chair and deputy chair elected would be the eventual winner and runner up in an election process which continued until the winner had 50% of the votes plus one. The chair and deputy chair would have the primary responsibility for setting the committee's agenda, though, of course, mechanisms would have to be created for ordinary committee members also adding o this agenda.

The overall make-up of the committees would still reflect all parties in the Assembly so that the committees did not become an impediment to the transaction of public business which is part of the government's agreed legislative programme, as set out in the published coalition agreement. This would avoid the weakness of the United States system where a congress dominated by one party could block all the legislative proposals of a President from another party.

At the same time the leadership of those departmental committees would be in the hands of non-government opposition parties and that would ensure that an appropriate level of critical scrutiny was maintained by the committees.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/ Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

Opposition speaking time should be built into all debates on government measures according to the size of the opposition party. The same should apply to all questions and Ministerial statements, especially to Questions to the First Minister and Finance Minister. Time should also be allocated to opposition parties to introduce substantive measures, confidence motions and private member's bills.

Opposition spokesmen/women should be the first called to speak after Ministerial statements to the Assembly. Rules need to be introduced so that all Ministerial statements are with opposition parties on the day prior to their being made with strict non-disclosure regulations.

First Minister's Questions should include opening questions of a general nature which would permit opposition parties to raise matters in supplementary questions without prior consultation with the First Minister.

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

UUP

Assembly and Executive Review Committee
Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

<table>
<tr><td>Stakeholder Name</td><td colspan="4">Telephone Number</td></tr>
<tr><td>Ulster Unionist Party</td><td colspan="4"></td></tr>
<tr><td>Stakeholder Address</td><td colspan="4">Stakeholder Type (Include one or more X)</td></tr>
<tr><td rowspan="5">Strandtown Hall
2-4 Belmont Road
Belfast
BT4 2AN</td><td>Registered Political Party</td><td>x</td><td>Local Government</td><td></td></tr>
<tr><td>Academic</td><td></td><td>Government</td><td></td></tr>
<tr><td>Legislature</td><td></td><td>Non-Government</td><td></td></tr>
<tr><td colspan="3">Other (Please Specify)/ Member of the Public</td><td></td></tr>
<tr><td colspan="4"></td></tr>
</table>

Please provide some background information on your role as a stakeholder

The Ulster Unionist Party was formally founded in 1905 and has a history of over 100 years of public service for all the people of Northern Ireland, spanning the creation of the State, the defence of the State in the face of continuous terrorist attack, and the brokering of peace and power-sharing devolved government structures. Our representation currently includes our MEP, 13 MLA's and 98 Councillors.

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

(1) **Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons**.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

The Ulster Unionist Party is content to submit a response to this process, with the proviso that we expect final debate and decision on these issues to be taken at Party Leader level.

The Party believes that there should be a mechanism in place to ensure that Ministerial offices and Chairpersons and Deputy Chairpersons of Committees are allocated on a fair and equitable basis.

The current allocation of Ministries is clearly not fair, as one Party has representation on the Executive Committee that is disproportionate to its electoral mandate.

A decision on d'Hondt or a replacement is dependent on other factors, such as the introduction of an official opposition.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

The Ulster Unionist Party position is that the Assembly should be seeking to move away from community designation and towards weighted majority voting to reflect the normalisation of politics here.

The Petition of Concern mechanism is being used on an increasingly frequent basis and we would welcome a review of the occasions it has been used and the reasons why, with particular reference to the original intent of providing this mechanism.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

The Ulster Unionist Party have long held the view that the best form of government is one which is held to account by a formal and officially recognised Opposition, offering real choice to the voter.

The creation of an Opposition should not come at the expense of a Coalition, cross-community government.

The nature of an Opposition (single or multi party) should be a matter for negotiation.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

The Ulster Unionist Party thinks it is unhelpful to discuss Opposition in terms of finance. Rather, it is a question of what resources, functions and provisions are necessary to empower and make effective an Opposition.

We believe focus should be put on issues such as Speaking Rights, Supply Days, and ring-fenced access to research and library resource.

Financial assistance is only a part of a set of arrangements for Opposition.

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

The Ulster Unionist Party believes that the allocation of Committee Chairs and deputy Chairs should be taken into account should the creation of a formal Opposition become reality.

This is to ensure that there can be effective scrutiny of the Government.

The formula for allocating Chairs etc should be consistent with any agreement of Speaking Rights and the other issues mentioned previously.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/ Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

See previous answers.

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

The Ulster Unionist Party notes that this review, being conducted by the Assembly and Executive Review Committee, is occurring alongside the draft Northern Ireland Bill brought forward by the Secretary of State as well as discussions at Party Leaders level.

Mr J McCallister and Mr B McCrea, Independent Members

Assembly and Executive Review Committee Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

<table>
<tr><td>Stakeholder Name</td><td colspan="4">Telephone Number</td></tr>
<tr><td>Mr John McCallister MLA and
Mr Basil McCrea MLA</td><td colspan="4"></td></tr>
<tr><td>Stakeholder Address</td><td colspan="4">Stakeholder Type (Include one or more X)</td></tr>
<tr><td rowspan="5"></td><td>Registered Political Party</td><td></td><td>Local Government</td><td></td></tr>
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<tr><td colspan="4">Independent MLAs</td></tr>
</table>

Please provide some background information on your role as a stakeholder

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

(1) **Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons**.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

The d'Hondt mechanism has achieved its original intent in terms of the Agreement by securing cross-community participation in, and support for, the devolved institutions. To enable further progress towards normalised politics, greater Executive accountability and

a robust parliamentary culture, the d'Hondt mechanism for the allocation of Ministerial positions should be replaced.

Legislation should require an Executive to achieve the support of a weighted majority (of not less than 65%) in the Assembly, thus securing cross-community consent. Allocation of Ministerial places should occur on the basis of negotiations between the various coalition parties, subject to the weighted majority vote in the Assembly.

While this will be discussed further in the questions concerning provision for Opposition, a robust parliamentary culture - including the emergence of an Opposition - would require an end to the use of d'Hondt for the allocation of Committee Chairpersonships and Deputy Chairpersonships.

These positions should be appointed on the basis of weighted majority vote in the Assembly. This would allow the positions to be filled by MLAs recognised by the Assembly as having the interests and abilities necessary to provide leadership to the various Committees.

Legislation providing for these changes should be negotiated during the remainder of this mandate, with the understanding that they will take effect after the next Assembly election. A failure to do will result in a static, unresponsive status-quo in Northern Ireland politics, incapable of moving beyond sectarian divisions to embrace normalised politics.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

No, community designation as currently operated should not be retained. While community designation was a necessary aspect of the Agreement, contributing to cross-community confidence in and support for the devolved institutions, its continued retention is preventing progress towards normalised politics in Northern Ireland.

Community designation should be abolished, replaced by a weighted majority vote on the matters presently designated as requiring a cross-community vote.

The Petition of Concern mechanism has outlived its usefulness and has also been consistently misused in a manner undermining progress towards a mature parliamentary culture. The proposed requirement of a weighted majority vote is a mechanism which would secure minorities while also not impeding the emergence of a robust parliamentary culture.

The existing list of matters should be required to be subject to a weighted majority vote. This would provide appropriate protection against any majority in the Assembly abusing its position.

Legislation providing for these changes should be negotiated during the remainder of this mandate, with the understanding that they will take effect after the next Assembly election.

A failure to do will result in a static, unresponsive status-quo in Northern Ireland politics, incapable of moving beyond sectarian divisions to embrace normalised politics.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

The introduction of provisions to formally recognise Opposition - within the context of power-sharing and inclusivity - is essential if authentic democratic, parliamentary accountability is to emerge in Northern Ireland. It was right and proper that the Agreement's priority was to secure consent for and participation in the devolved institutions. Now that this has been achieved, and in the spirit of the Agreement's in-built review mechanism, provision for a formally recognised Opposition must be created.

While a 'Shadow Cabinet' model would have a lesser standing than an 'alternative' Executive (in light of the requirement of coalition on the basis of cross-community support), it would be appropriate to designate - as in the South African model - the leader of the largest non-Executive party as 'Leader of the Opposition', with relevant parliamentary rights.

There is no other single change to the workings and structures of the institutions which would promote accountability and effectiveness to the extent that would occur with the introduction of a formal, recognised Opposition. In the absence of this development, other changes would be ineffective and probably cosmetic. Only a formal, recognised Opposition would provide for the accountability essential in any parliamentary context.

Legislation providing for these changes should be negotiated during the remainder of this mandate, with the understanding that they will take effect after the next Assembly election. A failure to do will result in a static, unresponsive status-quo in Northern Ireland politics, incapable of moving beyond sectarian divisions to embrace normalised politics.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

Practice in the Scottish Parliament and Welsh Assembly both provide broadly appropriate models for financial assistance Opposition/Non-Executive Parties. The purpose of such financial assistance is to ensure that Opposition parties are resourced in a manner which enables them

to hold Executive parties - operating with the correct and proper administrative and policy support of the civil service - to account.

In both Scotland and Wales, the number of Members within Opposition Parties chiefly (even if not solely, in light of the Welsh provision for support of Leaders without an executive role) determines the financial assistance received. Northern Ireland should follow this approach.

It seems distinctly odd to be asked to offer supporting evidence at this point in light of the well-established practices in Westminster, Cardiff, Edinburgh and Dail Eireann. If the Assembly is to encourage the emergence of an authentic parliamentary culture with a strong ethos of Executive accountability, similar provisions in Northern Ireland are obviously necessary.

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

It would be appropriate to ensure that a not insignificant proportion (perhaps 50%) of Chairs were Members of Opposition Parties, with Deputies from Executive Parties and vice-versa. This provision would operate alongside removing the d'Hondt mechanism for such appointments, while requiring a weighted majority vote in the Assembly.

While proportionality has its virtues - and is worthy of consideration - the emergence of robust, mature parliamentary culture might be better aided by leaving this to the negotiations between the Parties and the determination of MLAs to see those appointed Chairs and Deputy Chairs recognised as having the interests and abilities which would profit the work of the respective Committees.

Consideration might also be given to requiring those MLAs who would be Executive Ministers or Junior Ministers to refrain from participating in Assembly votes on the appointment of Chairs and Deputy Chairs, ensuring that these appointments are solely the interest of the Legislative branch.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/ Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

Current arrangements would require reform to enable Opposition Parties to effectively function in holding the Executive to account. The Westminster model of allotting a number of days each session to the Opposition and providing for a role for the Leader of the Opposition at PMQs would be appropriate.

The public standing and the effectiveness of the Assembly would be dependent on Opposition Parties having such rights. In their absence, accountability would be - as is presently the case - somewhat illusory.

Again, the workings of Westminster, the other devolved institutions in the United Kingdom, and Dail Eireann all suggest that in addition to formally recognising an Opposition, parliamentary processes must provide certain rights to the Opposition, enabling it to effectively hold to account the Executive power.

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

This AERC review accords with the intention of the Agreement, through its review mechanism, to allow for the organic development and reform of the structures and workings of the devolved institutions. With the passage of fifteen years, with well-established cross-community consent for and participation in the devolved institutions, and with the reality of a changing society, it is now time to provide for organic development and reform which would allow the institutions to better serve the people of Northern Ireland. Fundamental to this must surely be provision for an Opposition, essential to democratic accountability. If the AERC review fails to make such a recommendation, a significant opportunity will have been lost to improve the workings of the institutions “in the interests of efficiency and fairness” (Agreement, Strand 1, 36). The Assembly would thus remain the only legislative body in the United Kingdom or Ireland without the democratic accountability ensured by the presence of a recognised Opposition.

Scottish Parliament

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20 March 2013

Dear Ursula

REVIEW FOCUSSING ON D'HONDT, COMMUNITY DESIGNATION AND PROVISIONS FOR OPPOSITION

D'HONDT

I am pleased to submit the following procedural and practical information on various matters within the scope of your inquiry as they pertain to the Scottish Parliament.

Scotland – d'Hondt in the voting system

The Scottish Parliament comprises 129 Members.

The system used for Scottish Parliament general elections is a mixed member system comprising a first-past-the-post component, under which seats are allocated in single member constituencies, and a proportional representation (PR) component based on regional party lists. These two elements are then linked through the formula known as the d'Hondt method or system.

There are 73 constituencies in Scotland. The d'Hondt system is used to allocate the further 56 seats in the Scottish Parliament.

As well as voting for a constituent MSP, who is elected by the first-past-the-post method, voters in Scotland have a second vote which they can use to choose candidates from a party list.

The term "modified d'Hondt" has also been given to the use of the d'Hondt method in the additional member system used for the Scottish Parliament (and other legislatures) in which, after constituency seats have been allocated to parties by first-past-the-post, d'Hondt is applied for the allocation of list seats taking into account for each party the number of constituency seats it has won. Scotland is divided into eight regions. The second votes in each of these regions are distributed among the

list candidates according to the d'Hondt system until seven MSPs have been elected per region.

Regional lists
When casting their regional vote, voters choose between political parties rather than named individuals (except where individuals are standing on the regional list). Each registered political party standing in the regional ballot will have submitted a list of their candidates in order of the party's preference. The names on a list are in a fixed order. The first person on the list will take the first additional seat a party wins, the second person will take the second additional seat, and so on.

A candidate can stand both in a constituency and on a regional list (unless their party has agreed otherwise through their candidate selection process). If her or she succeeds in a constituency, their name is removed from the regional list so the candidate cannot be elected twice.

Arrangements in the Scottish Parliament: Conveners of committees and deputy conveners

Membership of committees is decided by the Parliament on a motion of the Parliamentary Bureau. In proposing membership, the Bureau has to have regard to the balance of political parties in the Parliament. (*Standing Orders of the Scottish Parliament*, Rule 12.1.5).

The roles of Convener and Deputy Conveners of committees are allocated between the parties using the d'Hondt formula (the membership is decided on the basis of direct proportionality).

If the composition of the parties changes during a Session (and after committees have been established), the *Standing Orders* are silent on whether committee membership should be revised but it is open to the Parliamentary Bureau to consider this. It is important to note that the Bureau gives consideration to "the balance of political parties" when considering membership i.e. not representation on the Parliamentary Bureau. (Standing Orders (Rule 5.2) enables MSPs who represent a political party with fewer than five representatives in the Parliament and MSPs who do not represent a political party to join together to form a group for the purposes of nominating a group representative to sit on the Bureau.)

In the Scottish Parliament the practice is to return to the start of the d'Hondt list for committees established after the initial group of committees set up at the start of those Sessions. This practice was captured in the *Guidance for Members of the Parliamentary Bureau* (attached), first circulated at the start of Session 3 (2007), which states at paragraph 26:

> When establishing ad hoc or private bill committees during a session, the Bureau will return to the first allocation on the d'Hondt list for convenerships for the first committee established and work its way down the list over the four-year term. Direct proportionality remains the methodology for deciding the share of seats on each new committee established.

The legislative provisions refer specifically to registered parties and individual candidates. There are no provisions in respect to the forming of coalitions by political parties or individual candidates for the purposes of obtaining a seat or seats in the Scottish Parliament.

The principles are not used to allocate membership of committees. An attempt was made to apply d'Hondt principles to committee membership at the outset of the Scottish Parliament but that was abandoned when changes were made to accommodate the minority parties with a single Member.

Other uses of d'Hondt in the Scottish Parliament

The d'Hondt formula is also used by the Parliamentary Bureau to allocate debates on Members' Business in the Debating Chamber. Members can propose, through their party's Business Manager, a topic for debate. The motion debated is not subject to a vote and does not result in a resolution of the Parliament. The time for Members' Business debates is allocated on a proportional basis between the parties using the d'Hondt formula.

COMMUNITY DESIGNATION

Resolutions or motions requiring cross-party support

Resolutions
A decision of the Parliament, if taken by division, usually requires a simple majority (unless otherwise expressly stated in the Rules).

A simple majority means that the number of members voting for a proposition is more than the number of members voting against that proposition. No account is taken of any members who vote to abstain.

An absolute majority means that the number of members voting for a proposition is more than half of the total number of seats for members of the Parliament or, in the case of a committee or sub-committee, more than half of the number of members of that committee or sub-committee.

The member nominated for appointment as First Minister is chosen by voting using a simple majority.

However, the Presiding Officer may be removed from office only by an absolute majority of the number of seats in the Parliament i.e. at least 65 votes in favour of removal would be required. The same applies to the Deputy Presiding Officers.

Cross-party support for Members' Bills and motions for Members' Business
The support necessary for a final proposal for a Members' Bill (or ensuring that a motion is eligible for Members' Business) is that it requires the support of Members of at least half the political parties or groups represented on the Parliamentary Bureau.

Recently, the formation of a new group for the purposes of a place on the Bureau affected this Rule and was taken into account when considering whether a propc al for a Bill or motion may proceed. At the start of the Session, there were four parti s represented on the Bureau and 'cross-party support' was deemed to be at suppo from MSPs from at least two of those parties. There are now five parties/groups or the Bureau and cross-party support is deemed to be support from MSPs from at least three of those parties/groups.

Provisions for non-government parties

In the Scottish Parliament, the Presiding Officer has considerable discretion over the control of conduct in the Chamber and in applying rules of debate etc.

a) Debate management: general

Debate management is the responsibility of the Presiding Officer. At the start of each session, Business Managers of parties are consulted about the proposed debate management framework which has been calculated in light of the results of the relevant election. The framework sets out – as a rule of thumb – the length of speeches and the number of speakers that any political party/group could expect depending on the overall length of the debate. The decision about the framework however is a matter for the Presiding Officer, not the Bureau.

In the event of changes to the composition of political parties in the Parliament, the Presiding Officer will reflect on whether and how the debate management framework may need to change.

One issue which the Presiding Officer has reflected on in recent months is whether a 'group' of independent Members should be recognised in some fashion. Clearly the 'group' is not a political party as understood by the terms of The Registration of Political Parties Act 1998. It is also unlikely to have a coherent political view, platform of policies or manifesto. The group does, however, receive an allocation of speaking time on the same basis as other parties.

b) Non-government business

Under *Standing Orders*, Rule 5.6.1, in proposing the business programme, the Bureau is obliged to ensure 16 half sitting days in each Parliamentary year for business chosen by political parties which are not represented in the Scottish Government or by any group formed under Rule 5.2.2 which is represented in the Bureau.

In the event that a new group on the Bureau is formed, this group would be entitled to a proportion of these half sitting days. Precedent for this has been set in previous sessions of the Parliament. The 16 half sitting days were shared on a proportional (% share) basis between the non-governmental parties. This includes the new group, as specifically provided for in Standing Orders.

c) Question Times

Selection of First Minister's Questions (FMQs)
Currently, both the main non-government parties are given a guaranteed question at FMQs every week (with four and two supplementary questions respectively). In this session, it has been agreed that the third largest opposition party will be allocated a question every two weeks out of three. In the third week, the Presiding Officer selects from the submitted questions what she considers to be the best quality question at Question 3. Question 4 is normally allocated to the Government party and question 5 is generally given to the next largest party. Question 6 is allocated equally between members of the Government party and the smaller non-government parties with the smallest being selected from time to time on a roughly proportional basis.

The Presiding Officer indicated her views to all MSPs earlier in this Session in that there were two important principles underpinning her approach to FMQs. Firstly, that "all parties represented on the Parliamentary Bureau are given the opportunity" to hold the Scottish Government to account. Secondly, that backbenchers have a greater opportunity to ask questions and more prominence when doing so.

The Presiding Officer will routinely reflect on whether any changes in the composition of the Parliament should affect the management of FMQs.

Topical Questions
Topical Questions takes place on a Tuesday as the first item of business. Any member may submit one Topical Question. The selection of a topical question for answer in any given week is entirely at the discretion of the Presiding Officer. Party balance forms no part of the selection criteria for Topical Questions.

Portfolio Questions and General Questions
Portfolio Questions and General Questions take place on a Wednesday and Thursday respectively each week. The random selection of names is carried out by computer. Once names have been selected, members are informed and questions are submitted a week in advance. As with Topical Questions, party balance forms no part of the selection criteria for Portfolio or General Questions.

Selection of amendments to motions
Selection of amendments for debate is a matter for the Presiding Officer. In doing so, she takes into account the time available for debates and party balance. Selection of an amendment brings with a guaranteed opening and closing speech in a debate.

Members' Business
Time is also set aside in the business programme specifically for Members business which is allocated on a rotational basis amongst the parties using the d'Hondt formula. This typically allows members to raise non-controversial, constituency-related issues.

Members' Bills
In the case of legislation initiated by Members, it is a matter for the Parliamentary Bureau to allocate time to Bills which are to be introduced.

Allocating chairs and deputy chairs to take account of opposition
See above on allocation of convenerships etc. under d'Hondt.

Financial Assistance for no-governmental parties

Section 97 of the Scotland Act 1998, as amended, provides for an Order in Council to allow the SPCB to provide assistance for opposition parties by making payments to registered political parties in the Parliament "for the purpose of assisting members of the Parliament who are connected with such parties to perform their Parliamentary duties" (The Scottish Parliament (Assistance for Registered Political Parties) Order 1999 (SI 1999 no.1745)). To be eligible, a party may have no more Ministers or Junior Ministers than one fifth of the total number of Ministers and Junior Ministers within the Scottish Government.

An eligible party is entitled to an annual sum based on the number of members of the Parliament who are connected to the party, and the Assistance Order makes provision for annual up-rating of this sum. The sum per member for 2012-13 is £7,349.38.

Yours sincerely
Ian

P E GRICE
Clerk/Chief Executive

National Assembly for Wales

Northern Ireland Assembly Review of D'Hondt, community designation and provisions for opposition

1.0 Introduction

1.1. It would not be appropriate for us to comment on a number of aspects of the review. The following factual information provides an overview of provisions for opposition in the National Assembly for Wales. Our response focuses on the financial support available to non-executive parties in the National Assembly for Wales and procedural issues, such as the organisation of business and allocation of chair.

2.0 Financial support for Members of the National Assembly for Wales

2.1. The system of financial support available to Assembly Members is set out in the Determination on Members' Pay and Allowances and is put in place by the National Assembly for Wales Independent Remuneration Board. The Board is a statutory body established by the National Assembly for Wales (Remuneration) Measure 2010.

2.2. The Remuneration Board's functions and objectives are set out in section 3 of the Measure. The Board is required to:

- make provision for the payment of salaries to Assembly Members and supplementary payments for those who hold additional offices;
- make provision for the payment of allowances to Assembly Members;
- make pension arrangements for Assembly Members;
- make payments to political groups for the purpose of assisting Assembly Members to perform their functions as Assembly Members.

2.3. Opposition parties in the National Assembly for Wales receive the following financial assistance:

- Support for Groups
- Additional salaries for all opposition Party Leaders
- Additional salaries for all Business Managers

3.0 Support for Groups

3.1. The status of groups in the Assembly is provided for under Standing Order 1.3. Financial support is made available to all groups, Government and opposition. The additional resources made available to Groups are allocated as follows:

Number of Members in party group	Additional allowance
3 or more (if party is represented in the Welsh Government)	£127,390
3 to 10 Members (if party is not represented in the Welsh Government)	£199,048
More than 10 Members (if party is not represented in the Welsh Government)	£199,048 plus additional £30,866 for each 5 additional Members

3.2. This financial assistance is in place to enable groups to employ additional members of staff to assist them their role as a group in the Assembly. This amount can also be used to pay for overtime, staff travel and subsistence costs and to commission external research to assist with policy development.

4.0 Additional salaries for opposition Party Leaders

4.1. Financial arrangements are also in place to enable holders of particular offices within each of the groups to receive an additional salary that reflects their additional responsibilities. These recognise the broadly proportional nature of the National Assembly for Wales by making such arrangements for all opposition parties, and not just the largest party in opposition.

4.2. Since May 2011, the additional salaries for each of the opposition Party Leaders is based on:

- a basic additional salary of £12,420 for all opposition Party Leaders;
- a proportional element comprising £1,000 for each Member in the group up to a cap of £41,949 (which is the equivalent additional salary for an Assembly Minister).

4.3. The base element reflects responsibilities shared equally by all opposition party leaders. The proportional element is based on the number of Members in each party group and ensures that the relative additional salaries payable to the leaders of each opposition party are transparently calculated, fully reflective of job responsibility and equitable.

5.0 Additional salaries for Business Managers

5.1. Similar arrangements are in place for the Business Managers of each opposition party, as well as the Business Manager of the party in Government. The payment recognises the additional responsibilities of each party manager with regards to the effective functioning and governance of the Assembly. All Business Managers therefore receive additional salaries reflecting responsibilities common across all parties, with additional weighting to reflect the number of Members in the group as follows:

- a basic additional salary of £6,420 for all Business Managers;
- a proportional element comprising £250 for each Member in the group up to a cap of £12,420.

6.0 Committee membership and chairs

6.1. Section 29 of the Government of Wales Act 2006 requires the composition of all Assembly committees to reflect the overall political balance of the Assembly and for motions in plenary establishing the make up of committees to be supported by at least two thirds of those voting. In the event that such a level of support was not given, the membership of any given committee would be decided through the application of D'Hondt. In practice, all committees and their memberships have been established consensually, with varying sizes and degrees of party balance, so D'Hondt has never been applied.

6.2. As set out in Standing Order 17, motions are tabled by the Business Committee and subsequently agreed by the Assembly in plenary to agree the membership of committees.

6.3. In practice this means that after an election, a series of motions will be tabled to populate the committees. Subsequently, motions will occur as and when a vacancy occurs on a committee, or a group wants to change their committee memberships.

6.4. Just as the membership of any committee must reflect as far as is reasonably possible, the balance of the political groups to which the Members belong, so our Standing Orders require that balance to be taken into account in the distribution of the chairs of committees.

6.5. In practice, a set number of places on each committee are allocated to each political group and it is then for that group to put forward the names of the Members they wish to represent them on the Committee. This is also true of the Chairs.

6.6. There are two levels of additional salaries for Committee Chairs:

Committees	Additional allowance
Children and Young People; Environment and Sustainability; Health and Social Care; Communities, Equality and Local Government; Enterprise and Business; Public Accounts; Finance; Constitutional and Legislative Affairs	£12,420
Petitions; Standards	£8,280

7.0 Opposition party debates

7.1. The time allocated for Government and Assembly (non-government) business in plenary, so far as is reasonably practical, should be in the proportion of 3:2, as set out in Standing Order 11. The Government is responsible for its own business within the time allocated to them.

7.2. Standing Orders also state that time must be made available for debates on the following items of business during each Assembly year:

- motions proposed on behalf of political groups who do not have an executive role (and the time allocated to each political group for motions proposed by it must be, as far as possible, in proportion to the group's representation in the Assembly);
  - motions proposed by any Member who is not a member of the government;
  - debates on reports laid by committees;
  - Short Debates; and
  - legislation where the Member in charge of the legislation is not a member of the government.

7.3. The Business Committee is responsible for the time allocated to Assembly business. In practical terms, this means that typically there will be between one and three hours allocated to opposition debates every Wednesday, subject to other demands on the Assembly's time.

7.4. This time is shared out between political groups and is roughly proportionate to their size using a formula agreed by the Business Committee.

7.5. There is no dedicated time for government back benchers, but all Members are free to table motions to be considered for the Individual Members Debates that are usually held once every half term.

7.6. While the Standing Orders do not recognise the designation of an 'official opposition', the leader of the largest party without an executive role is often referred to as 'Leader of the Opposition' both in the Chamber and in the Record of Proceedings.

7.7. During First Minister's Questions, all three opposition party leaders are called to ask three questions without notice to the FM. While all three leaders get the same number of questions, the order in which they are called is rotated, with how often a leader goes first being proportional to the size of their group.

7.8. During other Ministerial questions, spokespeople in opposition groups enjoy the privilege of being able to ask two supplementary questions to any tabled question, while other Members may only ask one.

8.0 Business Committee

8.1. As set out in Standing Order 11.3, as soon as possible after an election, the Minister with responsibility for government business must table a Motion to appoint as members of the Business Committee, the Presiding Officer and one Member nominated from each political group. The method of election for the Business Committee is the same as other committees.

8.2. If a Motion under this Standing Order is passed, each member of the Committee carries one vote for each member of the political group which he or she represents.

8.3. If Business Committee is undertaking the functions of determining the organisation of assembly business or determining the proposals for the titles and remits of committees, a member of the Committee representing a political group with an executive role may use the votes he or she carries but it shall be reduced by the number equivalent to the number of Members in his or her political group who are also members of the government.

8.4. In real terms, votes within Business Committee are rare and voting usually happens by consensus.

Professor Birrell – University of Ulster

Assembly and Executive Review Committee
Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

Stakeholder Name	**Telephone Number**			
Professor Derek Birrell	028 70123044			
Stakeholder Address	**Stakeholder Type (Include one or more X)**			
	Registered Political Party		Local Government	
	Academic	x	Government	
	Legislature		Non-Government	
	Other (Please Specify)/ Member of the Public			

Please provide some background information on your role as a stakeholder

Professor of Social Policy and Administration in the School of Criminology, Politics and Social Policy at the University of Ulster.

I have recently published books on the topics of Comparing Devolved Governance, Direct Rule, Devolution and Social Policy and Social Work in Northern Ireland.

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

(1) **Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons**.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

1. D'Hondt allocates executive ministerial posts in proportion to party strength and has been efficient in realising all-party or consociational government. This meets objectives of the 1998

Agreement in ensuring a devolved government that represents all significant political parties, all communities and a wide range of political opinion.

2. In practice it has proved possible to make, with political party and UK government agreement, some adjustment to d'Hondt, as was the case with the post of Justice Minister.

3. It can be noted that d'Hondt operates in the context of specific characteristics of the Executive and Departments:

   (i) With the principle of a ministerial department, that is, ministerial and department functions are co-terminus

   (ii) A single minister in charge of each department, except OFMDFM

   (iii) A sufficient number of departments (12) to allow five parties to hold ministerial office in charge of a department

4. Implications of d'Hondt for opposition – opting out

   Parties interested in becoming non-Executive parties can operate while d'Hondt is retained by either declining post(s) from d'Hondt procedure or resigning from the Executive or deciding not to participate in d'Hondt process.

5. D'Hondt procedure is also acceptable as the method for allocating committee chairs and deputy chairs. UK, Scotland and Wales operate a system based on proportionality. Some discretion can be exercised by government parties to move outside a strict proportional allocation, for example, to cement a coalition government agreement or produce support for a minority government by a non-government party.

   It can be noted that in Scotland of fourteen main committees nine have government party chairs, the opposition parties five. In five committees both chair and deputy chair are from the governing party. In Wales of ten main committees only four have government chairs despite Labour holding 50% of seats. Three opposition parties share six committee chairs.

6. In the event of recognition of an opposition the one exception to the operation of d'Hondt should be the chair and deputy chair of the Public Accounts Committee. It is normal parliamentary convention in most systems that this position is allocated to a member of the opposition parties. This is the case in Scotland and Wales.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

1. The criticism has been well rehearsed that community designation institutionalised a 'two communities' model and encouraged parties to prioritise 'community' interests. This can result in policy impasses or 'lowest common denominator' agreements.

However, community designation is part of the system of checks and balances and may be seen as still essential by most political parties to give them the security and confidence to participate in the devolved system of government.

2. Alternatives would possibly not receive widespread acceptance.

   (i) These include official inclusion of the 'other' category

   (ii) Right of MLAs to change individual designation in relation to subject of vote

   (iii) Requirement of weighted majority (for example, 60%) in place of community designation, which in practice may have similar outcome but is not so focused on community division

3. A further alternative is that the principle of cross-community support on the basis of MLAs is replaced by cross community party support, that is, a simple majority but with the support of at least a party from each community designation. A political group (party) in the Assembly must have at least two or three MLAs to be designated.

4. Matters for cross community vote.

   This list is restricted to certain 'constitutional and procedural matters' and to certain 'financial matters'. This would suggest the intention was that its use would not be common and not related to major output of Assembly which is in areas of social policy.

5. This interpretation has become misleading due to provision for petitions of concern, signed by 30 members and leading to a vote requiring cross-community support.

   This in effect opens up every vote to a cross-community vote which can lead to further impasses and dominance of communal approaches.

   Suggestions for less availability of petitions of concern would relate to requirement for support by a higher proportion of MLAs (50%). Any restriction on content, for example, only primary legislation or only Executive supported petitions, would be difficult to implement.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

1. Most discussion of the concept of an opposition in a parliamentary system is related to the Westminster model as a classical example. However, the Westminster model of opposition is closely related to a two-party system. This in UK terms has meant that two parties dominate parliament, the two parties alternate in power and one of the two parties can normally found a government without relying on a third party. This scenario has been upset by current UK coalition government. The Westminster model is based on the status of an official opposition, an official shadow cabinet and a range of rights in Parliament. These have been established by convention, standing orders or negotiation.

2. What purposes would be served by recognition of an opposition under devolution?

- would give a status and importance to opposition or non-government parties
- would give more structure and entitlements to opposition parties to enhance role of criticism and scrutiny
- would continue to provide a mechanism for democratic participation but in a different way from all-party government
- opposition could offer a replacement or shadow alternative to government in office for the electorate

3. Lessons from devolved institutions in Scotland and Wales

- Scotland and Wales do not have an official opposition. All parties not in government can be considered opposition parties. The term used is parties or party groups not in government
- a party group normally has to have at least 2/3 members of Parliament / Assembly
- opposition parties in Scotland organise members in parliament into a shadow government covering senior ministers' portfolios, 12 in a Labour shadow cabinet and 13 in Conservative shadow cabinet. Eleven Welsh Conservative Assembly Members form a shadow cabinet
- parties do not form a structured official opposition together, and only act together, through ad hoc negotiation
- there may be special arrangements for individual opposition members
- there is a strong participation ethos in the operation of devolution in Scotland and Wales, for example, even as a majority government the SNP has discussed the Scottish budget with opposition leaders
- at times a situation of opposition parties not being formally in a coalition government but entering an agreement to support a government, Lib Dems with Labour in Scotland, Green Party with Labour in Wales while still retaining status of an opposition party

Model of opposition for Northern Ireland

1. Smaller parties opting out of d'Hondt and all-party government is most viable option. Still a possible problem of a small party (parties) forming the opposition, size may limit role they can play.

2. Problem of reaction of two large parties, for example, DUP and Sinn Fein, to forming government together. They may prefer to be in all party government.

3. Possible incentives for small parties to form opposition

   - financial incentives
   - opportunity for significant role in Assembly processes

4. Related changes

   If there is a recognition of opposition status it carries with it some implications for the nature of government, that is, in setting up a government versus opposition scenario.

5. A major implication is for the current absence of the principle of collective responsibility in the Northern Ireland Executive. Opposition would work best opposing what is clear government policy and what is in the programme for government. System could simply be incongruous if there are different levels of opposition, the majority party in Executive able to disagree with minority party (parties) plus a second level of opposition between government and non-government parties.

6. Other means of strengthening effectiveness and accountability

- Greater commitment to achieving collective views within Executive and joined up government
- Assembly committees could be strengthened through
  - conducting more major scrutiny inquiries
  - regularly scrutinising annual reports of quangos
  - Expanding committee work to EU, petitions, equality areas
- Strengthening responsibilities of Assembly and Executive through absorbing more of the functions of quangos into central administration, particularly at all strategic and core policy areas.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

The funding for opposition parties in Westminster has three components

- funding to assist an opposition party in carrying out its parliamentary business. This is based on seats won and votes received. Argument that opposition parties have not access to use civil servants
- funding for opposition parties' travel and associated expenses, based on seats and votes
- funding for the running costs of the leader of the opposition's office, only payable to main opposition party
- regarding the N. I. Assembly this could be applied but should all opposition party leaders receive running costs?

In Scotland and Wales financial assistance is given. The amounts for 2012 may be of Interest:

	Seats	Opposition funding
[SNP Government]	65	N/A
Labour	37	£270,350
Conservatives	15	£108,593
Lib Dems	5	£46,798
Greens	2	£7,052

Wales has a slightly different system which in 2011 paid

Non-government party 3 – 10 members £199,000

Non-government party over 10 members £199,000 plus £30,000 for each 5 additional AMs

Government party £127,000

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

- The membership and role of statutory committees reflects in part the lack of a formal opposition. The Chairs and Deputy Chairs are from different parties from the Minister. The membership reflects proportionately the composition of the parties and the membership is drawn from all five parties. In the context of a lack of opposition the committees were expected to provide a strong policy challenge to the minister they were shadowing.
- The proportionate basis of committee membership and the Chair from a different party arrangement does in practice produce a spread of Chairs and Chairs among the parties and it is unlikely the designation of opposition parties would require or justify any different allocation. The distribution of statutory Chairs is DUP 5; SF 3; UU2; ALL 1; SDLP 1. An Opposition is unlikely to be able to claim more than 3 or 4 chairs. It can be noted that of seven subject chairs in Scotland the SNP hold five, opposition parties two and in Wales three are Labour and two are held by opposition parties.
- Moving to a Government and Opposition model would mean deciding if it was acceptable to have Chairs and ministers from the same Executive party as Committee chair and minister in relation to the same department. This would be accepted practice in UK, but may be seen as moving away from checks and balances in the Assembly. On the other hand to maintain different party affiliation of chairs and ministers for parties in the Executive creates a double form of opposition.
- It may be positive move to end the idea of a confrontation between the chair and the minister. It is not really the tradition in Great Britain for committees to be seen as a place of special opposition influence but rather they are a place of backbench influence. Committees in other jurisdictions often adopt an independent approach and a consensual approach.
- It would not necessarily be the case that an opposition party leader would become a committee Chair but it can be noted that the Government parties have a majority in the committees.
- Some adjustments may be necessary in the context of establishing opposition parties. The chair and deputy chair of the Public Accounts Committee by convention where there is a government and opposition model should always be from opposition parties. Special arrangements may have to be made for parties with one or two members or individual independents.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/ Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

Standing Orders in Scotland and Wales give some special recognition of the rights of parties which are not represented in the Scottish or Welsh Governments.

- Opposition party leaders can be given a special role at the Question Time for First Minister. This can cover; priority in asking questions, asking questions following ministerial statements or the number of supplementary questions asked. The number differs in Scotland between the size of the parties. In Northern Ireland such procedures might apply as well to the Deputy First Minister at Question Time. It can be noted that exchanges between the First Ministers in Scotland and Wales at these Question Times now receive much media coverage and are a focus for public attention. They can be interpreted as a major way for the Opposition to demonstrate it is holding the Government to account.
- Time would be allocated to give a balance between government and Opposition in Standing Orders, In the Scottish Parliament on 16 half days Parliament considers business chosen by opposition parties and in the Welsh Assembly motions proposed by opposition parties are allocated time in proportion to their representation.

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

- Political realities in Northern Ireland make a transition to a partisan "Government versus Opposition" culture unlikely.
- It would be necessary for a party of a significant size to become an opposition party not represented in the Executive.
- Smaller parties are the main candidates for taking opposition status and would face a difficult decision in choosing between the current status with entitlement to one, if not two, seats in the Executive, and taking up a position, not as 'the opposition' but as an opposition party.
- It is also not clear how appealing a government and opposition scenario would be to the two largest parties in that there may be implications that they would not necessarily approve of; for example, losing the chair of the Public Accounts Committee; perceptions that they have moved into closer cooperation as a government entity or under more pressure to produce agreement and consensual politics or faced with filling the Minister for Justice post.
- With opposition parties the Assembly would be operating on the basis of a double opposition and confrontational scenario, between the parties in government and between government and opposition parties.

Professor Cochrane – University of Kent

Assembly and Executive Review Committee
Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

<table>
<tr><td>Stakeholder Name</td><td colspan="4">Telephone Number</td></tr>
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<tr><td>Stakeholder Address</td><td colspan="4">Stakeholder Type (Include one or more X)</td></tr>
<tr><td rowspan="5">Conflict Analysis Research Centre,
School of Politics and International Relations,
University of Kent,
Canterbury, KENT
CT4 7BH</td><td>Registered Political Party</td><td></td><td>Local Government</td><td></td></tr>
<tr><td>Academic</td><td>x</td><td>Government</td><td></td></tr>
<tr><td>Legislature</td><td></td><td>Non-Government</td><td></td></tr>
<tr><td colspan="3">Other (Please Specify)/
Member of the Public</td><td></td></tr>
<tr><td colspan="4"></td></tr>
</table>

Please provide some background information on your role as a stakeholder

I am currently Professor of International Conflict Analysis and Director of the Conflict Analysis Research Centre in the School of Politics and International Relations at the University of Kent.

Prior to my current appointment I was Director of the Richardson Institute for Peace Research and Senior Lecturer in Politics at Lancaster University from 1998-2012.

Before this I held academic positions at the Centre for the Study of Conflict in the University of Ulster and at the Institute of Irish Studies, Queen's University of Belfast.

I have published six books and numerous peer-reviewed journal articles on issues relating to conflict management and conflict transformation and have particular research expertise on Northern Ireland's political history from the 1960s to the present.

My latest book entitled *Northern Ireland: The Reluctant Peace* has just been published by Yale University Press (March 2013) and focuses in part on the role of the devolved process since 1998 and its potential to build effective governance in Northern Ireland.

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

(1) **Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons**.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

The d'Hondt mechanism does not, in my view, require legislative reform and should be retained in more or less its current form for the allocation of Ministerial positions and for the allocation of Committee Chairmanships and Deputy Chairmanships. It is perhaps a blunt instrument which lacks the capacity to incentivise more nuanced forms of inter-party coalition pre and post election, but what it loses in flexibility it gains in transparency.

Of course, it should not be assumed that what is appropriate today and tomorrow will always be so in the future. I think that it is important to stress that while the legislative mechanisms such as d'Hondt may be fixed for defined periods, the political behaviour of the political actors that takes place around it is a more mobile and fluid phenomenon. Generally speaking, political parties are rational choice actors and take strategic decisions based on their calculation/perception of advantage both to themselves and for those they represent. The political context of 2013/14 is significantly different in this regard to that of 1998/99, not least because of well documented changes within both the unionist and nationalist blocs. Thus, the appropriateness of d'Hondt for a multi-party scenario where there is a relatively balanced split between the SDLP, SF, UUP, DUP and APNI may not pertain as obviously if future elections see a continued decline in the electoral representation of the SDLP and UUP in the Assembly. This may not invalidate the logic of the d'Hondt mechanism, but might make it a less obvious/appropriate option in its current form.

The reduction in the size of the Assembly and in Ministerial posts might also complicate the current attractions of d'Hondt for one or more of the parties, but this is likely to be relatively minor and could not be presented as reasonable grounds for reform of the current system.

However, notwithstanding these caveats, at present, the d'Hondt mechanism works, broadly speaking, in doing the job that is required of it, namely to facilitate proportionality and inclusiveness in the selection of Ministerial posts and Committee Chairmanships and Deputy Chairmanships.

While there are of course alternative mechanisms for achieving the same thing (e.g. Sainte-Laguë) I am not convinced that adoption of any of these options would make for a substantive or improved modification of d'Hondt as it currently operates. Academic opinion is divided on the subject of whether alternatives to d'Hondt would produce more inclusive representation at Ministerial level, and the benefits are in the margins, if they exist at all. In addition, to switch mechanisms for relatively little obvious payoff in terms of enhanced flexibility, would risk unnecessary confusion, both within the electorate and across the political parties themselves, - though it would be great for political scientists to have something else to model!

The wider issue here goes beyond the d'Hondt mechanism in that the devolved institutions and their associated policy instruments, such as the one under discussion, are still relatively young and there is something to be said in favour of continuity rather than discontinuity given the brittle beginnings of this phase of devolution from 1999-2007.

Another reason for promoting continuity over change in this area relates to the fact that Northern Ireland remains a deeply divided society. While opponents of the consociational model frequently lay blame for this at the door of the political system, this is again, a rather simplistic argument which is frequently asserted rather than substantiated. The point being that d'Hondt is ideally suited to Northern Ireland's continued 'reluctant peace' facilitating the rapid formation of ministerial positions and committee chairs in an environment where prior inter-ethnic coalition or agreement is extremely unlikely. While it may seem like a dismal

outlook, the avoidance of long periods of inertia post-election due to a lack of inter-party co-operation (or more fundamentally a lack of vision or capacity) makes it a realistic one.

If the period from 2007-2013 had been characterised by greater evidence of post-conflict transformation across the unionist/nationalist political parties and the wider communities they represent, the case for the retention of d'Hondt would arguably be much weaker as Mark Durkan's vision of a time when we could dismantle the 'ugly scaffolding' of the GFA may have been realised. But at the time of writing this is far from being the case and the reasons for the retention of the d'Hondt mechanism remain as salient today as when it was introduced.

None of the above seeks to minimise the weaknesses inherent within the devolved institutions (or the challenges facing the parties that operate them or the electorates that mandate them). It has been constructed around division and remains much more effective at stopping things from happening that press on the nerve of identity-based politics than it is at delivering effective governance.

However, this is a result of a wider malaise and should not be laid at the door of d'Hondt.

The notion that coalition-building either pre or immediately post election, based on the construction of a common platform that transcends traditional ethno-national lines, is difficult to envisage and has little empirical evidence to sustain it –from the Northern Ireland context at least.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

Community designation remains one of the least attractive elements of legislative provision within the Northern Ireland Assembly but its blunt utility (or something akin to it) may be required for the maintenance of cross-community consent in the specified areas.

I would favour some further creative thinking about how the current designation could be nuanced in order to obviate the most corrosive aspects of ethno-nationalist division that it may appear to encourage. Before getting into that however, a baseline point needs to be made.

There has been an extremely long and frequently tedious debate as to whether community designation (unionist, nationalist, other) has been an effective conflict management technique, or, has conversely, cast our existing communal divisions in sectarian concrete. The latter argument contends that community designation (and the wider political architecture linked to it) encased the divisions at the centre of the conflict into the heart of the political system, rendering it a flawed enterprise from the outset that was structurally incapable of transcending sectarian divisions, or delivering on the sort of post-conflict society that has been rhetorically alluded to by many of the political actors involved. It is difficult to get beyond these circular arguments (did the system cause the continued sectarianism or did the

continued sectarianism lead to the creation of the system –esp. with respect to community designation) and I suspect that this particular broken record will continue to repeat itself in the years ahead.

However, at the heart of the community designation debate lies an issue about the ability of the existing system to qualitatively evolve and adapt. I believe that the designation labels are fluid rather than static variables and thus do not confine either the political parties of their electorates within the straight-jacket of sectarian interaction. An equivalent example might be seen in the evolution of the Conservative and Labour parties from the 1970s to today. Both have transformed ideologically and in what they are held to represent and were not prevented from making these adjustments (for good or ill) by dint of their designation as being either Labour or Conservative, or by the wider parliamentary system that cast them in an adversarial relationship. So, while community designation would not be a selling point of the political system in my view, neither is it preventing Northern Ireland from evolving into a less divided society. It is being prevented from evolving in such a manner but the causes of this are complex, multi-faceted and community designation is not the source of the problem, merely the recognition of it.

All that being said, there may be changes that could be envisaged to the current community designation arrangements that might be worth some consideration.

The first relates to the 'other' designation, not perhaps the most appealing third leg of the identity stool. This could perhaps be changed to something with a little more vigour such as 'non-aligned' or something similar, rather than the conceptual void presented by 'otherness'.

A second perhaps more substantive reform would be to replace the cross-community threshold with a weighted majority –at a level that would be robust enough to ensure cross-community support without calling it that perhaps. Precisely where the bar is set here might be a matter for further investigation/negotiation between the political parties, but it is not difficult to envisage an appropriate percentile. This would be a contentious change however and regardless of the practical security afforded by a suitable weighting, it is likely to be resisted by nationalists. For both the SDLP and SF (and their respective supporters) concern about their nationalist political identity being recognised within the apparatus of the political system was a symbolic article of faith in the GFA and looks set to remain so for the foreseeable future. At the cosmetic level, this might create a sense of joint-enterprise between all MLAs in the Assembly (who would symbolically be counted as individual MLAs in this regard rather than as unionist or nationalist ones), but it is unlikely to change the underlying political culture or make a significant difference to the quality of governance within the institutions.

In short, as with d'Hondt, while changes of this nature can be envisaged and would not necessarily make things worse, it is unclear that they would make a significant improvement and would again, risk either unnerving or confusing the wider electorate, for limited and uncertain gains.

I have no particular view in relation to revising the list of matters set out in the 1998 Act requiring a cross-community vote, other than to say that this should be allowed to evolve in line with other changes that are taking place and that will continue to do so.

On an associated point, I would not favour any great changes to the current rules governing Petitions of Concern, as these provide a slightly more mobile and neat means that allows parties the security of knowing that they have access to a mechanism (subject to sufficient support) that allows them to designate something as a key issue, without having to come up with an exhaustive list in advance. It also, for once, allows the parties to take a minimalist rather than a maximalist approach as too often making political agreements is like making your last will and testament –you start with the absolutely worst scenario and work backwards. So the Petitions of Concern provide some much needed room for manoeuvre in my view and should be retained in their current form.

Of course there is the continuing danger than Petitions of Concern are being over-used for the purpose of obstructing the business of government rather than constructing a more effective and light-touch system where this mechanism would only be deployed in extremis.

The problem here, as ever, lies not with the specific mechanism but in the way it can be used as an obstructive technique to engage in identity-based politics within the system. But again this is part of a wider political malaise in NI that goes far beyond the issue of whether petitions of concern should remain in their present form or not.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

I would tend to agree with the statement that the accountability and effectiveness of the Assembly and Executive could be improved through provisions to formally recognise an Opposition. The simple fact is that the devolved political system lacks a formal critical voice –while many of the Committees do play this role, this is highly dependent on their personnel and lacks overall cohesion across government. It is not an ideal situation that the committee system is being used as a surrogate for a co-ordinated system of opposition.

An additional point here is one of external visibility, there is no coherent message of opposition being presented to external audiences beyond some notable individual actors and from positions taken on an ad hoc basis by members of the various committees. To the outside world therefore, there is no opposition, which makes it easier for those in government to ignore effective and rigorous scrutiny as being merely individualised and disconnected opinion.

It is also arguably the case that civil society has been less effective in performing this function than during the period of direct rule, when the much maligned ‘democratic deficit’ was filled by NGOs with sectoral expertise and a critical voice. The arrival of devolved government (especially post 2007) has perhaps reduced the role that many of these civil society groups often occupied as an unofficial opposition to UK government policy with respect to Northern Ireland.

The Civic Forum meanwhile was a key element of the GFA architecture, which has, it seems, been lost. This was originally envisaged as a partner (rather than a competitor) institution, a government ‘of all the talents’ which could advise policy rather than oppose or critique it. Nevertheless, it held out the prospect of an extra support for the construction of robust policy-making and effective governance, as sectoral expertise from its various quarters (business, culture, the community sector etc) would be hard-wired into the policy process on the inside rather than peering in from the outside.

If we had a vibrant and energetic Civic Forum with a strong track record of intervention within the policy process (and public respect for its role) the need for a formal Opposition would

perhaps be less pressing. But as the Civic Forum has failed to find a sustainable role in the devolved institutions, the rationale for a formal opposition would seem to be stronger.

If the devolved institutions are to promote the impression (and reality) that politics in Northern Ireland is entering a new era of normality and effective governance, a formal opposition is a necessity. This if course needs to be incentivised and financed, and nothing is without its costs.

Of course no political party is forced into the Executive against its will if it qualifies for a seat under d'Hondt and it is notable that to date none has ever refused a seat at the table (even the DUP took its seats in absentia when it was opposed to the GFA in 1999). But this illustrates the problem rather than the obverse. There are currently insufficient incentives available for political parties to consider opposition as a credible strategy and more could be done in my view to encourage it. This would provide a healthier dynamic within the Executive where collective responsibility would be easier to achieve (rather than having reluctant partners who are formally part of the Executive but seem uncomfortable being in that role).

The main problem here from my perspective is not whether a formal opposition would be beneficial or not, but is more with envisaging the underlying engineering that would enable this to function effectively, while maintaining the integrity of the rest of the political system, especially with respect to proportionality criteria.

There are numerous issues and problems associated with facilitating a formal opposition within the structures that currently exist, (not least the issue of the cross-community aspect of a formal opposition or whether this would be allowed to sit outside of that binary model). Also, who is to decide (and on what basis) who is to form an official opposition and the resources that would go with it? Some care is obviously needed here to avoid very small and unrepresentative parties from capturing speaking rights and financial support that is out of scale with its size.

Also, at what point could parties move into opposition? (mid –term/after an election etc?)

However, working through these complexities should be both achievable and secondary to the more foundational debate as to whether a formal opposition would augment the accountability and effectiveness of the existing institutions.

Simply because this is complicated to design is not a good enough reason to reject doing it.

At a very fundamental level, to retain credibility with the electorate (and to help move into a new post-conflict environment) voters would benefit from being given alternatives at election time. Even if the formal opposition is too small to position itself as a credible 'government in waiting' which is the usual function of an organised opposition, there is still a strong argument to be made that it could play a major role in providing alternative ideas, concepts and policy agendas for public debate. While opposition parties might not be in a position to implement these directly by forming an alternative administration, it is not beyond the bounds of reason to imagine that these positions would be studied by the governing parties and possibly mined for ideas/solutions, if only to protect their own policies from attack and criticism.

The worst of all worlds would be for a formal opposition to go the way of the Civic Forum, due either to the lack of sufficient political will among the potential parties concerned or insufficiently well thought out guarantees with respect to parliamentary recognition and financial support. An equally unsatisfactory scenario would be that opposition is over-incentivised with the result that smaller parties actively choose it in pursuit of resources and advantage rather than as a means of achieving policy objectives or enhancing scrutiny functions.

In terms of timing, this is impossible to provide at present as other variables are currently unknown. In an ideal world I would recommend that the modelling of this option is

investigated in a timely manner, perhaps with a view to decisions being taken on the subject before the end of the current Assembly term.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

Appropriate resourcing of an official opposition would be required to facilitate it operating effectively. The role of opposition is unlikely to be seen as attractive by any political party if it is not incentivised and resourced. This goes beyond financial issues as one of the big concerns for prospective opposition parties would be rights to recognition/speaking rights in the Assembly etc.

The formal designation of the title 'Official Opposition' might be less critical here than the more practical questions relating to on-the-ground recognition and financial support. Thus, it might not be necessary to formally designate this within the structures of government. As highlighted by McCaffrey & Moore in their briefing paper (NIAR 899-12, 4 December 2012) there is no formal recognition of an 'official opposition' in the Scottish Parliament or in the National Assembly for Wales. So, while there may be good reasons for formalising this in legislation –there is no obvious necessity for doing so. Following the 'if you build it they will come' mantra, facilitating this role through relatively obvious inducements (linked to recognition and financial support) would very likely be enough. Thus the official opposition would be self-selecting and emerge from within the Assembly rather than being imposed from above through unwieldy and reactive legislative mechanisms.

Cleary some formula would be necessary with respect to the recognition of an opposition and its access to parliamentary time, but this should not be overly difficult to conceive (though getting overall cross party agreement for it may prove more difficult). Some pro rata scaling up (in the spirit of d'Hondt) would be one option, with various bands that bring extra recognition with them. There could be a less segmented model in financial terms which simply attaches resources on a (per MLA basis) in opposition up to a certain limit. The House of Commons has been operating a scheme of this nature for opposition parties since 1975 along an algorithm based on a grant given based on the number of seats won in the previous election and an extra top up for every 200 votes gained by the party.

This could probably be designed in a manner that protects the proportionality principle, which lies at the centre of the current arrangements. Thus, greater public support for the opposition role would presumably lead to the creation of virtuous circles, with more electoral gains in terms of MLAs, more financial resources and parliamentary time and so on.

Care is needed here of course to ensure that a political party is not incentivised to sit in opposition in perpetuity and nor is it immediately clear how parties might move easily between being in opposition and being in government.

It is not easy to cost this out in detail at this point as the financial implications may depend on take up of opposition roles, but in addition to the House of Commons convention there are indicative models available from Scotland and Wales that might be used for modelling purposes. The resources saved from possible future reductions in the overall number of MLAs and ministerial positions might also be fed back into this and in terms of timing, it would

make more sense to divert existing resources that are already allocated, than attempting to regain these funds once they have been allocated elsewhere.

Of course there may be other models available, but the key point is that the arguments in favour of a formal opposition need more serious attention and modelling so that the specific implications can be understood and assessed.

If it is adequately incentivised and financed (while avoiding the risks over over-incentivisation that may create an 'opposition-ghetto') moving to a formal Opposition could conceivably make a significant improvement to the quality of governance within the devolved institutions, without sacrificing the key principles of proportionality or inclusivity, while bolstering public confidence and choice.

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

Given the previously highlighted concern about the risks of over-incentivisation of potential opposition parties, I am not convinced that the existing arrangements for the allocation of Chairs and Deputy Chairs need to be changed to take account of formal opposition.

This is a complex area and it is important to protect against unintended consequences where a tweak in one area, however, minor may have implications for others.

Special arrangements for the allocation of Committee Chairs /Deputy Chairs may confuse other aspects of the carefully balanced political geometry with respect to the allocation of these positions through d'Hondt to parties other than those who hold the ministerial portfolio. Thus, there is already an oppositional element within the system here that may get complicated and/or confused by other arrangements linked to formal opposition. (A double-opposition dynamic within the committee structure would unnecessarily complicate the functioning of the committee system.

Clearly there is a need to avoid over-rewarding minority parties within the system and over-incentivising medium sized parties to act as an opposition when they would qualify for a seat in government.

The principle of a formal opposition being incentivised would seem to require some enabling measures to allow it the space to operate and function effectively. But in my view this can be accommodated though minimum thresholds in other areas related to speaking rights and financial provision and for a variety of reasons outlined above, I would not recommend tampering with the existing arrangements with regard to the allocation of Committee Chairs and Deputy Chairs.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/ Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

As with several of the previous sections, this is very much a matter of scale and a political judgement to be made or negotiated rather than a technique of political science that can be objectively applied. That being said, some clarity on issues of speaking rights in the Assembly will be required for the benefit of all concerned (not least for the Speaker.)

It would be unsatisfactory if a very small but vocal 'one-person-party', was able to designate themselves as part of the opposition and obtain extra speaking rights and financial resources as a result. So, there is certainly a need for a minimum bar to be imposed before any extra speaking rights are granted.

An obvious way forward again would be a minimum threshold requirement, or perhaps a series of thresholds. These provisions are less difficult to envisage than some of the other 'engineering works' needed to build a credible model of formal opposition. Once again the arrangements that already exist in Scotland and Wales linked to the recognition of smaller non-government parties could be looked to in the first instance here.

Whether it is called 'priority' speaking rights or 'designated' speaking rights –some ring-fencing of time would be required to allow an opposition to play a useful role.

This could be achieved relatively cleanly, with mechanisms that facilitate participation in Question Time/response to Ministerial statements and so on.

Again this would need to be modelled carefully to avoid 'over-incentivisation' but it would not be the most problematic aspect of the current system to reform.

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

Professor Galligan - Queen's University Belfast

Assembly and Executive Review Committee
Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

<table>
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<tr><td>Legislature</td><td></td><td>Non-Government</td><td></td></tr>
<tr><td colspan="3">Other (Please Specify)/ Member of the Public</td><td></td></tr>
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Please provide some background information on your role as a stakeholder

In my capacity of Professor of Comparative Politics at QUB, I research on political institutions and practices, with specific interest in political representation of women. More recently I have extended my research agenda to encompass the consequences of devolution across the UK and legislative reform more generally. I was a member of the 5-person independent McKay Commission that sought to address 'the consequences of devolution for the House of Commons'. Our report is available at http://tmc.independent.gov.uk/, and our core recommendation was that the Legislative Consent Motion principle and practice be applied to bills the UK Government wishes to introduce that have a separate and distinct effect in England.

I am involved in public and political discussions on constitutional reform in the UK and Ireland, including the UK's Changing Union project (http://ukchangingunion.org.uk) and the Constitutional Convention (www.constitution.ie/convention.aspx).

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

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In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

The d'Hondt system used for the allocation of Executive office positions and Assembly Chairs and Deputy Chairs is in keeping with the principles of inclusivity and power-sharing enshrined in the 1998 Agreement, the St Andrews Agreement, and provided for in the NI Act 1998. It has operated effectively to secure proportional power-sharing and distribution of Committee lead positions. It is an accepted formula for distributing such positions, and so changing from it should only be considered if there is consensus to do so, and if there is a more fair and inclusive formulation available.

Re allocation of Ministerial positions: D'Hondt facilitates the formation of an Executive based on consociational principles, that is government representing significant parties, with cross-community inclusion and the main strands of political opinion. The advantage of d'Hondt is that it allows for a transparent, fair and accepted mechanism for the allocation of ministerial posts in a consociational Executive. It also keeps the link between voter support and party distribution of portfolios. This transparency builds public confidence in the Executive, enabling it to govern with authority and legitimacy.

The NI Act sets a test, as well as a principle, that NI Executives have to meet: that of inclusivity and power-sharing. d'Hondt is a **mechanism** for enabling that test to be met. In this regard, it has served well, as the significant parties are included in the Executive, representing a balance of views among the electorate. The alternative to the d'Hondt allocation of ministerial posts in the Executive is the St. Lague method, that is generally known to be kinder to smaller parties. However, I concur with previous evidence offered to the Committee by Professor O'Leary and others that in a 10-person executive, both D'Hondt and St Lague can deliver an inclusive and proportional outcome, whereas in a reduced executive, there is a significant risk that 'others' will be excluded: thus in a smaller executive, there is no guarantee that either method will enable parties to meet the inclusivity and power-sharing test.

D'Hondt is at its most effective in enabling government formation when the number of posts to be distributed among the parties is sufficient for all significant parties to be represented in the Executive. Should there be a move to reduce the size of the Executive – in terms of members as well as Departments - it would call for careful consideration of how to facilitate inclusion and power-sharing in a manner proportional to the electoral result.

One could reduce the number of Departments, but keep the same number of ministers, though some would be junior ministers and therefore not permanent members of the Executive. Thus, D'Hondt could operate in a similar manner as it does at present, in determining the selection of all ministerial roles.

In regard to Committee Chairs and Deputy Chairs, it makes sense to retain the D'Hondt mechanism for their selection also. Again, the transparency point comes into play, as does the test of inclusivity and powersharing. The fact that statutory committee Chairs and Deputy Chairs are drawn from MLAs that do not belong to the party holding a ministry is a strong reinforcement of the powersharing and inclusive nature of the political arrangements, and D'Hondt is an appropriate means for distributing those positions. In addition, the confidence built up in D'hondt mechanism is an important factor in the behind-scenes negotiations that take place between parties: D'Hondt 'decides' the numerical allocation, leaving parties free to negotiate the distribution of the substantive posts.

A reduction in the size of Departments at Executive level would entail a reduction in the number of statutory committees in the Assembly, with the risk of building a distortion into the system whereby 'others' were excluded from consociational arrangements. Again,

the implications of change need careful thought. I am not convinced that another form of proportionality would have the same widespread acceptance among politicians and the public as D'hondt enjoys. Nor am I convinced that an alternative such as St Lague, while being potentially kinder to smaller parties, would be able to operate in this manner with a reduced Executive and Committees.

One development that could affect the above is the formation of an 'opposition' in the Assembly. Should an opposition emerge, either by design or default, then the allocation of committee chairs and deputy chairs would have to take this development into account. The d'Hondt system could still work in this scenario, provided parties were willing to adopt a flexible approach to its application to Chair/Deputy chair positions, for example recognising an 'alliance' of small party representatives and independents for these purposes. In particular, the Public Accounts Committee is one where convention followed elsewhere dictates that the chair and deputy chair positions are held by representatives from non-governing parties.

Consociational politics is predicated on inclusion and power-sharing, as noted above. The focus in this regard is generally placed on proportional **party** balance. What is generally overlooked is proportional **gender** balance in portfolio/Committee chair or deputy chair allocation. In this respect, D'Hondt acts purely as a mechanism, the outcome of which reflects the gendered nature of party politics.

At present, women comprise 4 of 15 Ministers (including junior ministers), holding 27% of ministerial portfolios. In terms of Committee positions, women hold 4 Chair positions of 19 (21%), but none of the 18 Deputy Chair positions. Yet there are 20 women elected to the Assembly, comprising 19% of its MLAs. Taking all of these roles into account, 48 or 55% of all of the men elected to the Assembly hold authoritative positions, while 8 or 40% of women do so. To bring women's responsibility-holding up to the level of men's would require 3 additional women appointed to such roles.

I draw this to the Committee's attention in the context of discussions regarding a reduction of the size of the Executive and Assembly. It is known that when a political forum is reduced in size, women's representation within that forum suffers as the competition for post-holding becomes more intense. D'Hondt will not necessarily affect this, but politics will. In the spirit of inclusion and power-sharing as provided for in the Agreement, the gender share of positions of authority in the Assembly and Executive also needs to be taken into account in any reforms.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

Community designation is a mechanism designed to support consociational decision-making. It operates in tandem with cross-community support for enumerated key decisions

taken in the Assembly, specified in the NI Act 1998 and listed in the Briefing Paper (p. 17). The discussion on community designation is divided on whether it is a "good thing" (as it accommodates competing nationalist identities) or a "bad thing" (as it perpetuates ethnic divisions and reduces the influence of those designating as 'other'). There is a risk in changing the designation rules of moving from a community veto to a party veto, which would undermine the intention behind this consociational device. I do not have the insight to come down on one or other side of this debate. I will observe, though, that as Northern Ireland evolves as a political entity in its own right, the rigidity - and inbuilt assurance - of community designation may require revisiting.

Petitions of Concern provide a mechanism for 30 MLAs to express their concern about a matter before the Assembly, and subject it to cross-community consent requirements. The intention behind Petitions of Concern was to alert the Assembly to upcoming decisions that had a bearing on significant community-specific interests. Given the role of community designation and cross-community voting in determining the outcome of **key decisions**, the question then arises as to the nature of Petitions of Concern – in other words, how key are the issues that invoke a Petition of Concern? There is some disagreement as to the extent to which the practice of employing Petitions of Concern has conformed to the underpinning intention of the provision. There is merit in designing a mechanism, either through Standing Orders or by means of a determination of the Speaker (on advice), whereby the use of Petitions of Concern is more regulated and the content conforms to an agreed understanding of what constitutes a 'key decision'. This is one aspect of the functioning of the Assembly where reform could enhance public confidence in the legislature, as it would be seen to prevent use of the Petition of Concern mechanism for ethno-national advantage.

More generally, some of the changes above and in the previous section involve significant modifications to the Agreements on which the institutional arrangements are based. Thus, any proposed changes to the operation of the Assembly and Executive in respect of the matters above would require extensive political and public debate, in a transparent deliberative process.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

Consociational arrangements inevitably involve a politics of opposition that is different to the opposition found in classical Westminster-style democracies. This is the case in Northern Ireland as in other countries where consociationalism is used to politically manage deep differences. As the politics of conflict management has been the focus in Northern Ireland, the politics of opposition has had less attention until now.

The crux of the matter is – what is opposition for, when the government is composed of representatives from the significant parties? Clearly the traditional form of opposition does not sit easily in this context, and so the model of opposition as the 'government in waiting' does not readily apply. However, this is not the only function of an opposition, and it is in the

other aspects of opposition politics – holding the Executive to account, scrutinising proposed legislation, and bringing issues of the day into the Assembly for debate – that non-Executive MLAs can exercise their democratic powers.

The Committee system supports these roles, especially that of legislative scrutiny and Executive accountability. In particular, the arrangements by which statutory Committee chairs and deputy chairs are from different parties to that of the Executive ministers enable a robust scrutiny of the policy decisions of each Executive Department. In this regard, the UUP and SDLP in particular have provided a robust 'opposition'. Indeed, such is the extent of these parties engagement in these legislative roles that there is some support in both parties for a move to a more formal opposition role in the Assembly.

A shift of this kind would involve the Executive minister/s from either, or both, parties resigning. Or, if it were to follow on from the 2015 elections, then the party seeking to form an opposition would not take up its share of Executive portfolios. This is permitted under d'Hondt and the rules of government formation.

The question is, though, would parties be politically better off in following this course as distinct from retaining the strong informal oppositional function in the Assembly they enjoy under present arrangements? The main gain in a move of this kind would be to set up a potential 'alternative government'. Realistically, though, the chances are slim of one or more opposition parties being able to form a viable alternative government under consociational power-sharing rules. This is assuming that it is the (at present) smaller parties would form an 'official' opposition as distinct from the 'loyal' opposition they provide at present.

This formal opposition would have implications for the Executive, pushing it towards collective cabinet responsibility. It would take time for Executive parties to adopt this convention, though that could happen over time.

Under formal opposition arrangements, the non-Executive parties could not expect to hold any more chair and deputy chair positions than the current distribution. This is because the d'Hondt mechanism for the allocation of chair/deputy chairs of committees is likely to continue, and should a party choose not to take up its share of Executive positions, it would not lose out (nor would it gain) in Committee role allocations. It could be argued, then, that the sacrifice of one or more ministerial portfolios by going into opposition would be greater than the gain of formal oppositional politics. Indeed as matters stand, Executive parties have a dual advantage of being in government and also being in a position to scrutinise the government.

Perhaps a way forward is to incentivise oppositional behaviour through allocating Assembly speaking time to non-Executive parties or party groups (in the case of smaller parties and independents). Rules would need to be devised under which a group of non-Executive MLAs would be recognised for the purposes of speaking time, questions to ministers and other holding to account functions. These rules could be based on those that determine party speaking order, and applied to a party or grouping of parties and independents. In the case of a group other than one of the five substantive parties, the group would manage its own distribution of the time and any other parliamentary resources allocated to it (such as additional research assistance). This modest move could be considered for the 2015-19 parliamentary term, if it obtained cross-party consensus.

Another pragmatic way forward would be to enhance the research capacities of all MLAs so that they can build on their policy expertise in specific areas, and contribute to legislation as well as carrying out their constituency representative functions. There are a range of major policy challenges with an impact on the daily lives of citizens in Northern Ireland – economic, fiscal, ecological (to name but a few) – that MLAs are expected to address. Enhancing their research support capacities would aid them in this task. This initiative alone would do much to strengthen the accountability and effectiveness of the Executive in governing Northern Ireland.

A third consideration is enabling Committees to undertake inquiries of a wider or far-reaching nature than they currently do. Enhancing the powers of Committees in this way would provide a powerful scrutiny of major political issues of concern, contributing significantly to policy development. This would have resource implications, though these would not be on a recurring basis. An initiative of this kind would also complement any moves to enhance research capacities of individual MLAs.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

If there was consensus on introducing a formal opposition, then this move would require appropriate funding, which the ISRP could draw up. There are standard models on which to draw, including allowances for the Leader of the Opposition. The Research paper by McCaffrey and Moore provides an overview of these models.

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

Formal oppositions in Westminster-type legislatures do not control the Chair/Deputy Chair positions of committees. Indeed, the practice is for governments to retain control of Committees for the purposes of passing government legislation. Thus, in a hypothetical full-blown government-opposition scenario in the case of Northern Ireland, this could mean that the smaller parties lose out on their existing Committee allocation of chair/deputy chair positions. This would run counter to the principles of inclusivity and power-sharing in the Belfast agreement and would be a radical change from the current arrangements.

To facilitate the emergence of a formal opposition, should that be the route followed, then in order to maintain inclusivity the use of d'Hondt in the allocation of Committee roles should be considered.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

It is reasonable to expect an opposition comprising non-executive parties and party groups to be given additional time to raise and debate non-Executive business. Opposition spokespersons should have priority at Ministerial Question Time and in responding to Ministerial Statements. The order of priority would be determined by the size of the party, or party grouping, represented by these MLAs.

Furthermore, the current arrangements providing time and speaking rights for non-Executive parties on non-Executive matters would need to be reconsidered in the light of any new arrangements.

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

Outline memorandum for the Northern Ireland Assembly and Executive Review Committee

Yvonne Galligan

D'Hondt

For Executive post allocation: The system has worked well, is fair, and keeps the link between voter support and party distribution of portfolios. Its extension to include the appointment of the Justice Minister needs further consideration.

D'Hondt has the advantage of open, transparent determination of the number of ministries to be held by parties – and builds public confidence in the Executive because of this transparency.

It significantly reduces party conflicts over Executive composition and portfolio allocation

Any change must be consistent with the principle and practice of power-sharing and inclusion.

Opposition and Accountability

Important principle of democratic politics: facilitating an opposition and government accountability

There is nothing to prevent parties from choosing not to take part in the Executive.

the current arrangements whereby chairs and deputy chairs of committees are not from the party of the Executive minister allows for holding the minister to account, and is a form of parliamentary scrutiny similar to that of an opposition

Scrutiny is also integrated into the Executive, with ministers being open to questioning by their ministerial colleagues - an unusual feature of institutional design.

Recent research indicates that questioning of the Executive ministers is most actively conducted by the SDLP and UUP

Opposition and co-operation need to be carefully balanced in the Assembly

There is a debate to be had for enhancing the scrutiny opportunities of non-Executive party representatives, and individual MLAs. This calls for a rethinking of how parliamentary time is allocated.

Designation

There is a risk, in changing the designation rules, of introducing a party veto as distinct from a community-based veto.

The operation of Petitions of Concern should be scrutinised through the mechanisms available in the Assembly itself, and modifications be the subject of political agreement.

More generally, some of the changes above involve significant modifications to the Agreements on which the institutional arranguements are based. Thus, any proposed changes to the operation of the Assembly and Executive in respect of the matters above would require extensive political and public debate, in a transparent deliberative process.

Dr Loizides – University of Kent

Assembly and Executive Review Committee
Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

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<tr><td colspan="3">Other (Please Specify)/ Member of the Public</td><td></td></tr>
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</table>

Please provide some background information on your role as a stakeholder

I am Cypriot academic who lectured in international conflict analysis at the University of Kent (2011-) Queen's University Belfast between 2006-2011. In May 2011, I suggested a modified Northern Irish style d'Hondt executive for federal Cyprus in a keynote address organized by the Cyprus Academic Dialogue attended by the diplomatic corps in Nicosia and covered extensively by the Cypriot media. I have also co-authored two articles forthcoming in 2013 in *West European Politics and Political Studies* contrasting party politics in Northern Ireland and Cyprus. I would like to focus my intervention only on the first section on the d'Hondt since it falls within my area of expertise.

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

(1) **Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons**.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

The d'Hondt mechanism should be retained but the divisor method could be reconsidered and if possible changed to Sainte-Laguë which is more proportional and favourable to smaller parties.

By inviting everyone to join the cabinet, the d'Hondt mechanism and its variations (e.g. Sainte-Laguë) could skip the most contentious aspect of consociationalism in divided societies, namely, forming inter-ethnic majority coalitions. Prolonged deadlocks in forming governments could be particularly problematic especially at the time of a global financial meltdown. The absence of formal d'Hondt style arrangements has left countries in similar situations without elected governments for prolonged periods as seen in Belgium in 2009-10. Coalitions also increase uncertainty and competition among groups as suggested in the case of Lebanon where groups have responded violently to attempts by others to ostracize them politically following negotiations to form a government.

Under d'Hondt or Sainte-Laguë parties are instead represented into the cabinet in accordance to their strength. If they do not voluntarily assume their assigned cabinet posts, others will be entitled to step in. Especially, Sainte-Laguë appears to be more representative and fairer to the second and third largest parties enabling a broader participation into democratic governance; in the case of Northern Ireland it will prevent absorption of the second largest parties in each community by the leading Unionist and Nationalist parties.

One might realize the advantages of the current mechanisms and other variations, once similar situations are considered in other parts of the world. The experience of Cyprus is particularly relevant in this debate. In 2009 a compromise on 'cross-voting' was reached between the leaders of the two communities. Cross-voting is an alternative to the current NI executive system and it was expected in Cyprus to catalyse bicommunal negotiations as it favoured the moderate parties making it more difficult for hardliners to be represented in government.

In summary, the 2009 compromise stipulated the following had a settlement been approved: it allowed all Cypriots a double vote, one in their ethnic community and another (with a suggested standardized weight of about 20 per cent) in the other community. In the election of President, every person would have one vote, making Turkish Cypriots an electoral minority of around 20 per cent. In a second election, Turkish Cypriots would vote for Vice-President. Greek Cypriots would participate but with a weighted vote of about 20 per cent. Thus, the Greek Cypriot vote would be significantly weighted, and the community would become an electoral minority of the Turkish Cypriots. The Greek Cypriot President would be head of government two thirds of the time; the Turkish Cypriot for one third of the time. In cases of constitutional deadlock, the acting President would have the winning vote and play the role of arbitrator.

The agreement signified one of the few major breakthroughs of the past decade (and probably one of the best moments to reach a settlement in Cyprus. Although, innovative and historically supported by civil society actors in the island, cross-voting failed to catalyse progress in mediations and even deepened the stalemate. In general, systems that favour the moderates might not be the best alternative for a divided society seeking political settlement. For one thing, as O'Leary argues moderates are by definition supportive of compromise and do not need additional incentives to sign up for the peace process. For another, systems that alienate large national-minded constituencies from government could possibly contribute to polarization; if hardliners are already in power, they will turn down proposals favouring their moderate opponents. More importantly, consensus democracy as presented by seminal studies in the field by Lijphart and others are not only better at managing ethnic/religious diversity but run more effective economic policies particularly in times of crisis.

The evolution of Northern Irish consociational structures has inevitably influenced my thinking on mediating power-sharing in Cyprus. In a previous co-authored article on this topic (Loizides & Keskiner, 2004), I supported cross-voting as an amendment to the 2002-4 Annan Plan. In the 2009 Cyprus peace talks, the United Nations used cross-voting principles to negotiate a mutually agreed-upon compromise between Greek and Turkish Cypriot leaders but the result was to sustain the stalemate and derail one of the best opportunities to settle the Cyprus issue. If Northern Ireland had followed similar arrangements, critical moments in mediation for power-sharing might have been missed. Thus it is important to consider the counterfactual of not having a peace deal at all as this has been demonstrated by other cases.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

D'Hondt or Sainte-Laguë as well as other alternatives such as cross-voting might require (or be supplement) with institutional arrangements that require community designations. Those might be unavoidable in divided societies because of historic agreements to protect community (not just individual) rights. Yet past decision by the ECHR (Sejdic and Finci v. Bosnia and Herzegovina) with regards to designations for the three posts of co-presidents in Bosnia (reserved for the three main ethnicities) have pointed to the fact that those were discriminatory as they effectively excluded members of smaller minority groups such as the Roma and the Jews. The political system of NI does not seem to be problematic in this respect and given other relevant decisions on Cyprus by the same court (i.e. Aziz v. the Republic of Cyprus). However, to avoid finding itself on the wrong side of a future ECHR ruling, it might be wise to seek early advice on future arrangements by the Venice Commission which is the designated advisory body for constitutional issues of the Council of Europe.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

Answer Here.

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

Professor McCrudden – University of Oxford
Professor McGarry - Queen's University, Canada
Professor O'Leary - University of Pennsylvania
Dr Schwartz - Queens University, Canada

Memorandum for the Northern Ireland Assembly and Executive Review Committee

The authors of this joint memorandum are as follows:

Christopher McCrudden DPhil is a Fellow of the British Academy, Professor of Human Rights and Equality Law at Queens University Belfast, William W. Cook Global Law Professor at the University of Michigan, and a visiting professor at the University of Oxford, where he was previously Professor of Human Rights, and a practicing barrister-at-law (Blackstone Chambers).

John McGarry PhD is a Fellow of the Royal Society of Canada and Canada Research Chair in Nationalism and Democracy at Queen's University, Kingston, Ontario, and previously Professor of Political Science at the University of Waterloo. He was previously Senior Advisor on Power-Sharing to the Mediation Support Unit of the Department of Political Affairs of the United Nations.

Brendan O'Leary PhD is Lauder Professor of Political Science at the University of Pennsylvania, and Professor of Political Science at Queen's University Belfast, and previously Professor of Political Science at the London School of Economics & Political Science. He was previously Senior Advisor on Power-Sharing to the Mediation Support Unit of the Department of Political Affairs of the United Nations.

Alex Schwartz PhD is Banting Postdoctoral Fellow and Adjunct Assistant Professor with the Department of Political Studies at Queens University (Canada). He holds a doctorate in law from Queen's University Belfast, where he also taught constitutional law and European law. Previously, he was a visiting academic with the Centre for the Study of Social Justice at the University of Oxford and a postdoctoral fellow with the Canada Research Chair in Quebec and Canadian Studies at L'Université du Québec à Montréal.

Memorandum for the Northern Ireland Assembly and Executive Review Committee

Christopher McCrudden, John McGarry, Brendan O'Leary & Alex Schwartz

D'Hondt

The use of the d'Hondt system for executive formation in Northern Ireland should be preserved. It has served Northern Ireland extremely well. It ensures a proportionally composed executive. The executive is fairly composed of those parties with a sufficient mandate, and the decision to take up executive portfolios is voluntary, though that is sometimes forgotten. The d'Hondt "sequential and proportional allocation mechanism," as it is strictly described, (O'Leary, et al.: 2005) provides an automatic solution to the standard problem of government formation in a vibrant multi-party setting. The mechanism provides an elegant, transparent and democratic way of avoiding the lengthy and costly negotiations that sometimes delay government formation in countries that use proportional representation election systems. The examples of Israel, Iraq, and Belgium are well known to all MLAs.

The d'Hondt system is not, in fact, unique to Northern Ireland, if by "unique" is meant singular. The d'Hondt divisor, named after Viktor d'Hondt is the independent European invention of a method first devised by Thomas Jefferson to structure the apportioning of congressional districts among the several states for elections to the US House of Representatives (Balinski and Peyton Young: 1982). The d'Hondt (or Jefferson) divisor has been widely used in proportional representation elections to allocate parliamentary seats in proportion to votes won by parties (Taagepera and Shugart: 1989; Lijphart: 1994; Cox: 1997). The d'Hondt system has also been used to allocate committee chairs and places in the European Parliament (Hix and Høyland: 2011). Indeed its usage within the European Parliament was undoubtedly one of the inspirations for its adaptation by Northern Ireland's politicians, who first discussed the use of d'Hondt amid what were informally known as the Brooke-Mayhew talks of 1991-2. Even the use of d'Hondt to allocate executive portfolios is not unique to Northern Ireland. The method has been used in the four largest Danish municipalities of Copenhagen, Aarhus, Odense and Aalborg, with a combined population of over one million people, for decades (O'Leary, et al.: 2005). The Government of the Brussels-Capital-Region, which regulates a population larger than that of Northern Ireland, also allocates portfolios according to the d'Hondt system, while allowing for subsequent exchanges of portfolios (Source: Correspondence between Brendan O'Leary and Steven Verbanck, Brussels 2012, awaiting further confirmation). We also believe that variations on d'Hondt have been contemplated as constructive ways of resolving conflict in Cyprus (Source: Correspondence between John McGarry, Brendan O'Leary and Dr Neophytos Loizides).

So, the system has worked, is used and proposed elsewhere, and is predictable. There have been no technical difficulties in its use. The relevant provisions of the Northern Ireland Act 1998, as amended, are well drafted. Successive Northern Ireland Assembly Presiding Officers and their colleagues have run the system professionally. The legislative drafting was careful. It considered the possibility that there could be ties among parties at various stages in the allocation process, and chose to break these ties by the parties' respective first-preference vote totals, thereby linking the electorate's preferences to the determination of ministerial portfolios in a transparent manner that is fully in keeping with our shared democratic ethos.

We may usefully contrast Northern Ireland's peace agreement and political institutions with some recent less successful settlements where the parties in conflict agreed to share power, but not on the details of how to share ministries, or particular portfolios, which later gave rise to conflict and disagreement, see e.g. Kenya's 'Serena Accord' of February 2008, or Zimbabwe's agreement of 2009 (for further critical appraisal of these cases see Cheeseman and Blessing-Miles: 2010).

We also note that, in a very constructive manner, the currently leading parties among the nationalists and unionists agreed to meet to indicate how they would express their preferences among portfolios before the actual legal determination by the d'Hondt mechanism in the Assembly. This decision, a welcome demonstration of mutual confidence-building, was intended to avoid "surprises" in the formal allocation process in the Assembly, and enabled the parties to express and resolve whatever anxieties they deemed fit to discuss. This, we think, was an exemplary case of mutual confidence building. We regard this development as entirely constructive, and see no reason why it should not act as a precedent. But we nevertheless believe it essential that the formal d'Hondt mechanism be preserved to help the parties co-ordinate close to what would be the default outcome if they could not agree to avoid springing surprises on one another.

The d'Hondt mechanism is not only working, transparent, elegant, designed to avoid deadlocks over government formation, and better than some international comparators, but also strongly inclusive. All parties with a significant electoral mandate benefit from the d'Hondt mechanism because they can then get automatic access to the executive, if that is what they seek, and provided that they bind themselves to democratic and peaceful politics through the pledge of office. No other party can veto their presence; differently put, no one can veto those whom their voters mandated. This feature of the d'Hondt system is

exceptionally important in a place which has been as deeply divided as Northern Ireland. Government formation would have been extraordinarily difficult if the parties had been obliged to negotiate not only over the number of portfolios and their allocation but also over which parties would comprise the executive and which ministers would be allocated to which ministerial portfolios.

The d'Hondt system is also democratically fair. Other things being equal, the party which wins more votes wins a stronger presence in the executive. The Northern Ireland executive, so far, has not been deadlocked by micro-parties, which famously have had excessive "pivotality" in countries such as Israel. It is true that the d'Hondt divisor (1, 2, 3… n) benefits larger parties (slightly) more than other divisors that could be used for executive portfolio allocation (e.g. Sainte-Lagüe or Webster (1, 3, 5, … n)) (see Taagepera and Shugart: 1989). Indeed, among the family of possible divisors, d'Hondt is the most frequently used precisely because it benefits larger parties. But it can be justified from an institutional design perspective because, in a modest way, it discourages excessive party fragmentation.

While some among us spoke up in previous academic engagements for both d'Hondt and Sainte-Lagüe, none of us see any strong current case for changing the divisor formula for executive formation from d'Hondt to Sainte-Lagüe. That the Democratic Unionist Party and Sinn Féin have been the recent beneficiaries of a rule that was initially agreed in negotiations between the Ulster Unionist Party and the Social Democratic and Labour Party is not a principled reason to change the system. Indeed, the case that used to be made for Sainte-Lagüe was partly based on the idea that it would help to include the DUP and Sinn Féin, then the second largest parties in their designations, a need that is now otiose. We shall consider the situation of the 'others' in due course.

We strongly believe that, without the inclusionary mechanisms of the d'Hondt system, Northern Ireland's currently largest political parties would have found it far more difficult to have come to a stable accommodation. We have seen remarkable changes from both of these parties. Sinn Féin is committed to exclusively peaceful and democratic politics; its leaders delivered IRA cease-fires and encouraged the IRA's subsequent internationally supervised disarmament and disbanding; and republicans now accept Northern Ireland's newly reformed police and work within Northern Ireland political institutions. The DUP has accepted executive power-sharing with republicans; all-island and cross-border bodies are jointly run with the Government of Ireland; there has been significant transformation of the police; and justice and policing oversight have been devolved on a power-sharing basis (for discussions see McGarry and O'Leary: 2004; Mitchell, et al.: 2009). By any standards, these are remarkable movements towards accommodation. For that reason we think that great care should be taken to avoid the premature dismantling of the institutional machinery that helped make this possible.

A last word is called for here in defence of the d'Hondt mechanism for executive formation before we broaden the discussion. In our view, the agreement reached at Saint Andrews to modify the rules governing the choice of the First Minister and Deputy First Minister was not only procedurally correct but was entirely appropriate for a functioning and liberalized consociation. Under the previous rule, a concurrent majority of designated nationalists and unionists as well as a concurrent majority in the Assembly had to elect the First Minister and Deputy First Minister. This rule was consociational, but it was also an example of "coercive centripetalism": it obliged nationalists and unionists actively to support one another's nominees for these positions. It therefore became a source of tension. It also made the choice of an 'other' for either position highly unlikely. By contrast, the rule now in use for the choice of the First and Deputy First Ministers is the functional equivalent of the d'Hondt system: Northern Ireland has three blocs, nationalists, unionists and others, and the premiership is shared among at least two of them. In our view the new arrangements are very close to allocating two portfolios among three parties by using d'Hondt, and therefore corresponds to what some of us previously recommended as a productive change, to let each

group choose its own leaders free of the constraints of requiring the endorsement of other parties (McGarry and O'Leary: 2004; McGarry and O'Leary: 2004; McGarry and O'Leary: 2007).

The debate about d'Hondt should be seen in the broader context of a profound debate over the type of democracy that is most effective in a divided place like Northern Ireland. There are two basic models among contemporary democracies: the winner-takes-all (or majoritarian) model, illustrated by the traditional Westminster model; and a consensual (or proportional) model, such as that which operates in contemporary Belgium (Lijphart: 2012; Powell: 2000).

In the winner-takes-all model, especially suited for homogeneous societies, governments or cabinets endorsed by bare majorities in the legislature ("minimum winning coalitions") are seen as virtuous. Its defenders say that under the Westminster model the Government faces a recognized Opposition, in a predominantly two-party or two-bloc system, and is thereby held to account. The electorate is also provided an alternative Government-in-waiting.

This, of course, was the model applied to Northern Ireland under what has been called the "Stormont" system (McCrudden: 1997; O'Leary and McGarry: 1993). This adversarial model, it is widely argued, was deeply unsuited to a deeply divided place, especially when there seemed to be a permanent governing majority: none of the benefits that might have flowed from alternation in government were available. We also observe that the Westminster Parliament itself has presided over a series of changes in the United Kingdom's constitution that are significant departures from the full winner-takes all model (in the devolved institutions in Scotland and Wales), in elections to the European Parliament, in some local and regional institutions and election systems, and in the UK's key legal institutions) (see e.g. King: 2001; and Morison: 2001). There have also been minor modifications to the parliamentary committee system. Against this context, we are somewhat perplexed by calls for Northern Ireland to resemble more the Westminster model of Government-Opposition. These demands seem to us to be premature, at best.

The alternative conception of democracy to a winner-takes-all model (which easily slides into "majoritarianism") is the consensual model, which places a much higher value on inclusivity and power-sharing. There are many variations in consensual systems but the most consensual are of the 'consociational' kind (built around the core principles of parity, proportionality, autonomy and veto rights among equal communities). We are not alone in classifying the 1998 Agreement as of this kind (McCrudden, et al.: 1998; McCrudden, et al.: 1998; O'Leary: 1999). Great care, in our view, should be taken in modifying or dissolving consociational institutions, especially when they have proved their worth in helping to calm conflict and deliver stable government. That is why we entirely share the Secretary of State's view that any changes to the institutions must be consistent with the power-sharing and inclusive values of the Agreement.

We believe, in summary, that the d'Hondt system helps create an inclusive and broad-based government, one which incorporates all those, including the 'others', who win a significant mandate from the electorate. The d'Hondt system not only helps to protect today's nationalist minority against possible majoritarian excesses by the unionist majority of today, but also protects the possible unionist minority of tomorrow from the possible majoritarian excesses of a possible future nationalist majority. No change to this system should occur, legally or in practice, without cross-community consent.

Opposition & Accountability

The Review Committee will be well aware that the d'Hondt system does not oblige an all-party, comprehensive, or "grand coalition." Any party is free to choose to go into opposition. The fact that there are five parties in the current executive is a choice, not one that is forced by the rules. It is true that the largest unionist and nationalist parties will always face enormous positive incentives to join the government (and thereby obtain one of the co-equal first ministerships and an allotment of cabinet portfolios), but the point stands: membership of the government is voluntary. The constraint is that no party can demand the exclusion (or

inclusion) of other parties. Through the d'Hondt system, the parties entitled to portfolios in the executive have their entitlements determined by the electorate as a whole. In future circumstances one can perfectly imagine any of the five largest parties going into opposition (along with the TUV), by refusing to take up their entitlements to portfolios on the executive.

The current system also provides for ministers to be held to account by statutory committees. We may be mistaken, or out of date, but it has been our joint and sustained reading of the Northern Ireland Act 1998 that section 29 (5) requires the Standing Orders of the Assembly to provide that, in making nominations for chairs and deputy chairs of statutory committees, the relevant party nominating officer "shall prefer a committee in which he does not have a party interest to one in which he does." We have assumed that the "shall" here is mandatory, and that therefore parties are obliged not to nominate members to be chairs or deputy chairs of committees which are scrutinizing ministers who come from their party. The wording on the documents sent to us was equivocal on this matter, which is why we raise the matter. In short, we assume (a) that section 29(5) applies with the meaning we construe it to have, and (b) that this is a good thing. In winner-takes-all systems it was historically rare for opposition parties to chair anything other than public accounts committees (as a check on corruption). Indeed, in such systems governments have usually been very careful to ensure that they keep control over virtually all committees. So, nothing in the Northern Ireland arrangements is prima facie constitutionally odd, even by the majoritarian standards of winner-takes-all systems, except that Northern Ireland's arrangements are both more inclusive and potentially open up the executive to more scrutiny. Unusually, Northern Ireland's new system specifically provides for ministers to be faced by committee chairs and deputy chairs who are not from their own party on key committees. These chairs and deputy chairs have good reasons to hold the relevant minister to account and are likely to be in receipt of both formal and informal information that is likely to enable them to perform their tasks well. We think that this is a good arrangement, and would want evidence that it is not working before being persuaded of the need for change.

We also note that the ratio of executive members to non-executive MLAs is not high. When there are two first-ministers, ten ministers, and two junior ministers, then approximately 13 per cent of the MLAs would be in the government. That would leave a very high proportion of the Assembly, 87 per cent, outside of the executive. In addition, each ministerial member of the executive typically faces a committee comprised of a majority from other parties, hardly a position that automatically favours the executive. Precisely because Northern Ireland's programme of government (and the other obligations ministers owe one another, legal and prudential) are not as binding as those imposed by rigorous collective cabinet responsibility under winner-takes-all we suggest that Northern Ireland's ministers are possibly more exposed to scrutiny (by MLAs whose parties are also in the executive, as well as without) than their Westminster counterparts. We are therefore not persuaded that Northern Ireland suffers from a lack of a powerful Opposition because of the rules and institutional design of the Northern Ireland Act 1998, as amended.

A last point on the committee system: the existing institutional design permits a party that does not take up its entitlement to executive portfolios to nominate its members to chair and deputy-chair committees in the relevant d'Hondt sequential order. This system certainly does not punish a decision to go into opposition, and has no counterpart in the Westminster model.

Northern Ireland is governed differently from the rest of the United Kingdom partly because it is different. One clear difference is the remarkably effective joint leadership embedded in the First Minister and Deputy First Minister. There can be no meaningful singular Leader of the Opposition to these two post-holders, without generating the spectacle of a First Leader of the Opposition and a Deputy First Leader of the Opposition. The First Minister and Deputy First Minister jointly run the executive but only control their own ministers on the executive. The First Minister and Deputy First Minister are, however, open to interpellation. They answer questions for half an hour on Mondays. Answers are rotated sequentially between the two

post-holders. MLAs do not decide which of them answers their questions. The Speaker determines which questions are to be asked through random computer selection.

We know of one recently published study regarding the questioning of ministers in the Northern Ireland Assembly by Dr. Conley, a political scientist at the University of Florida, and just published in Irish Political Studies, and it seems most impressive (Conley: 2013). Conley demonstrates a decline in the number of questions posed to the executive over the period 2007-2011, but convincingly shows that the cause was not an example of increasing executive reluctance to be questioned (a pattern first found in empirical research in this vein on the questioning of British prime ministers since 1868 (Dunleavy, et al.: 1990)). Rather, the recent Northern Ireland experience reflects the successful determination of the Assembly to obtain more substantive answers from ministers through procedural reforms that decreased the number of questions and expanded the time available for Ministers to answer.

Conley's other research findings include the following items among many which could have been selected:

- The First Minister and Deputy First Minister, who have no control over the questions they face, give substantive answers and do not refer matters to other ministers. They are, however, given ample time to prepare under Standing Orders that oblige them to answer as clearly and fully (a clear shift from Westminster-style adversary politics).
- The SDLP's and the UUP's MLAs were the most active in holding the executive to account on general government questions (more than 20 per cent of the SDLP's and more than 30 per cent of the UUP's questions concerned the functioning of the executive). These data suggest, in Conley's words, that the "minor designated parties often assumed the role of the 'loyal opposition.'"
- The MLAs systematically vary by party regarding what subjects they raise (e.g. Sinn Fein's specialty is in social policy, whereas Alliance specializes on social cohesion).
- Constituency concerns constituted a full one-third of the questions posed to the First Minister and Deputy First Minister.

Conley's research results suggest an emergent and mature consociational system, attuned to Northern Ireland's political requirements, in which the need to incentivize 'co-operation' has been successfully balanced against the benefits of incentivizing 'accountability.' At least regarding Question Time, we think that creating occasions for more dramatic debating pyrotechnics could increase heat rather than light and would not necessarily be good for the people of Northern Ireland, who might welcome a period of dullness in executive-legislative relations.

We also think it would be perverse if the Assembly sought to reward parties because they went into opposition (rather than choosing to cooperate), when they currently have the opportunity both to co-operate and oppose. We therefore see no clear need for enhancing the resources (whether in money, time or positions) for exclusively opposition parties (i.e. those not in the executive) as opposed to enhancing the research and information-processing capabilities of all MLAs (e.g. through giving them the capability to hire more highly skilled assistants to aid them in scrutinizing policy issues and the public administration, as opposed to handling constituency matters).

The consociational principle of proportionality suggests that parties should have resources commensurate with their popular support. It would be odd to reward largely uncalled-for-adversary politics by giving those who deliberately go into opposition, or who fail to win significant electoral support, disproportionate resources. We suggest, in short, that non-executive parties in opposition should have no more call on public resources than a consistent proportionality rule would suggest (and that MLAs in parties in the executive should enjoy the same, proportional support). Similarly, time for non-executive business should be proportionally linked to the size of non-executive parties, but no more.

We are also not persuaded by the suggestion that there should be more "votes of no confidence." Under sections 32(1) and 32(2) of the *Northern Ireland Act 1998* the Assembly may dissolve itself through a qualified majority. We have a strong preference for executive stability, and believe that the qualified majority aids stability. Elections will remain polarized in Northern Ireland. There is no need to increase their number or frequency, though occasionally elections may resolve a deep crisis within the executive. It remains true that under section 32(3) of the Northern Ireland Act 1998 (as amended) that the First Minister or the Deputy First Minister can trigger an election if they resign and their party refuses to fill the vacated post. We would prefer that the resignation of either a First Minister or a Deputy First Minister could not take place without the relevant party having nominated the successor. Executive stability is a good thing, provided the executive is representative and accountable. Northern Ireland certainly does not need to become like France's fourth republic or Italy's first republic, where the executive often formed and reformed more often than once a year, and where the same personnel often simply moved around ministerial offices. It is neither good for government nor good for attracting inward investment.

Perhaps the suggestion is that there should be votes of no confidence in particular ministers. There is already provision, however, to admonish and suspend ministers in breach of the pledge of office. With cross-community consent a party can be excluded from access to the office if it has breached the pledge of office. Is more needed? Our perspective is that the d'Hondt executive formation system in Northern Ireland is closely analogous to Switzerland's election of its federal executive council. Though the Swiss voting is majoritarian in form it is consensual in substance, and once the federal executive council has been elected it is like a presidency (Steiner: 1982), that is, it cannot be replaced until the next general election, although individuals may lose office because of criminal conduct which disqualifies them. Likewise in Northern Ireland we think that one appropriate way to conceive of the emerging political system is that the public through its votes determines Northern Ireland's executive for the next legislative term. Parties may replace individual ministers, and are wise to do so if their ministers are inadequate or have been engaged in maladministration. They should surely suffer electoral retribution if they do not replace ministers who have disgraced themselves; and that should be quite sufficient for them to act.

Designation

A foundational component of the April 1998 Agreement, endorsed by the referendum of May 1998 in both parts of Ireland, was the use of designation rules to protect the interests of nationalists, unionists and others. Designation affects the election of the First Minister and the Deputy First Minister (though now in a different manner to the original design), but it has no effect on the formation of the rest of the executive (the d'Hondt algorithm is difference-blind and operates according to party strength, not designation by national identification).

One useful way to think about designation rules in a consociational system is that they reflect the tension between sometimes competing consociational principles, namely, parity between the consociational partners as communities, and proportionality as an electoral, representational and allocational rule (see McCrudden and O'Leary: 2013 Ch. 1. C. 14ff). Proportionality as such (e.g. through the single transferrable vote in multimember constituencies to elect MLAs, or d'Hondt to allocate executive portfolios and committee positions) does not prevent one community from being consistently outvoted according to simple majority voting procedures. Designation was intended to achieve parity to avoid simple-majority rule under proportional rules leading to one community's dominance, both now, and in the future should there be a demographic and electoral reversal of community fortunes. The Northern Ireland 1998 Act, as amended, produces parity through obliging concurrent majority support or weighted cross-community consent on specific matters that affect the vital interests of the partners.

Experience in the period between1998 and 2002 taught MLAs that the use of the concurrent majority requirement for the election of the first and deputy first ministers demanded too

much of the partners (and of "the Others", in extremis), so the rules for electing the First Minister and the Deputy First Minister were modified with wide consent. The new rules have so far worked without proving troublesome. The existing rules do not prevent those who choose not to identify with either the nationalist or unionist designation from holding either of the offices in question. If the "others" were to become the largest or second largest designation within the Assembly, the largest party among the "others" would then appoint one of their own as the First Minister or Deputy First Minister. In short, the rules prevent the leadership of the Executive from being captured by a single community, but do not exclude those who prefer not to designate as nationalist or unionist. In so far as "designation" is used for the appointment of the First Minister and Deputy First Minister, we therefore see no need for reform.

The question of how "designation" is used for "key" decisions or for decisions subjected to the Petition of Concern procedure is somewhat more complicated. The underlying rationale for these qualified majority-voting rules is to protect the interests of the two historically largest and most antagonistic communities in Northern Ireland by allowing each group of their representatives to veto important proposed decisions when they do not attract a significant degree of cross-community agreement. In keeping with this rationale, the rules make it impossible for the votes of any single party, regardless of how many seats they hold, to be both necessary and sufficient in attaining a winning coalition of votes.

These special decision rules are frequently said to be unfair to those who designate as "others." That is because the rules make the votes of Others less decisive (more strictly, less likely to be pivotal) than the votes of designated nationalists and unionists (McGarry and O'Leary 2004; and see Schwartz: 2011 for a treatment that applies "power indices" developed in the political science of voting). Whenever cross-community decision-making rules apply, the votes of "others" are only potentially decisive regarding the majority threshold or qualified majority thresholds, while, by contrast, the votes of nationalists and unionists are potentially decisive for both the majority or qualified majority thresholds as well as for one of the intra-nationalist or intra-unionist thresholds.

We observe first that it would not be a good solution to this question to give the "others" a parallel role as a designated community in cross-community consent procedures, because that would, at least at present, dramatically give undue weight to their voting power in the Assembly compared with their support among the electorate, and because they have not sought such a measure. We also observe that on current electoral trends, without any cross-community consent procedures, and with an Assembly run on simple majority rules, "the others" would likely be disproportionally "pivotal" in the Assembly in the decade ahead, in the same way that small parties in Germany or Israel have frequently punched above their electoral weight in executive and legislative decision-making. We also observe, third, that there is no compelling evidence that these rules have so far functioned as disincentives for voters contemplating support for the "others." Support for the latter category has increased slightly in net terms in the fifteen years since the 1998 Agreement, whereas it had fallen in the fifteen years before the Agreement (any argument that possible growth in support for the "others" has been held back by the rules would in our view rest on highly speculative counterfactuals).

Some have suggested (and some of us have at various junctures been open to the idea) that the existing cross-community and weighted majority decision rules could be replaced by a truly "difference-blind" qualified majority decision rule, i.e. one that makes no use of community designation. Any such revised decision rule would have to be consistent with the rationale of blocking decisions that lack a significant amount of nationalist and unionist support, and should itself attract their respective support with roughly equal intensity. But, several difficult questions then arise.

The first is to choose the number at which the qualified majority rule would be fixed. On the one hand, a relatively lower threshold is a relatively less reliable means for blocking decisions

that lack de facto cross-community consent. For example, given the current composition of the Assembly, a 60% threshold would not be a very secure guarantee for nationalists. The total number of nationalist MLAs is 43, i.e. about 39.8% of the Assembly. Thus, a decision which attracted no nationalist support whatsoever could still pass the Assembly under a qualified majority threshold of 60%. Allowing such a possibility is not, we suggest, why nationalists voted overwhelmingly and enthusiastically for the 1998 Agreement. On the other hand, a relatively higher qualified majority threshold risks giving a single party the power to block any motion or Bill it chooses, regardless of the subject matter. Under a 65% threshold, assuming the current composition of the Assembly, the DUP (which currently has 38 seats, or 35.1% of the MLAs) would be necessary to any possible winning coalition for legislative resolutions or enactments. In other words, the DUP would have a guaranteed veto (a party veto, not a designated community veto) even though its support falls well short of a majority of the voters. And because the DUP would also have more than 30 seats, the party could unilaterally activate this veto by organizing a Petition of Concern. Meanwhile, the voting power of the second largest party, currently Sinn Féin with 29 seats, could be effectively nullified if all the remaining parties were to vote against its preferences en bloc. Moreover, because the second largest party is also (and is often likely to be) the largest of the two nationalist parties, a winning coalition that excluded that party would have fewer than fifty per cent support among the nationalist bloc. This possibility runs counter to the Agreement's principle of inclusivity.

It would also significantly alter the bargaining power of the parties in the Assembly. Under the existing rules, both the votes of the DUP and Sinn Féin (who each currently have more than 50% of the seats from their respective community designations) are necessary (but not sufficient) for any possible winning coalition, whenever the cross-community consent rules apply. The current provisions, therefore, give these leading designation parties relatively equal veto bargaining power (i.e. "parity"). We also think that requiring a difference-blind qualified majority rule beyond two thirds of the Assembly's members would generate pathologies of its own (seen in other political systems when legislative consent requirements go past two thirds to approach unanimity).

We therefore caution strongly against any precipitate change to the rules which have so far served Northern Ireland and its generally-successful peace agreement very well. We note in passing that there is something rather misleading in the language of "difference-blind" rules. In a place as highly politicized as Northern Ireland, intelligent politicians, parties and communities are more than capable of knowing whether they are likely to stand to lose or gain under various "difference-blind" rules. In short, the situation is not one in which the parties are blind to their likely future strengths and weaknesses under the new rules. For that reason we are inclined to doubt that there is likely to be cross-community consent to change the cross-community consent rules, as would be required by the mandate of the 1998 Agreement, and by its legislative enactment. We cannot identify an equilibrium-qualified majority decision-making rule likely to be agreed by a majority among nationalists, unionists and others respectively. The existing rules protect most the communities that have been most in conflict, and the conflict-regulating effects which they have produced also serve to protect the "others" who want to advance a different politics. For these reasons, we regard the cross-community rules as fully within the margin of appreciation that should be allowed to democratic power-sharing polities (especially because in this case the others are fully protected in the franchise, access to office, their ability to expand their support, in their civil and human rights, and because we know that it can be formally mathematically proven that no voting rule or decision-rule can meet all the desirable properties that democrats would want such rules to have (Arrow: 1963 (1951)).

Lastly, we observe that although the Petition of Concern procedure can be used to subject any decision of the Assembly to these cross-community consent requirements, the procedure has been used relatively sparingly. On the last count (by Schwartz in January 2012), the procedure had only been used 22 times. We have observed that the Petition of Concern has occasionally been abused to block decisions which have nothing to do with community-

specific vital nationalist or unionist interests. Regarding this possibility, we would encourage the Assembly to consider ways in which it might give its Presiding Officer in conjunction with a suitably composed committee of the Assembly means to inhibit what we might call pseudo-petitions of concern. We would not welcome any provision for judicial review of the Petition of Concern procedure, because we think that it is vital, so far as possible, for the consociational partners to make decisions about their joint fate jointly, without calling in outside agencies, such as courts or the two sovereign governments, to resolve matters that the Agreement establishes as being within the jurisdiction of the consociational partners themselves. Should provision for judicial review of a Petition of Concern be considered important by the Assembly, which we recommend against, then we think it would be important for any such provision to be clearly set within and constrained by the language and ethos of the 1998 Agreement.

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Professor McCrudden - Legality of the current arrangements

Legality of the current arrangements: equality and human rights issues

1. We did not include in our submission any discussion of the equality or human rights implications of the current, or possible future, arrangements. We have noted, however, that the Northern Ireland Affairs Committee, in its recent call for evidence, has asked specifically whether there are any equality and human rights considerations that should be brought to its attention. It might also be useful to this Committee, therefore, if I briefly touched on these issues. I am happy to clarify further the points I am about to make, if necessary. For obvious reasons, this part of our evidence is in my name only.

2. The general conclusion, before explaining why I reach this conclusion, is that the likelihood of equality law, or of human rights law, being the grounds for any successful challenge to the current arrangements is so negligible that the Committee would be justified in dismissing it. I shall concentrate on the implications of the European Convention on Human Rights for the current arrangements. There are two issues that we should distinguish.

3. The first is whether the mere requirement of parties to register as 'unionist', 'nationalist' or 'other', is itself a breach of human rights requirements, being a breach of Article 8 of the Convention, protecting 'private life', or Article 9, protecting freedom of religion. I am aware that a question was asked in the Assembly on the effect of recent ECtHR case law on monitoring in the fair employment context some years ago, which might be thought to raise somewhat equivalent issues.[1]

4. In my view, the relevant case law of the ECtHR poses no threat to the requirement on parties to choose a designation in the Assembly. The cases in which the European Court of Human Rights objected to requirements to disclose affiliations and identities all involved the forced disclosure of religious or 'ethnic' identities, and it is by no means clear that the Court would regard 'unionist', 'nationalist' or 'others' as ethnic classifications (although there is some possibility that they might).[2]

5. Even if the Court were to view designations as 'ethnic' classifications, the other elements of these cases comes into play. All the relevant cases in which claims have been successful on these grounds have involved individuals,[3] but the designation requirements for the Assembly relate to parties, not individuals. The party designations in the Assembly are chosen, based on self-identification, rather than imposed.[4] There can be no objection to the procedural fairness of the process of designation.[5] There are strong prudential justifications for the system,[6] as we set out in our Memorandum. It would, in short, be a dramatic departure from precedent were the Court to regard the Assembly designation requirements as by themselves contrary to the Convention, and my professional judgment is that they would not.

6. The second major issue is whether the other practices the Committee is considering would amount to a breach of Article 3 of Protocol 1 taken alone or in combination with Article 14. Article 3 of Protocol 1 protects the right to fair elections; Article 14 prohibits discrimination.

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1 AQW 6552/10, Dr Stephen Farry (on the implications of Ciubotaru v Moldova, application no. 27138/04).

2 Sejdi´c v Finci v Bosnia and Herzegovina, application nos. 27996/06 and 34836/06.

3 The relevant case law includes the following cases: Sinan Isik v Turkey, application no. 21924/05; Ciubotaru v Moldova, application no. 27138/04; Wasmuth v Germany, application no. 12884/03.

4 Sinan Isik, above

5 Ciubotaru, above.

6 Wasmuth, above.

7. As regards the arrangements for the appointment of the Executive, the legal position is straightforward. Article 3 of Protocol 1 does not apply to the formation of an Executive, only to the right to vote for and to be elected to the Assembly.[7] Article 14 does not apply, because it is not a stand-alone prohibition of discrimination; it would have to engage some other right; Article 3 of Protocol 1 seems to be the only possible candidate, and we have seen it does not apply. So there appears to be no legal basis for challenging the formation of the Executive under human rights law in this respect.[8] In any event, the system of proportional and sequential allocation of ministerial portfolios is difference blind; it does not, on its face, allocate on the basis of religion or ethnicity; nor does it, of course, exclude the "others" from gaining ministerial portfolios.

8. As regards the election of the First and Deputy First Minister, you will be aware that the 1998 Agreement specified that these posts would be held only by a designated unionist and a designated nationalist. The subsequent rule, agreed at St Andrews in 2006, changed that system. The post of First Minister is now awarded to the largest designation in the Assembly (whether nationalist, unionist or other), and the Deputy First Minister post is awarded to the second largest designation in the Assembly (whether nationalist, unionist or other). Therefore, the method now adopted, after St Andrews, is 'difference-blind', meaning that there is no prohibition on 'Others' being elected as First or Deputy First Minister.

9. As regards the arrangements requiring unionist and nationalist agreement to any important decision in the Assembly, by providing for qualified majority rules, we have already accepted that these have the effect of rendering the legislative votes of those self-designating as "others" less likely to be pivotal. Does this amount to a breach of Article 1 of Protocol 1 on the ground that the vote cast by a voter for a candidate of a party that will register as 'Others' is of less value in comparison with that of a voter voting for a unionist or nationalist candidate?

10. The answer to this question is more complicated because it is clear that Article 1 of Protocol 1 does apply, and therefore that Article 14 would apply as well, unlike in the context of the selection of the Executive or the First and Deputy First Ministers. It is also more complicated legally because of the decision of the ECtHR in Sejdic and Finci v Bosnia, in which aspects of the constitutional arrangements agreed at Dayton to settle the civil war in Bosnia were challenged. The decision of the Court was that constitutional prohibitions on "others", that is non-Constituent Peoples, from being able to stand for the upper-house of the Federal Parliament were contrary to the Convention in so far as they prevented a self-identified Jew or Roma, who did not wish to self-identify as one of the Constituent Peoples, from standing.[9]

11. The Northern Ireland arrangements would, nevertheless, survive any challenge on these grounds under the Convention. The main reason, again, is that the rules on designation are not based on 'ethnicity' or religion; they refer to national identification. Given that no 'suspect classification' (such as 'ethnicity' or religion) is used, requiring heightened scrutiny by the Court, the default rule applies. This is that electoral systems, the right to vote and the right to be elected, are all matters within national competence and expertise, to which the Court generally gives a wide margin of appreciation.[10] It is also relevant that the Dayton agreement was never subject to democratic approval, unlike the Belfast-Good Friday Agreement.

12. In conclusion, whatever the merits or demerits of the existing arrangements on political, prudential, or ethical grounds, there is no good reason under equality or human rights law to depart from these arrangements.

Christopher McCrudden, 4th March 2013

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7 Sejdi´c and Finci, above.

8 The United Kingdom has not ratified Protocol 12 of the ECHR, which would create a stand-alone non-discrimination requirement.

9 For a detailed discussion of this case and its implications, see Christopher McCrudden and Brendan O'Leary, Courts and Consociations: Human Rights versus Power-Sharing (OUP, 2013).

10 Dating back to Mathieu-Mohin and Clerfayt v Belgium (1988) 10 EHRR 1.

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Supplementary Evidence to the Northern Ireland Assembly

From Professor Brendan O'Leary

In the joint submission made by Christopher McCrudden, John McGarry, Brendan O'Leary and Alex Schwartz we did not consider the formal possibility that the size of the Assembly might change. I have since run some simulations regarding the likely consequences of changing the number of MLAs returned per existing constituency (using the 2011 first preference voting patterns for these purposes). There may be some arithmetical errors in my simulations in particular constituencies because the analyses were performed quickly, but the general patterns suggested are likely robust. The analyses here supports the arguments that will be presented in my oral statement on behalf of our joint submission.

Brendan O'Leary

Simulating the Impact of Reducing the Number of MLAs Returned Per Constituency based on the 2011 Elections for the Northern Ireland Assembly.

Distribution of Seats in the Assembly

Suppose that the number of MLAs in the Assembly is reduced from the current number of 108 to 90, with five members elected in each constituency rather than the current six members (Scenario 1). If the electorate voted as it did in 2011 then following the method described below comparative party and designation losses would be as shown in Table 1.

Unionists		Nationalists		Others
DUP	-7	SF	-4	
UUP	-6	SDLP	-1	
TOTAL	-13	TOTAL	-5	

Table 1. Projected losses with existing constituencies returning 5 members
Source: Table 6 and the Appendix below provide specific constituency predictions

Under this first scenario there would be 38 nationalist MLAs out of a total of 90, i.e. **42.2%**, compared with their present share of 43 out of 108, i.e. **39.8%**. By contrast there would be 42 unionist MLAs if we count Mr McClarty as an independent Unionist, i.e. **46.7%**, compared with **50.9%** at present. The percentage share of others (Green and APNI) would rise to **11.1%** from **9.3%** at present, and their number of MLAs would stay the same.

Suppose instead that the number of MLAs is reduced from the current number of 108 to 72, with four members elected in each constituency rather than the current six members (Scenario 2). If the electorate voted as it did in 2011 then following the method described below party and designation losses would be as shown in Table 2.

Unionists		Nationalists		Others	
DUP	-12	SF	-11	APNI	-3
UUP	-5	SDLP	-3	Green	-1
Ind Unionist	-1				
TOTAL:	-18	TOTAL:	-14	TOTAL:	-4

Table 2. Projected losses with existing constituencies returning 4 members
Source: Table 6 and the Appendix below provide specific constituency predictions

Under this second scenario there would be 31 nationalist MLAs out of a total of 72, i.e. **43.1%**, compared with their present share of 43 out of 108, i.e. **39.8%**. By contrast there would be 37 unionist MLAs, i.e. **51.4%**, compared with **50.9%** at present. The percentage share of others (Green and APNI) would fall to **6.9%** from **9.3%** at present, and the other MLAs would consist entirely of APNI members.

Consequences for Executive Formation

Scenario 1.
If the Northern Ireland Assembly were reduced in size by 18 MLAs and the electorate otherwise voted as they did in 2011 (according to the projected losses in Table 1) then the d'Hondt allocation process for the executive would run as shown in Table 3.

divisors	DUP		UUP		APNI		SDLP		SF	
	S	M	S	M	S	M	S	M	S	M
1	31.0	**1**	10.0	**7**	8.0	**8**	13.0	**4**	25.0	**2**
2	15.5	**3**	5.0		4.0		6.5		12.5	**5**
3	10.3	**6**	3.3		2.7				8.3	**9**
4	7.8	**10**								
5	6.2									

Table 3. Running d'Hondt with an Assembly reduced to 90 MLAs
S= Seats. Numbers in bold under M are Ministries won by each party and their order of "pick."

In this first scenario with a 10 member executive there would be 4 DUP, 1 UUP, 3 SF, 1 SDLP and 1 APNI Ministers, and a balance of 5 unionists, 4 nationalists and 1 other. With a six member executive there would be 3 DUP, 2 SF and 1 SDLP Ministers, i.e. 3 unionists and 3 nationalists and no others.

Running this scenario under Sainte-Lagüe (using odd number divisors of 1, 3, 5 etc) with a 10 member executive there would be 4 DUP, 1 UUP, 3 SF, 1 SDLP, and 1 APNI ministers, and a balance of 5 unionists, 4 nationalists and 1 other; whereas under Sainte-Lagüe with a 6 member executive there would be 3 DUP, 2 Sinn Fein and 1 SDLP Ministers, a balance of 3 unionists and 3 nationalists and no others. Sainte-Lagüe combined with a smaller executive would enhance nationalists' prospects of having parity of representation with unionists. The ambition to have a smaller executive is simply inconsistent with the desire to improve the prospect of representation of others in the executive since not even the Sainte-Lagüe rule can help them.

Scenario 2.

If the Northern Ireland Assembly were reduced in size by 36 MLAs and the electorate otherwise voted as they did in 2011 (according to the projected losses in Table 2) then the d'Hondt allocation process for the executive would run as set out in Table 4 below. With a 10 member executive there would be 4 DUP, 1 UUP, 3 SF, and 2 SDLP Ministers, and a balance of 5 unionists, and 5 nationalists, and no others; and with a six member executive there would be 2 DUP, 1 UUP, 2 SF and 1 SDLP Ministers, i.e. 3 unionists and 3 nationalists and no others.

	DUP		**UUP**		**APNI**		**SDLP**		**SF**	
divisors	S	M	S	M	S	M	S	M	S	M
1	26	**1**	11	**5**	5		11	**4***	18	**2**
2	13	**3**	5.5		2.5		5.5	**10**	9	**6**
3	8.7	**7**	3.7		1.7		3.7		6	**9**
4	6.5	**8**							4.3	
5	5.2								3.6	
6	4.3									
7	3.7									

Table 4. **Running d'Hondt with an Assembly reduced to 72 MLAs**
S= Seats. Numbers in bold under M are Ministries won by each party and their order of "pick."

Running this scenario under Sainte-Lagüe (using odd number divisors of 1, 3, 5 etc) with a 10 member executive there would be 3 DUP, 2 UUP, 2 SF, 2 SDLP, and 1 APNI ministers, i.e. a balance of 5 unionists, 4 nationalists and 1 other; whereas under Sainte-Lagüe with a 6 member executive there would be 2 DUP, 2 Sinn Fein, 1 SDLP and 1 UUP Ministers, a balance of 3 unionists and 3 nationalists and no others. Once again, we can see that Sainte-Lagüe combined with a smaller executive would enhance nationalists' prospects of having parity of representation with unionists, and that the ambition to have a smaller executive is simply inconsistent with the desire to improve the prospect of representation of others in the executive.

Reasonable conclusions from the two scenarios

1. Regarding distribution by designation, the first scenario results in the proportion of nationalist MLAs increasing, and the proportion of unionist MLAs decreasing. Others would increase, very slightly, but not in their number. The second scenario results in the proportion of both nationalist and unionist MLAs increasing. The proportion of others would decrease.

2. Any significant reduction in the size of the Assembly (e.g. by 36 members) would enhance the likelihood that APNI would not win a place in the executive, whether the executive is large (10) or small (6).

3. A smaller executive (of six) makes parity in the number of unionist and nationalist ministers far more likely, and would almost certainly remove others from representation in the executive.

4. The use of Sainte-Lagüe can only marginally enhance the likelihood that others would get a higher pick among executive portfolios, and would not significantly compensate them for loss of seats in a much reduced Assembly. The use of Sainte-Lagüe at present would seem likely to enhance the prospects of the nationalist compared with the unionist bloc.

Method Used to Make These Simple Simulations

Exact simulations of the impact of changes in "district magnitude" under STV can not be executed without complete knowledge of each voter's full array of preferences expressed in the ballot papers cast in each constituency in Northern Ireland in 2011, and detailed knowledge of movements in the electoral register and changes in every constituency's demographics. A comprehensive simulation would also allow party strategies to change following changes in district magnitude, e.g. parties would be more likely to run fewer candidates as the number of candidates to be elected falls.

Fortunately, however, there is a simple way of approximating the highly likely consequences of changes in district magnitude, which does not involve making guesses about the number of candidates who will run, or the intricate details of the transfer of ballot papers. The method is to extrapolate from the 2011 elections by calculating the approximate number of Droop quotas that would be won by each party if there were six, five or four candidates to be elected, and then using the size of these quotas to predict outcomes. The reason this works so well is that the best simple predictor of the number of seats a party will win in a multi-member constituency is the number of Droop quotas (1/(n+1)+1) it has at the first stage of the count (where n is the number of people to be elected in the constituency). The Droop quota can be treated as 1/n+1 for approximation. The number of quotas a party has is calculated by taking its first preference vote share expressed as a percentage and then dividing it by its Droop quota (here expressed to one decimal place).

Table 5 below provides a worked example from East Antrim, based on the 2011 first preference vote totals by party. The Droop quotas have been calculated for three outcomes (6, 5 or 4 candidates being elected). The numbers inside square brackets predict the number of seats each party would win under each scenario assuming voters vote the same way as in 2011. In 2011 with a six member constituency the quota was 1/7 = 14.3% when rounded to one decimal place; it would be 16.7% for a five member constituency, and 20% for a four member constituency. The operative assumption made in the calculations here is that a party with more than half a quota may win a seat, providing its quota total is the largest remainder in the count, having already allocated a seat to each party that has won a whole quota. Another background assumption is that voters follow party allegiance in their preference rankings (a reasonable assumption in Northern Ireland).

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	8.2	4.6	15.5	2.3	16.9	46.2	6.4
6 member district (quotas)	0.6 [1]	0.3	1.1 [1]	0.2	1.2 [1]	3.2 [3]	0.4
5 member district (quotas)	0.5	0.3	0.9 [1]	0.1	1.0 [1]	2.8 [3]	0.4
4 member district (quotas)	0.4	0.2	0.8 [1]	0.1	0.8 [1]	2.3 [2]	0.3

Table 5. East Antrim Simulations by Quota strength.
Numbers inside square brackets predict number of seats each party is expected to win.

As Table 5 shows this method would have correctly predicted in 2011 that the DUP would win 3 seats in East Antrim (with 3.2 quotas); the UUP 1 seat (with 1.2 quotas); the APNI 1 seat with 1.1 quotas, and SF 1 seat with .6 of a quota. On these assumptions the method predicts that in this constituency SF would lose a seat if the constituency was reduced to returning five MLAs, and that if it became a four seat constituency then both SF and the DUP would lose a seat compared with the status quo. Readers will also note that when six members are being returned all unionist designated parties (the UUP, DUP and Other Unionists) have 4.8 quotas [which would predict that they would return 4 members, correctly]; when five members are being returned they would have 4.2 quotas [which would predict that they would return 4]; and when four members are being returned they would have 3.4 quotas [which would predict they would return 3]. So this method is useful both for predicting party outcomes and outcomes by designation.

What we have done in the Appendix that follows is to repeat the same exercise for the 17 other constituencies. The Appendix shows that only in one constituency did the method employed here retrodict manifestly the wrong outcome for any seat allocation in 2011: it

suggests that the DUP would have won 2 seats and the SDLP 1 seat in South Belfast, when the result was the opposite. In Upper Bann the method would have retrodicted SF winning two seats not one, but that can be discounted as SF significanttly mismanaged its vote across its candidates. Getting one result manifestly wrong (and one understandably wrong) across two parties among 108 seat allocations shows that the method produces a very impressive approximation of real-world allocation. All are aware that the transfer pattern in South Belfast in 2011 was unusual.

Table 6. Summary of projected seat losses by party by constituency with existing constituencies now returning 5 MLAs (scenario 1).

The comparison is with 2011 outcomes.
Source of calculation: See Appendix.

Party	SF	SDLP	APNI	Others	UUP	DUP	Other Unionists
East Antrim	-1						
North Antrim					-1	-1	
South Antrim						-1	
North Belfast						-1	
East Belfast					-1		
South Belfast							
West Belfast	-1						
East L'derry						-1	
Foyle		-1					
West Tyrone		-1					
Fermanagh & West Tyrone	-1	+1				-1	
Mid Ulster					-1		
Newry & Armagh	-1						
South Down					-1		
Upper Bann					-1		
Lagan Valley						-1	
Strangford					-1		
North Down						-1	
TOTAL	-4	-1			-6	-7	

Summary: Projected Losses: SF 4, SDLP 1 Nationalists 5
Projected Losses: DUP 7, UUP 6 Unionists 13

Table 7. Summary of projected seat losses by party by constituency with existing constituencies now returning 4 MLAs (scenario 2)

The comparison is with 2011 outcomes

	SF	SDLP	APNI	Others	UUP	DUP	Other Unionists
East Antrim	-1					-1	
North Antrim					-1	-1	
South Antrim			-1			-1	
North Belfast	1					-1	
East Belfast			-1			-1	
South Belfast	-1	-1					
West Belfast	-2						
East L'derry						-1	-1 [UUP]
Foyle	-1	-1					
West Tyrone	-1	-1					
Mid Ulster	-1				-1		
F'agh & S. Tyrone	-1					-1	
Newry & Armagh	-1					-1	
South Down	-1				-1		
Upper Bann					-1	-1	
Lagan Valley			-1			-1	
Strangford					-1	-1	
North Down				-1		-1	
TOTAL	-11	-3	-3	-1	-5	-12	-11

Summary.	Projected Losses	SF 11, SDLP 3 APNI 3, Green 1, UUP 5, DUP 12, Other Unionist 1	Nationalists 14 Others 4 Unionists 18

Appendix 1. Constituency Details

Simulation details using all constituencies with Six, Five or Four Members returned extrapolating from the 2011 elections and calculating Droop quotas

EAST ANTRIM (method retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	8.2	4.6	15.5	2.3	16.9	46.2	6.4
6 member district (quotas)	0.6 [1]	0.3	1.1 [1]	0.2	1.2 [1]	3.2 [3]	0.4
5 member district (quotas)	0.5	0.3	0.9 [1]	0.1	1.0 [1]	2.8 [3]	0.4
4 member district (quotas)	0.4	0.2	0.8 [1]	0.1	0.8 [1]	2.3 [2]	0.3

NORTH ANTRIM (method retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	15.3	9.1	4.6	-	11.7	47.6	11.7
6 member district (quotas)	1.1 [1]	0.6	0.3		.8 [1]	3.3 [3]	.8 [1]
5 member district (quotas)	0.9 [1]	0.5	0.3		0.7	2.9 [3]	0.7 [1]*
4 member district (quotas)	0.8 [1]	0.5	0.2		0.6	2.4 [2]	0.6 * [1]

* Allocated in a tie-breaker with the UUP; the TUV had a higher first preference vote total in this constituency

SOUTH ANTRIM (method retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	14.5	10.6	14.2	-	17.8	38.3	4.7
6 member district (quotas)	1.0 [1]	0.7	1.0 [1]	-	1.2 [1]	2.7* [3]	0.3
5 member district (quotas)	0.9 [1]	0.6	0.9 [1]	-	1.1 [1]	2.3 [2]	0.3

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
4 member district (quotas)	0.7** [1]	0.5	0.7	-	0.9 [1]	1.9 [2]	0.2

* Last seat allocated to the DUP in a tie-breaker with the SDLP because the DUP first preference vote divided by three in this constituency was higher than the SFLP's first preference vote share for its single candidate
* Allocated to SF because it had a higher 1st preference vote total than APNI

NORTH BELFAST (method retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	31.9	14.0	6.3	4.5	8.2	37.1	-
6 member district (quotas)	2.2 [2]	1.0 [1]	0.4	0.3	0.6	2.6 [3]	
5 member district (quotas)	1.9 [2]	0.8 [1]	0.4	0.3	0.5	2.2 [2]	-
4 member district (quotas)	1.6 [1]	0.7 [1]	0.3	0.2	0.4	1.9 [2]	

EAST BELFAST (method retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	3.2	0.8	26.3	2.7	9.7	44.0	13.1
6 member district (quotas)	0.2	0.1	1.8 [2]	0.2	0.7 [1]	3.1 [3]	0.9*
5 member district (quotas)	0.2	0.0	1.6 [2]	0.2	0.6	2.6 [3]**	0.8
4 member district (quotas)	0.2	0.0	1.3 [1]	0.1	0.5 [1]	2.2 [2]	

* The method did not fail to predict on this occasion because the "Other Unionists" category conflates the PUP and the TUV, which had different policy platforms, and both of which were behind the UUP in first preference vote totals. ** Unless local circumstances change the method would predict the UUP would lose to the DUP for the last available unionist seat.

SOUTH BELFAST (method does not retrodict perfectly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	12.5	23.9	19.8	5.2	13.6	24.3	0.7
6 member district (quotas) *	0.9 [1]	1.7 [1]	1.4 [1]	0.4	1.0 [1]	1.7 [2]	0
5 member district (quotas)	0.8 [1]	1.4 [1]	1.2 [1]	0.3	0.8 [1]	1.5 [1]	0
4 member district (quotas)	0.6	1.3 [1]	1.0 [1]	0.3	0.7 [1]	1.2 [1]	0

* The method anticipating 2 DUP rather than 2 SDLP seats: in this case the SDLP's Conal McDevitt benefitted from a highly unusual pattern of transfers.

WEST BELFAST (method retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	70.8	13.5	0.5	7.6	1.7	6.1	-
6 member district (quotas)	5.0 [5]	0.9 [1]	0.0	0.5	0.1	0.4	-
5 member district (quotas)	4.2 [4]	0.8 [1]	0.0	0.4	0.1	0.4	-
4 member district (quotas)	3.5 [3]	0.7 [1]	0.0	0.4	0.1	0.3	-

EAST LONDONDERRY (method retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	21.1	14.9	5.5	-	8.4	36.9	13.1
6 member district (quotas)	1.5 [1]	1.0 [1]	0.4		0.6	2.6 [3]	0.9* [1]
5 member district (quotas)	1.3 [1]	0.9 [1]	0.3		0.4	2.2 [2]	.5* [1]
4 member district (quotas)	1.1 [1]	0.7 [1]	0.3		0.4	1.8 [2]	0.4

* Former UUP MLA David McClarty was elected as an independent. His first preference vote total has been used to calculate what would happen if five or four members were returned. There is clearly a whole UUP

quota in the constituency for five members (and close to one for four) if the UUP persuades Mr McClarty to rejoin it.

FOYLE (method retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	34.0	35.3	0.9	11.5	-	18.4	-
6 member district (quotas)	2.4 [2]	2.5 [3]	0.1	0.8*		1.3 [1]	
5 member district (quotas)	2.0 [2]	2.1 [2]	-	.5**		1.1 [1]	
4 member district (quotas)	1.7*** [1]	1.8 [2]	-	0.4	-	0.9 [1]	

* Highest among the others was Mr. Eamon McCann with just over half a quota, so method would have been right. The SDLP candidate won its third seat through DUP transfers. ** McCann's quota is calculated. *** The method predicts SF would lose a seat if 4 members were returned, but in fact they would likely retain a 2nd member at the expense of the DUP on McCann's transfers.

WEST TYRONE (method retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	50.1	8.5	2.2	5.7	10.4	23.1	-
6 member district (quotas)	3.5 [3]	0.6 [1]	0.2	0.4	0.7 [1]	1.6 [1]	-
5 member district (quotas)	3 [3]	0.5	0.1	0.3	0.6 [1]	1.4 [1]	
4 member district (quotas)	2.5* [2]	0.4	0.1	0.3	0.5 [1]	1.2 [1]	

* In a four member contest if SF was to attract any SDLP transfers it would win three of the seats, but the method predicts just two for nationalists in this constituency when just four are returned.

MID ULSTER (method retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	49.2	14.7	0.9	3.4	10.3	16.7	4.9
6 member district (quotas)	3.4 [3]	1.0 [1]	0.1	0.2	0.7 [1]	1.2 [1]	0.3
5 member district (quotas)	3.0 [3]	0.9 [1]	0.1	0.2	0.6	1.0 [1]	0.3

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
4 member district (quotas)	2.5 [2]	0.7 [1]	0	0.1	0.5	0.8 [1]	0.2

FERMANAGH & SOUTH TYRONE (method retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	40.3	9.6	1.8	2.1	19.3	24.4	2.1
6 member district (quotas)	2.8 [3]	0.7	0.1	0.1	1.3 [1]	1.7 [2]	0.1
5 member district (quotas)*	2.4 [2]	0.6 [1]	0.1	0.1	1.2 [1]	1.5 [1]	
4 member district (quotas)	2.0 [2]	0.5	0.1	0.1	1.0 [1]	1.2 [1]	

* With five members being returned the final seat would likely be determined by transfers, with the DUP and SDLP fighting for the last seat. The method predicts the SDLP would win the last seat.

NEWRY & ARMAGH (method retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	40.8	23.5	1.6	0.2	18.7	13.1	2.0
6 member district (quotas)	2.9 [3]	1.6 [1]	0.1	0	1.3 [1]	0.9 [1]	0.1
5 member district (quotas)	2.4 [2]	1.4 [1[	0.1	0	1.1 [1]	0.8 [1]	0.1
4 member district (quotas)	2.0 [2]	1.2 [1]	0.1	0	0.9 [1]	0.7	

SOUTH DOWN (method retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	30.9	35.8	2.1	2.7	10.6	12.5	5.6
6 member district (quotas)	2.2 [2]	2.5 [2]	0.1	0.2	0.7 [1]	0.9 [1]	

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
5 member district (quotas)	1.9 [2]	2.1 [2]	0.1	0.1	0.6	0.8 [1]	
4 member district (quotas)	1.5 [1]	1.8 [2]	0.1	0.1	0.5	0.6 [1]	

UPPER BANN (method almost retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	27.2	11.4	6.5	-	24.6	27.1	3.0
6 member district (quotas)	1.9 [1]*	0.8 [1]	0.5	-	1.7 [2]	1.9 [2]	0.2
5 member district (quotas)	1.6 [1]	0.7 [1]	0.4	-	1.5 [1]	1.6 [2]	0.2
4 member district (quotas)	1.4 [1]	0.6 [1]	0.3	-	1.2 [1]	1.4 [1]	0.2

* In 2011 there was vote mismanagement by SF, when its two candidates's total of first preferences was very close to two quotas, but they lost out to the SDLP.

LAGAN VALLEY (method almost retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	3.4	6.1	12.4	1.7	20.4	53.1	2.9
6 member district (quotas)	0.2	0.4	0.9 [1]	0.1	1.4 [1]	3.7 [4]	0.2
5 member district (quotas)	0.2	0.4	0.7 [1]	0.1	1.2 [1]	3.2 [3]	0.2
4 member district (quotas)	0.2	0.3	0.6	0.1	1 [1]	2.7 [3]	0.1

STRANGFORD (method almost retrodicts correctly for 2011)

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
% 1st pref vote in 2011	3.0	8.5	14.4	-	20.4	48.9	4.8

	SF	SDLP	APNI	Others	UUP	DUP	Oth U
6 member district (quotas)	0.2	0.6	1.0 [1]	-	1.4 [2]	3.4 [3]	0.3
5 member district (quotas)	0.2	0.5	0.9 [1]	-	1.2 [1]	2.9 [3]	0.3
4 member district (quotas)	0.2	0.4	0.7 [1]	-	1.0 [1]	2.4 [2]	0.2

NORTH DOWN (method almost retrodicts correctly for 2011)

	SF	SDLP	APNI	Green*	UUP	DUP	Oth U
% 1st pref vote in 2011	1.0	2.7	18.6	7.9	10.4	44.2	4.8
6 member district (quotas)	0.1	0.2	1.3 [1]	0.6 [1]	0.7 [1]	3.1 [3]	0.3
5 member district (quotas)	0.1	0.2	1.1 [1]	0.5 [1]	0.6 [1]	2.6 [2]	0.3
4 member district (quotas)	-	0.1	0.9 [1]	0.4	0.5 [1]	2.2 [2]	0.2

* I have excluded the rest of the Others to show the winning Green candidiate

Dr O'Malley – Dublin City University

Notes of provisions for Opposition in the Northern Ireland Assembly

Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity.

Dr. Eoin O'Malley
School of Law and Government
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26th March 2013

The role of the opposition in democratic systems might be threefold: observing, interrogating and proposing alternatives. So first it should, keep an eye on government for us, because most people have better things to do with their time. The opposition should tell us what the government is doing, thus reducing government's temptation to tell lies. As well as observe and report, second, the opposition should also challenge and question government. It should poke about at government, generally making being in government less comfortable than it otherwise would be. If the government proposes something, the opposition's job is to ensure that poor proposals are exposed and an embarrassed government withdraws or amends them (or better still doesn't propose poor or self-serving policies in anticipation of being embarrassed). Government should be able to defend and justify its decisions and the opposition's job is to make sure that we hear these justifications. Finally, the opposition is meant to provide an alternative government. So it should come up with proposals as to what it would do in government and also appear competent enough to be a credible alternative.

A significant advantage governments usually have over opposition is the huge mismatch in resources between government and opposition. Each minister has a small army of civil servants working for him or her. She can come up with well-costed, credible policy proposals. Opposition spokespeople, on the other hand, are more or less on their own. Opposition parties are generally now much better funded than they were, and now have their own research and policy offices. But their policy capacity is often limited and much of the research they engage in is market research. MPs (used generically) often have parliamentary assistants and also have access to a library and research service, but the level of support is usually small compared to the support Government has – an exception to this might be the US. Opposition spokespeople are battling virtually alone against the impressive armoury a minister can bring to bear. It's no wonder opposition parties can appear inept.

The Northern Ireland Assembly, of course, is unusual in that there is no formal opposition as all the main parties are now part of the executive. So there is no alternative government and there is no party without access to departmental civil servants. This might not seem like a problem, as everyone has broadly equal access to resources. The access to resources may be reasonably evenly divided *across* all the policy areas, but *within* specific policy areas the minister is very powerful. Ministerial places are divided according to the d'Hondt formula and there may be good reasons to retain this, but it does mean that cabinets are formed in ways that are not the case in 'normal' democracies. There is no policy agreement made between coalition partners in advance of forming government on how to govern over the course of their term in office. Although there is limited research on the operation of the cabinet in Northern Ireland, it does not seem to do so according to the normal doctrine governing ministerial responsibility in cabinet government: confidence, confidentiality and unanimity.

This means that one place where accountability could take place – in cabinet – probably does not happen as it should, as it appears ministers have a great deal of autonomy within their own system. This means it is even more important that the legislature is strong enough to act as a brake on the executive in Northern Ireland. So how does one achieve this? In one sense Northern Ireland is spared a problem most Westminster-style democracies suffer from: that the government has a guaranteed majority in parliament which is cohesive, loyal and

led from within the government. Unless some form of logrolling exists, whereby say a Sinn Féin minister is not thoroughly questioned by DUP MLAs because the DUP ministers have an agreement to get this treatment reciprocated (and I've heard of no evidence that this is the case) the majority of MLAs have a strong incentive to thoroughly question proposals from each minister, as the minister will be from a different party.

The Northern Ireland Assembly also has advantages over other chambers such as Dáil Éireann, where the Ceann Comhairle (Speaker) is effectively chosen by the government of the day. The Speaker in the Assembly is not in the gift of the Executive and can be a genuine protector of the rights of the Assembly members.

That said the Assembly and Executive Review Committee has suggested a number of areas that might be looked at to consider the strengthening of parliamentary opposition and oversight in the Northern Ireland Assembly. I should point out that this is written without any great knowledge of the operation of the Assembly, but from more general knowledge on the role of parliament in government oversight. Specifically the Committee suggests three areas for consideration, which I shall take in turn.

a) Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties;

The suggestion that opposition parties should be provided with greater financial resources is, on the face of it, as sensible one. Especially when one considers that there has been a shift towards this throughout Europe. There are I think some issues that need to be considered. First, in the specific Northern Ireland context, part of the problem is that there are no non-executive or opposition parties. This is the issue that the committee is trying to address, so it would not be much use to provide financial support for these parties, unless one thought that this might encourage parties not to take up seats in the executive. This, however, would have consequences for the power sharing role of the current institutional structures.

A second, more general reason to be wary of the solution of providing extra financial resources to parliamentary parties is that the money will not necessarily be spent on providing executive oversight. Parties have an incentive to win elections, and so more resources provided to them will be directed to electoral ends. One can put in place rules to try to prevent this, but these might be unwieldy and it may be easier to provide the relevant services directly. So for instance, providing greater parliamentary support to MLAs might be desirable, we can see from other countries that parliamentary assistants tend to work as constituency assistants rather than provide policy or legislative support.

Furthermore, parties in Northern Ireland tend to be highly leadership-controlled. Providing a pay with extra financial support will probably mean that the party's leadership (which will be in the executive) will be provided extra resources, thus strengthening the executive vis-a-vis the assembly.

A better way to provide the Assembly with better resources to observe and interrogate executive proposals and to make alternative proposals would to be provide direct support in the areas that one would expect them to want support if they were acting as if they were an opposition. That is to provide policy making capacity and support for legislative proposals. The most logical way to do this would be to enhance the research service provided to MLAs and to committees. This service could also be split into a number of areas. One which provides economic advice and independently costs Executive or members' proposals (along the line of the Congressional Budget Office in the US). Another could provide policy advice and alternative policy proposals. A further section could provide some of the services that the parliamentary draftsman provides the executive. We should also see Assembly committees being given much greater support than they currently receive.

b) Arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition; and

As I understand it currently works in the Northern Ireland Assembly chairs are assigned using the d'Hondt method. It is normal that committee chairs are allocated proportionately to the size of the parties. This has a disadvantage in that it usually means the committee chairs are from the government party/ies.

I also understand that there is some effort made to ensure that the chairs and deputy chairs of committees a not from the same party. This could be guaranteed if the assumption of proportionality were removed from the allocation of committee chairs. Indeed allowing allocation on the basis of parties gives some patronage power to the party leadership, which enhances the executive control of the assembly. A solution might be to have voting on the allocation of committee chairs by secret ballot, where the candidates for each committee post must not be members of the same party as the relevant minister.

c) Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.

Agenda setting is an important source of power in parliamentary democracy. For instance, one of the more important resources a parliament has is time. If a proposal has no time to be debated and passed, it can effectively be vetoed by those who control the time. If some questions or issues cannot be asked or debated the executive will avoid potentially difficult questioning of its own proposals.

Ministers generally will not fear parliament when they know there are limits to the amount of time or questions their interlocutor has. Compare this to a minister facing a Jeremy Paxman or Vincent Browne who can ask the same question again and again, effectively embarrassing the interviewee into giving some answer, or through the publicity they receive, punishing them for a failure to do so.

Parliament too should be a place that politicians fear. Allowing those asking PQs to as more supplementary questions would help, as would clearer censures for misleading or refusing to answer the questions. A stronger Freedom of Information regime would also facilitate more robust and pointed oversight of the executive. Parliamentary rules and the culture of secrecy on these islands tend to be too respectful of office holders; tackling it would go some way to strengthening the Assembly.

One of the reasons parliament tends to be respectful of the executive in Westminster systems is that the executive is made up of party leaders. Then one should try to think of ways to separate the executive and assembly.

Separate Government and Parliament

As it is currently structured, MPs, particularly government MPs (which is more than half of them), have neither the opportunity nor the motive to provide robust oversight of government legislation. The political career path for most MPs and MLAs leads to the Cabinet at its summit. We can reinvigorate our democracy by (metaphorically) opening the doors of government. By giving the Parliament access to more and better information from government and opening government to people from different backgrounds and expertise, we can in the future avoid the type of policy failures that brought us to the political and economic crisis we find ourselves in.

One of the first ways we can increase the motive of the Assembly to oversee the activities of government is to separate them properly. All ministers are MLAs. They spend time together and experience the same problems of re-election. Ministers are the leaders of backbench MLAs' parties. There is a symbiotic relationship where ministers rely on MLAs for parliamentary support, and in return ministers try to deliver electoral success, which

may come in the form of popular policies or through the delivery of political goods, such as services to constituents and their areas.

The UK and Ireland are unusual in requiring all ministers come from parliament. In many countries there is a requirement that ministers resign their seats, if they have one, on their appointment as minister. This makes MPs much less likely to view ministerial office as a career, as taking a ministry risks the potential longevity of life as a parliamentarian. It also means that MPs treat their job as a parliamentarian seriously. This would create a parliamentary class of politicians

The idea that people who are good parliamentarians will make good ministers is silly. The jobs are quite different. One requires one to be a good interrogator, whereas the other needs the ability to bring people along with you.

Separating the Executive and the Assembly will mean that the village atmosphere that exists there will be weakened and a culture where MLAs feel able to question their own party's ministers will ensue. It will strengthen the motive for the Assembly to be a proper overseeing body. If it were possible for ministers to come from other walks of life, we might see ministers with different points of view and because they would not all be career politicians, ministers would be more willing to resign for bad performance or unsuitability for office.

One of the advantages of having ministers who are full-time career politicians is that they have a greater understanding of politics and the political process. It is not the case that people who are successful in one walk of life will automatically succeed in another. For instance, Lech Wał sa was an inspiring leader of a resistance movement but struggled in government. So Michael O'Leary of Ryanair may not make an effective minister, even if one could give him a job. In many European countries, academics are seen as notoriously poor ministers. But even successful ministers sometimes find they do not succeed in a different set of circumstances. And there is no single 'right' type for a political leader. The problems faced by political leaders sometimes are best suited to certain types of personality. So Winston Churchill, regarded by many as washed up, became stunningly successful in the context of war, but then went on to become a poor peacetime prime minister.

Making the Assembly Work

We should also rethink what the purpose of the Assembly is. According to some outdated constitutional theory, parliaments are meant to be legislative bodies. We could admit that parliaments do not make laws and instead enable them to improve and oversee the making of laws. One way to improve how laws are made is to remove the overly partisan nature of legislative debates. It is a general problem that legislation goes through parliament without proper scrutiny. One of the reasons is that it arrives in parliament as agreed government policy. Government parties are then much less likely to (publicly) question the policy and opposition parties are less likely to engage in the constructive improvement of policies. The tone of the debate is partisan and the quality of the debate suffers.

One solution to this problem is if committees can study legislation at a much earlier stage. In some countries there is pre-legislative scrutiny of policy proposals, which still allows the government to set the agenda but gives more time for real scrutiny before mistakes are made. If we assume that rushed legislation tends to be flawed legislation, under this system one will see legislation is more considered and government is more willing to accept improvements. A pre-legislative scrutiny committee could ask expert witnesses to comment on the legislation, thus ensuring more points of view are considered. Critics of this approach say that it takes away the agenda-setting role of parliamentary committees. But this role does not really exist. How many times have the legislative committees produced worthy proposals which have never been delivered?

Another issue mentioned is whether there should be confidence votes in the executive. This is obviously an important aspect of the doctrine of ministerial responsibility. A problem with

introducing one where any new executive is going to be more or less the same as the old one is precisely that – what does it achieve? This is useful where an election can break a deadlock or where the parliament can construct a new executive. However, the current rules of the NI Assembly mean that a new government will be a slight variation in the old one. Thus no deadlock will be broken, but we could have an election which might exacerbate differences between the communities. I'd leave this alone.

Professor Wilford – Queens University Belfast

Assembly and Executive Review Committee
Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

Stakeholder Name	**Telephone Number**			
Professor Rick Wilford				
Stakeholder Address	**Stakeholder Type (Include one or more X)**			
	Registered Political Party		Local Government	
	Academic	x	Government	
	Legislature		Non-Government	
	Other (Please Specify)/ Member of the Public			

Please provide some background information on your role as a stakeholder

Professor of Politics at QUB, Co-Convenor of the NI Devolution Monitoring Project 1999-2009 and currently Director of Legislative Studies and Practice at Queen's. I submitted written and oral evidence to the Committee in the earlier stages of this inquiry

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

(1) **Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons**.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

D'Hondt is one means of realizing the proportionality principle embodied in the NI Act 1998/ GFA and is utterly consistent with the consociational thinking that underpins the institutional design of the Strand One Institutions.

Re Ministerial Positions: The application of the d'Hondt mechanism—its automaticity—in relation to Executive formation carries an (arguable) advantage, namely it precludes any requirement for coalition bargaining in the sense that an eligible party/parties have the right to opt-in to the Executive if it/they so choose: equally, of course, they can choose to opt-out and surrender their Executive role(s), an option that no party has thus far exercised. That does not mean that bargaining/negotiation is wholly excluded: the exact choice of Executive Departments in both 2007 and 2011 was (unlike in 1999) the outcome of informal discussions (and a 'dry-run') among the eligible parties, albeit that the rank ordering of party choice(s) was governed by the d'Hondt formula. The experiences of 2007 and 2011 demonstrated a certain maturing of inter-party relationships, thereby realizing the spirit (and the letter) of both accommodation and of inclusion that informs the wider consociational design.

On the other hand, it can be argued that d'Hondt's apparent advantage dispensing with need for inter-party bargaining over inclusion in the Executive entails the postponement of, inter alia, discussions and negotiations designed to agree the programme for government: that is, they occur in the wake of the relevant election but after the formation of the Executive. In that respect, one might argue that there is something of a disconnect between electors' preferences and the outcome of PfG negotiations, since the latter are conducted behind closed doors and can take some time to conclude which, in turn, can delay the Executive's legislative programme with consequent effects on the Assembly's business/timetable. In the best of all possible worlds or, perhaps as an exercise in 'wishful thinking'—such negotiations could occur in a pre-election period enabling parties, or some, to appeal to the electorate on the basis of a shared platform, thereby ameliorating the apparent 'disconnect' vis a vis the electorate. They could, however, occur in the post-election context, enabling parties to agree a PfG prior to the formal act of nominating the Executive. Neither process seems likely to appeal to the eligible parties. Thus, perhaps what matters as much as the precise formula for allocating the number of Executive seats to the relevant parties is the character of informal, accommodatory politics that animated the distribution of Ministerial portfolios in 2007 and 2011.

Against that more recent background and given the commitment to proportionality, the Committee might contemplate a different formula, namely St Lague, as mentioned in the Research Paper cited at 3.42 above or, indeed, in my earlier evidence to the Committee. As I explained on that occasion, and as noted in the Research Paper, St Lague lends some numerical advantage to smaller parties (by increasing the divisor more rapidly than d'Hondt). Whether d'Hondt, St Lague or, indeed, another proportional method of Executive seat allocation is preferred, all meet the tests of proportionality and inclusion, though with somewhat different effects, both in terms of sequential process and thereby of outcomes. However, whatever the method, it would be triggered in a post-election context which, if past patterns are repeated—i.e. all eligible parties opt-in to the Executive—would be likely to entail delay in agreeing the PfG and consequentially the legislative timetable.

Should there be at some point a reduction in both the total number of MLAs and of Executive Departments (that is, after 2015), the parties might then be persuaded to change the proportional allocation formula to one that carries more potential for smaller parties in order to sustain the inclusivity principle that underpins the process of Executive formation, pending electoral outcomes of course. Parties may judge that any change should be deferred until 2019/20 or, on the other hand, be implemented in 2015/16 especially if there was to be an agreed reduction in the number of Executive Departments prior to the next Assembly election. It seems to me that the earlier this is accomplished the better: it would, among other things, assure the electorate that the Assembly and the Executive are motivated to embark on reform and in a manner that defends inclusiveness and proportionality – and, further, that will represent some marginal savings in the costs of administering the Strand One institutions, which would undoubtedly chime with the (austere) times.

There are then, two issues to be contemplated by the parties: the retention of both inclusiveness and proportionality and the timing of any agreed change in the method of Executive formation: each is influenced, if not governed, by possible related reforms, notably

the number of future Departments. If there was to be no change, either in the number of MLAs or of Departments, then the attraction of maintaining d'Hondt is likely to be compelling for the parties: it might be styled as 'the inertia of established practice/commitments'. My own judgement is that change is more likely should there be a reduction in both the total number of MLAs and of Departments: in those circumstances, such a change—to St Lague for instance—may be required in order to afford the realization of the principles of proportionality and inclusiveness.

Re Committee Chairs/Deputy Chairs: Here, I would follow the same line of thinking: that is, a change in the allocation formula should be influenced (but not determined) by a reduction in both the number of MLAs and of Departments. For the sake of consistency, such a change, to say St Lague for Executive formation, should also be adopted for the allocation of chairs and deputy chairs.

Of course, should a party or parties decide not to exercise its/their option of entering the Executive but instead take on an Opposition role (all other things being equal – see below), there may be a case for applying a different formula or process to the task of allocating chairs/deputy chairs, or of giving such parties some sort of preference before a formula was applied. I'm not persuaded by this proposition. In such circumstances, notably where there was a reduction in the number of Departments and, consequentially, of statutory committees, there would be considerable latitude for such a party/parties to exercise its choices, latitude that is reinforced by the norm/procedure whereby a chair/deputy chair is not drawn from the same party as that of the relevant Minister: this practice widens the range of strategic choices for an Opposition party/parties.

In summary, my guess is that any change in the allocation formula is likely to be triggered by decisions relating to the total number of MLAs and the re-configuration of the Executive. The responses by the Executive parties to the NIO's consultation published on 11 February 2013 indicated a disposition to reduce the number of MLAs, the SDLP excepted. SF, which did not furnish a written response to the consultation exercise, has however stated (in the AERC Report NIA 52/11-15, 12 June 2012) that it wants 'an as inclusive Assembly as possible', and will 'consider all options that reflect the inclusiveness and equality envisaged by the GFA'. St Lague would accomplish those objectives, whether adopted in the current context or one altered by a reduction in the number of MLAs and Departments.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

The provision for community designation has nothing to do with existential doubt among/within the parties, but rather is a device designed to test cross-community support for policy, legislation and other matters, including procedural matters. In that sense it is a rather blunt tool and can be deployed to block certain proposals or measures via the Petition of Concern procedure. Critics, myself included, have argued elsewhere that it has the effect

of entrenching communal identities, what others would less kindly term sectarian thinking/ action, and of according greater significance to the votes cast by self-designated Unionists and Nationalists as compared with 'Others' on key issues – which it does.

Clearly, NI remains a divided society and safeguards are required to ensure that measures do command cross-community support, but this does not necessitate community designation. Instead, a weighted majority could be adopted to resolve 'key' decisions, set at a level (say 65%) that assures, in effect, that cross-community support has been achieved and which would ensure that no key decision could be taken in the face of significant opposition. Moreover, it would, as referenced in the Research Paper, represent a (mostly symbolic signal) of the dismantling of a communal divide: the proposal that parties, rather than individuals, designate as Unionist, Nationalist or Other, would only consolidate collective communal identity.

Re key decisions requiring cross-community support: one addition, namely the process of nominating & electing FM & dFM. This was the status quo ante in the first mandate when the incumbents were jointly elected by means of a cross-community vote. (In addition, Messrs Trimble and initially Mallon and subsequently Durkan, appeared together at QT and took alternate questions, another symbol of the 'jointedness' of the Office). I appreciate that the change effected at St Andrews dispensed with the requirement for a ratifying/legitimising cross-community vote within the Assembly for the nominees but, as devolution has bedded-down, I think there may well be a case for resurrecting the procedure, thereby adding it to the list of 'key decisions': i.e. it would require a weighted vote that realizes the principle of cross-community consent. Agreement by the two leading parties from their respective communities to run their nominees on a joint ticket, together with the dropping of the designation requirement, would send the signal that the political process was normalizing, albeit that it would provide for identity politics in an implicit rather than an explicit, manner.

As an alternative, one might refer to the Anglo-Irish 'Comprehensive Agreement' (2004) which included a recommendation for a cross-community vote for the entire Executive on a single 'Executive slate'. In Switzerland (another oppositionless consociation, but one with extensive provision for the exercise of direct democracy) each nominee to the seven-member Federal Council requires endorsement by a secret ballot of both chambers of the Federal Assembly in a combined vote. The nominees are themselves nominated by the parties by means of the 'magic formula', an inter-party agreement (it has no statutory basis) designed to realize a power-sharing administration. Details aside, the key issue here is ratification/election by the legislature a process that, unlike the Swiss model, should be transparent: applied to NI it would demonstrate publicly the legitimacy of the whole Executive, including the FM and dFM. I.e., rather than having a separate vote for the latter pairing, there would be one weighted vote for the full Executive.

Each of the above alternatives, if effected, should be in place following the next Assembly election.

Re Petitions of Concern: 30 is not a 'magic' number, nor one cast in stone. Clearly, lodging a PoC has become a noteworthy feature of the parliamentary process at the Assembly, signalling that it meets the perceived needs of the parties. Put another way: provide the tool and it will be used, including as a blocking device. If it is to be changed, there may be a case for increasing the threshold (to 35% of members, n38) in part to reflect the proposal to displace designation in favour of a qualified weighted majority. On the other hand, a move to qualified majority voting – at say 65% of members present and voting – would in itself be an assurance that no key decision could be taken in the face of significant opposition: on that basis, there may be an arguable case for abandoning the PoC procedure.

However, the case for its retention rests on the opportunity it supplies for a belt and braces safeguard to parties on issues not routinely subject to the key decision tests as set out in the NI Act 1998: and it would, admittedly, be an exhaustive and probably futile task to attempt to extend the list of 'key decisions' subject to such a vote. Its provision, like the Belgian

procedures cited in the Research Paper', supplies a safeguard against majoritarianism and its retention, I suspect, would be sought by the parties, not least because it realizes the mutual veto principle entrenched in the NI Act 1998. Perhaps the key issue is whether the 30 signatures currently required to trigger a petition is the appropriate threshold.

The actual number does matter: and it may matter more should the Assembly decide that provision for an official Opposition be made. A party or parties that chose to form a formal Opposition could be disadvantaged if the threshold was set too high. Yet, if procedures were adopted on the floor, including 'supply days', such a party/parties would enjoy opportunities to subject the Executive, either in whole or part, to structured scrutiny – even censure – which would compensate for any insufficiency of numbers to reach the PoC threshold.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

In respect of Executive inclusiveness, as Members will be aware the Additional Initial Standing Orders (1999) provided that the Executive must include at least three Unionist and three Nationalist Ministers, an expression of the power-sharing principle entrenched in the 1998 Agreement, realized by means of community designation. Abandoning the Standing Order would seem to raise the prospect of an exclusive rather than an inclusive Executive, i.e. one that was not based on inter-communal power-sharing. Yet, it could be redrawn in line with the proposed requirement to achieve cross-community support by way of a weighted majority. In addition, the application of either d'Hondt or St Lague to the process of Executive formation is in itself a guarantor of bi-communalism through the power-seeking motives of the parties. Key, though, would be provision for a weighted majority vote endorsing the nominees for the Executive whether in a single Executive slate vote or one for the nominees for FM & dFM and another for the remaining nominees: each would meet the over-arching need for cross-community support for the Executive.

Participation in the Executive is already voluntary, provided it meets the current test applied by the above standing order: eligible parties may, conversely, choose to decline the seat(s) to which they are entitled. However, that choice is constrained by the lack of resources, both procedural and financial: there are, in short, no tangible incentives enabling a party or parties to choose to adopt a formal Opposition role.

Invariably, in contemplating a formal Opposition one is drawn to the Westminster model, a model predicated on a majoritarian political system, with single-member constituencies and a 'first-past-the-post' electoral system: such a model is not consistent with the consociational design of the NI Act 1998 and related legislation.

To date, Executive parties have, arguably, enjoyed the best of both possible political worlds: able to perform both a governing and an oppositional role, without jeopardizing their participation in the Executive. Such a 'habit' is appealing and difficult to break and has, for the most part, been effectively managed since 2007. Moreover, like Scotland and Wales,

there is no formal provision for an Opposition in NI, although in the former two cases, as the Research Paper by Messrs McCaffrey and Moore points out, there is provision for non-Government parties re supply days and related matters.

The, at first sight, nearest comparator to the NI model is Switzerland – it too is an oppositionless consociation, but the corrective in that case is provision for direct democracy, i.e. referendums. One party there did, in 2007, opt for Opposition, but it was a short-lived phenomenon and within a year it rejoined the Federal Council. Proposals to create an Opposition have been mooted in Switzerland but without success: the Swiss model, one of concordance, collegiality and direct democracy is distinctively different from NI (it is also federal and bicameral, of course).

The case of South Africa is identified in the Research Paper however, despite the formal provision for Opposition, as a dominant party system (ANC) it has evolved into what some critics term 'hidden majoritarianism'. In Belgium, also cited in the Research Paper, there is a highly fractured party system within which the process of government formation is protracted to the point where some believe its continuance as a state is questionable. Both Belgium and South Africa do make provision in the form of resources for non-governing parties, as is the case in both Wales and Scotland, albeit that in the latter cases they are not termed as 'the Opposition' as such. Nevertheless, they do supply guides to the type of resources that may be made available and which enable the non-governing parties to perform their parliamentary roles – including, their self-presentation as alternative governments-in-waiting.

In NI, the weight of party opinion is disposed to making provision for an Opposition, as opposed to parties performing an oppositional role, not least via the committee system. It is the case (as per O'Leary and McGarry among others) that the statutory committees in the NIA supply a mechanism for 'rigorous accountability', but they are not a surrogate for Opposition. Their key role in general is to subject government to effective scrutiny, whether in a Westminster or Westminster-like setting or other parliamentary contexts. (And it is worth noting the recent changes wrought to the select committees in the House of Commons in terms of their chairmanships and memberships. Most chairs are directly elected by the whole House and members via open elections within party blocks, thereby adding to their legitimacy: such roles are no longer in the gift of the Whips.)

Such scrutiny can/must be conducted in democratic parliaments, whether or not there is provision for a formal (if not 'loyal') Opposition. One expectation of party chairs/members (certainly at Westminster) is that they leave their 'party baggage' outside the committee room: this is a behavioural norm rather than a structural matter: partisanship can transcend even the most elegantly designed committee system. The question then is, what could a formal Opposition provide that a scrutiny committee system cannot? To which the readiest response is an alternative Government.

UK and other constitutional purists argue that without Opposition there is no democracy: in the words of Sir Ivor Jennings, 'in truth opposition is an essential part of democratic government' he was referring to the institutionalization of Opposition in the House of Commons, defined in statute in 1937 (in Canada, the role was defined in 1905) whilst Lawrence Lowell, the American constitutional expert, described the institutionalization of opposition 'as the greatest contribution of the nineteenth century to the art of government'.

The key word in this connection is 'institutionalization'. Executive parties can and do adopt an oppositional role in the current Assembly, i.e. ride two horses simultaneously. In addition, opposition by Executive parties (to policy proposals, for instance) can be effected at the Executive table if three Ministers call for a cross-community vote at an Executive meeting. That is to say, NI is not 'oppositionless': and statutory committees can, especially where they are unanimous, express opposition to policy and legislative proposals as a result of performing their scrutiny role.

However, calls for an official Opposition suggest that current practice(s) is/are deemed insufficient by some. If provision was to be made for Opposition then on what basis? In the current context, a party or parties can decline a seat or seats in the Executive and self-designate itself/themselves as an opposition (of sorts), but without access to the resources available to parties in other legislatures. I think the issue of resources, be they financial, supply days, committee places, speaking rights, can draw on practices elsewhere, not least Scotland and Wales, each of which provides a guide on how to facilitate non-governing parties. However, in each of those cases there are viable and electable 'governments-in-waiting', whereas the premium placed on inclusiveness in NI creates a potentially different order of problem.

I certainly would not endorse the idea that the principle of inclusiveness be abandoned: i.e., as is currently the case, parties that are, on the basis of seat strength, eligible for a seat or seats around the Executive table, should retain that eligibility: it would be for it/them to decide whether or not to participate in the Executive. Should that mean that an Opposition should comprise only that party/those parties otherwise eligible for an Executive place but which opt not to enter the Executive or, indeed, leave an Executive of which it was/they were formerly a constituent part? (And having withdrawn, voluntarily, from the Executive would not be permitted to rejoin it at a later date.) In a sense, there is a threshold issue lurking here: should there be a minimum number of MLAs (from one or more parties) below which they would be denied the formal Opposition role? Defining such a critical mass would, I think, be a necessary and perhaps tricky issue to be resolved.

So, in terms of the composition of an Opposition: should it, in part, be a matter of status: i.e., whether or not a party is sufficiently strong in terms of the number of seats it holds to otherwise be included in the Executive? Or should it be based on a numerical baseline? Would the role of Opposition be confined to one party or a coalition of smaller parties – or, indeed, both, in some sort of rank order? Unlike the design of the Executive, I am not persuaded that the Opposition should be necessarily coalitional, albeit that it could be a strength of any such provision and it would enable some perhaps greater choice in allocating the roles of 'shadow' ministers between/among the relevant parties.

For now, I will leave these questions hanging in the air. Certainly, provision for an Opposition would enhance Executive accountability and in theory at least enable a party or coalition of parties to develop an alternative programme for government in order to widen its electoral base. Electoral dynamics would, potentially, change in such circumstances.

One final point: if there is to be provision for an Official Opposition which, among other things, acts as a potential partner in government rather than the alternative government, then consideration needs to be given to creating the procedural opportunity for a censure motion, i.e. a vote of no confidence. Perhaps this could be afforded by way of an amended PoC procedure.

Re other accountability measures.

There are two related matters that may be considered: (a) Place the Liaison Group on a statutory footing, tasked to produce an annual report and a legacy report at the conclusion of a mandate, so as to both record the work of the statutory committees and identify those operational/procedural/resource matters it considers need to be addressed so as to ensure that scrutiny is conducted efficiently and effectively: it could in that regard be regarded as an agent of change both for the current Assembly and, via a legacy report, future Assemblies; (b) Empower it to cross-question the First and deputy First Ministers at least annually on policy/programme co-ordination, for which it has strategic responsibility. The remit would need to be carefully calibrated so as not to impinge on the roles of the OFMdFM Committee.

If the above changes, i.e. provision for an Opposition and a new status and role for the Liaison Group were to be implemented, it would be feasible to introduce them in the next

mandate beginning in either 2015 or 2016. Perhaps the time necessary to effect such changes would in itself enhance the argument for extending the current mandate by 12 months.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

Re additional financial assistance: this would be justifiable and in all likelihood, relatively inexpensive, especially were there to be a reduction in both the total number of MLAs and of Executive departments. The method for calculating the amounts (both salary top-up + office expenses/allowances) for the 'Leader of the Opposition' would need to reflect the status of the role and be related to party strength, i.e. an amount for each seat held. This is clearly a matter for the ISRP, which may draw on the models developed in the Scottish Parliament and the NAW as guides to its recommendations. Lower amounts (salary top-up and expenses/allowances) could be made available to other Opposition spokespersons, on a scale commensurate with the scope and remit of the respective Departments (the ISRP has already indicated that it is minded to examine the allowances available to Ministers in accordance with the complexity and range of Ministerial responsibilities: the same exercise would need to conducted in respect of Opposition spokespersons). The reach of financial assistance to an Opposition party would be governed by the seat-strength of non-Executive parties, the baseline point mentioned earlier.

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

I am disposed to retain the proportional allocation of Chairs/Deputy Chairs via either d'Hondt or St Lague. I think that supplying other resources, including 'supply days', priority at question time, enables the Assembly to dispense with the earmarking of Chairs/Deputy Chairs for Non-Executive parties. In the best of all possible worlds, Committees should generally be nests of consensus: the value placed on consensus could be reduced where, for instance, shadow ministers occupied a chair/deputy chair role. However, blocking them from such roles would be problematic, not least because it would offend the principle of equality. What matters is how chairs/deputy chairs interpret their roles: being a chair and an opposition spokesperson could create role strain and impair intra-committee relations.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/ Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

As mentioned in passing earlier, I do think that an Opposition party/parties should have time available when it determines plenary business, i.e. 'supply days', whether full or half-days. Given that 16 half-days are available in the Scottish Parliament (as outlined in the McCaffrey/ Moore Research Paper) for non-Executive parties and that the NIA has fewer members, 10-12 half-days seems appropriate.

I also support the proposition that the Leader of the Opposition (or Opposition spokespersons as appropriate) should have priority at Ministerial QT and in response to Ministerial statements. Equally, if a second smaller party meets the threshold of what constitutes an Opposition party (i.e. in terms of the minimum number of seats it holds), then its leader should be accorded second order priority, both at QT and in respect of Ministerial Statements.

Supply days and priority speaking rights are the norm for official Oppositions and afford opportunities for the relevant parties to both scrutinize and criticize Government policy and legislation, thereby offering an alternative to voters and the wider public.

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

AERC Inquiry: 26 February 2013

Summary Paper

Rick Wilford

This summarizes the points made in the formal submission template and follows its order of topics.

D'Hondt

- The key issues here, as I see it, are the guarantee of proportionality and inclusiveness and the timing of any change in the formula for allocating Ministerial positions. There is a range of such formulae, including d'Hondt and Sainte Lague.
- Perhaps what matters as much as the formula (though they can exert differential effects, including the sequencing of party choices for Ministerial seats) is the existence of informal accommodatory politics among Executive-eligible parties.
- If there is to be a change, then this might be contingent on inter-party agreement to reduce both the total number of MLAs and of Executive Departments. To sustain inclusion and proportionality, consideration may be given to, say, Sainte Lague, which lends some advantage to smaller parties.
- Re Committee Chairs/Deputy Chairs, if a change in the Executive allocation formula (triggered by preceding 'trigger' points) then Sainte Lague. I am not persuaded that adjustment to their allocation should be provided in the event of a formal Opposition being provided for (see below).

Community Designation

- Its purpose is to safeguard the principle of cross-community consent for legislation/policy/procedural matters, one that could equally be achieved by way of a weighted majority vote.
- Such a change would supply a signal that NI is capable of moving from ascribed labels which may conceal as much as they reveal.
- I would extend the scope of 'key decisions' to include the ratification of the nominees for FM &dFM by way of a weighted vote on a joint-ticket. In addition, the same procedure to be adopted re the Executive nominees on an 'Executive slate', as proposed by the 2004 'Comprehensive Agreement'. Alternatively, the nominees for FM and dFM could be included on the slate.

Petition of Concern

- There may be a case for increasing the threshold to 35% of members present and voting, in part to reflect the weighted majority proposal (65%) re key decisions – although the latter provision would provide the assurance that no key decision could be taken in the face of significant opposition: in turn, this could supply the basis for abandoning the PoC procedure (its retention would, on the other hand, offer a belt and braces assurance).
- If retained, and if the number/proportion was set too high, this could disadvantage any party/parties who chose to form an Opposition (if enabled, that is).

Provisions for Opposition (1)

- Committees are not a surrogate for Opposition, albeit they can form an 'oppositional role', the influence of which is enhanced by intra-Committee consensus. Opposition performs complementary functions and the singular one (in the Westminster model):, namely that of an alternative government-in-waiting. The latter is only possible in NI on a power-sharing basis which may nudge some parties into an Opposition coalition.

- A threshold would, I think, need to be established below which a party would be ineligible for Opposition status (though they would be free to support an Opposition party/parties in the division lobby, of course). The choice of Opposition should not, though, be confined to a party/parties otherwise eligible for Executive status, given a threshold of MLA numbers which a party/parties would need to meet to qualify as an Opposition..
- Opposition should be enabled to move a censure motion in the Assembly, though the threshold would need to be established so as to avoid vexatious censure motions.
- The extent of the institutionalization of Opposition is key (see below)
- Re other accountability measures: (i) Place the Liaison Group on a statutory footing & (b) enable it to cross-question the FM & dFM (+ junior ministers) annually, at least, on policy and programme co-ordination.

Provisions for Opposition (a)

- Additional financial assistance should be provided to enable a party/parties to be adequately resourced – a task for the ISRP, which could draw on the Scottish/Welsh provision as possible models/

(b)

- Not adopt special measures for the allocation of Chairs/Deputy Chairs to Opposition party/parties, retain d'Hondt or move to St Lague, the latter if the total number of MLAs and of Departments is reduced.

(c)

- Supply days be allocated to the Opposition party/parties and their Leader(s) be accorded priority at QT and in response to Ministerial Statements (or a shadow Minister, as appropriate)

RW 19 Feb 2013.

The Labour Party in NI

Assembly and Executive Review Committee
Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

<table>
<tr><th>Stakeholder Name</th><th colspan="4">Telephone Number</th></tr>
<tr><td>The Labour Party in Northern Ireland</td><td colspan="4">02897511310</td></tr>
<tr><th>Stakeholder Address</th><th colspan="4">Stakeholder Type (Include one or more X)</th></tr>
<tr><td rowspan="5">Kenneth Erskine
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BT247NT</td><td>Registered Political Party</td><td>x</td><td>Local Government</td><td></td></tr>
<tr><td>Academic</td><td></td><td>Government</td><td></td></tr>
<tr><td>Legislature</td><td></td><td>Non-Government</td><td></td></tr>
<tr><td colspan="3">Other (Please Specify)/ Member of the Public</td><td></td></tr>
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Please provide some background information on your role as a stakeholder

The Labour Party in Northern Ireland is a non-sectarian, equal opportunities political party that wants to encourage joint-working rather than solidify historic conflicts.

We wish to encourage a greater review of the Assembly more generally, and this is elaborated upon within the additional information section of this report.

We thank you for reading our report and look forward to any future involvement, if required.

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

(1) **Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons**.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

1. The d'Hondt model is undoubtedly a product of the community-designation mechanism, whereby it allows an equitable number of both unionists and nationalists to be represented in the Executive, thus avoiding one-community dominance. The problem with this, however, is that all major parties are involved in the executive and thus, no party can fulfil the roll of opposition adequately. Therefore, there is a lack of democratic accountability within the assembly, as all parties have an effective 'stake' in the operations of the executive. More worryingly for democracy though is the fact that alternative visions for government cannot be effectively expressed throughout a parliamentary term. This means that there is little choice for people in elections, the same parties have been involved in the executive since inception, with the only addition being the Alliance Party's admission in 2007, which in turn led to a diminished opposition. When people vote they only have the opportunity to rearrange the playing field of the executive and not fundamentally change its structure or ideology.

2. It is now clear that with the provisions for cross-community voting it is not possible to have an effective vote of no confidence in a Minister, for in such an instance, it would be difficult to envisage the Minister's designated community achieving a majority against him/her. Ministers are their respective political party's representatives in the executive and as a result the onus effectively lies with them to either support or replace them.

3. There have been accusations, from numerous sources, of a lack of joined-up government, despite the evident intent of such a model, as envisaged by the GFA. It should be anticipated that in multi-party coalitions, as the d'Hondt system requires, there will be a degree of protectionism amongst political parties and 'their' departments but the degree of protectionism is somewhat alarming. Indeed, noted academics, such as Professor Rick Wilford, have come to describe "ministers, sequestered in their departmental silos, (went on) solo runs" and thus said ministers do not entertain any joint working, which somewhat undermines the entire purpose of mandatory coalition government.

4. The Labour Party in Northern Ireland disagrees with the d'Hondt system, in its present guise, for executive nomination and calls for a review of its structures, as is elaborated upon in the additional information section, below are several options for change:

    i. If the community designation structure is retained it may be possible to continue with mandatory coalitions but cease with the use of d'Hondt. Indeed, it may be possible to create a system whereby; a.) a coalition must be formed; b.) this coalition must include a minimum of two political parties; c.) the coalition must have representation from both unionists and nationalists. In the Assembly's present guise this would probably result in a DUP/SF government, allowing the SDLP, UUP and APNI to operate a strong opposition but also, potentially, an alternative vision for government, either together or alone.

    ii. Equally, executive functions could be shared between MLAs in committees whereby d'Hondt is retained for their allocation but where executive decisions are left to individual committees and thus Chairpersons would act as the spokespersons for the committees. This would be quite revolutionary in that it would demolish the executive and replace it with committees carrying out what ministers are presently doing but it would ensure joint-working and joint-community membership in all executive functions. It would additionally negate the purpose of an opposition, as all parties would be involved in policy creation, that said the Assembly would still need to review the committees work.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

1. The current system of decision-making in the Assembly makes territorial politics the bedrock of political decision-making by requiring MLAs to designate as unionist, nationalist or 'other' (i.e. to be defined either by national allegiance or by lack of it; if MLAs refuse to designate then they are automatically classified as 'other'). Major Assembly decisions must be endorsed on a cross-community basis i.e. with a majority from both unionists and nationalists, thus reducing the incentive for MLAs to designate as 'other' as a matter of principle.

2. By forcing members to designate on the basis of community attachment, and making non-alignment a somewhat second-class designation, the Assembly's structures actively encourage division at every level. In short, whilst these systems remain in place it is difficult to envisage NI ever abandoning territorial politics in favour of a more left-right ideological remit.

3. The Labour Party in Northern Ireland fundamentally disagrees with the community designation system as it encourages, rather than discourages, community division. We desire a full and proper review to facilitate any needed change, as is elaborated upon in the Additional Information section. Nevertheless, below are several options for reform;

   i. Major parliamentary decisions could simply require a super majority of 75% in order to be passed. This means that both communities will retain an embargo on the passage of important bills whilst also allowing those who designate as 'other' a say on the matter.

   ii. All legislation could simply require a basic majority but be subject to review by equality proofing. Equality proofing could additionally involve community groups and citizens' initiatives in its process, meaning that all legislation passed would be acceptable to local communities whilst also allowing a greater citizenry role in the process.

   iii. On a slightly different tact, the power to legislate could reside within committees, similar to statutory committees presently installed within Stormont. Within this system d'Hondt would be retained for allocation purposes and committees of roughly 8-12 MLAs would involve themselves in policy and legislation on specific policy briefs, such as Health. Unanimous consent would probably be the best option for legislating within this system as it would force committee members to work together and for them to create a programme for legislating. These Committees could also double-up as executive review committees.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

1. It is paramount that the NI Assembly has an effective opposition, which is presently not the case. The d'Hondt system of Executive allocation means that in the Assembly's present incarnation only independents and single MLA political parties do not have a 'stake' in the regional government.

2. Opposition is needed for several reasons but these can be summarised into the following;

   i. To hold the government to account

   ii. To produce an alternative vision for government

3. Neither of the main functions of an opposition can presently be fulfilled by the opposition of today in the NI Assembly. It is highly unlikely that a rump of several independents and small parties will ever be able to effectively hold a government to account, especially when the executive itself numbers greater than the entire opposition. Furthermore, independents cannot produce a programme for government because they are solo-MLAs and thus no alternatives to government can ever be adequately expressed in today's Assembly. This reduces the options open to voters as all of the main parties remain in the government, indeed change of government is largely impossible unless, of course, voting habits are revolutionised.

4. Therefore it is our belief that democracy is being undermined in the Assembly as a direct consequence of the lack of an effective parliamentary opposition. We believe an opposition needs to be established urgently if there is to be any chance of democratic accountability in Northern Ireland.

5. Opposition can be created in several ways but the easiest way, as previously outlined in the d'Hondt section, would be to remove the d'Hondt system of Executive allocation and replace it with mandatory coalitions that can be limited to two parties, one unionist and one nationalist. This would allow political parties with sizable numbers the opportunity to decline government and produce an alternative vision for executive policy.

6. Nevertheless, the Labour Party in Northern Ireland calls for a full and proper review of all Assembly procedures, this is elaborated upon in the Additional Information section.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

1. In order for an opposition to work effectively it requires financial resources, at the state level.

2. The House of Lords in the United Kingdom recently introduced a system of allocating funds to opposition parties that reside within the chamber. Under the House of Lords' system, the largest sum of money is received by the largest party but with community designation in the NI Assembly this could potentially be a contentious issue. Consequently, although our party disagrees with the community designation system, if it were to be retained the largest

opposition parties on both the nationalist and unionist side could receive equitable sums of money, irrelevant of party size.

3. The following are ways in which our party believes financial assistance could be afforded to opposition parties:

   i.) Opposition parties could alternatively receive money relative to the number of MLAs that they have, meaning that an amount of money would need to be divided by the number of opposition MLAs and then split between the parties and independents. This system would be most effective in the event of the removal of the community designation system.

   ii.) Another system could be that only larger opposition parties, numbering between 5-8 MLAs+, could receive financial assistance. This system could either give all parties that meet the size quotient equitable aid or a top-up relative to additional size.

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

1. Committee Chairs should not continue to be allocated via the d'Hondt model and should instead be under the remit of the opposition. Membership of committees should be completely proportional to party strength in the Assembly but, where possible, chairmanships, and indeed Deputies, should not come from governing parties.

   This will avoid the lack of committee scrutiny in the British House of Commons whereby the majority of parliamentary committees are chaired by members representing the governing party/parties. In addition, it will ensure that governing parties are not responsible for parliamentary scrutiny of their own executive representatives.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/ Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

1. As there is no genuine opposition currently installed in the Assembly, there is not adequate time for opposition questions, seeing as one does not currently exist.

2. Should the ideas we have submitted in 'Provisions for Opposition: B.' be put forward, we believe that Committee Chairs should be given priority speaking rights in Question sessions with their respective Executive minister. This could be modelled on the system used in the British House of Commons for PMQs, whereby the Leader of the Opposition may ask 3 questions, as a matter of priority, to the Prime Minister. However, the adversarial style

of PMQs is not to be encouraged. As such, we would advise that the respective Executive member attends Committee hearings for questions on a weekly basis whereby all members may ask relevant questions. This will of course be in addition to the current process of Assembly, written and oral, questioning.

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

1. We are making a proposal for a fundamental review of the decision-making structures established in the 1998 Good Friday/ Belfast Agreement, the 2006 St Andrews Agreement and the 2010 Hillsborough Agreement, to ensure that the Northern Ireland regional government works more effectively. It is in response to an Executive Review Committee request for submissions.

2. Despite party political opinions raised in this proposal, the Labour Party in Northern Ireland believes that a wide-ranging review, and only a review, is required to kick-start the process of parliamentary reform. Such a review would need to be carried out by an authoritative and independent group. The proposed model is that of 1992's Opsahl Commission.

3. The case for review is regarded as contusive with Labour policy. However, being an independent review, it should only conclude with advice/recommendations and not de facto legislation.

4. It is because of our preference for a review that our recommendations offer multiple suggestions rather than singular alternatives. There are many alternatives that should be explored in great detail by an independent commission in the aim of enhancing democracy in the Northern Ireland Assembly.

5. The structures set out in the 1998 Good Friday/ Belfast Agreement may have been necessary to kick start joint working but since the re-establishment of regional decision-making in May 2007 it has been clear that the present arrangements are deeply flawed. A lack of proper democratic accountability and political opposition has been most obvious in the re-established assembly and it is for these reasons that a review is necessary. Until these obstacles to democracy are overcome, the assembly will continue to be at a political cross-roads.

Centre for Opposition Studies

Assembly and Executive Review Committee
Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

Stakeholder Name	**Telephone Number**			
The Centre for Opposition Studies (Nigel Fletcher, Executive Director)	020 7340 6062			
Stakeholder Address	**Stakeholder Type (Include one or more X)**			
	Registered Political Party		Local Government	
	Academic	x	Government	
	Legislature		Non-Government	x
	Other (Please Specify)/ Member of the Public			

Please provide some background information on your role as a stakeholder

The Centre for Opposition Studies is an independent, cross-party research organisation dedicated to promoting the study of political opposition in the UK and overseas. As well as studying opposition, we run engagement projects in developing democracies such as those in the Middle East, highlighting the importance of democratic opposition to achieving political stability.

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

(1) **Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons**.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

The d'Hondt mechanism acts to embed the principles of inclusivity and cross-community representation in the formation of the executive. These principles are at the heart of the 1998 Act, and to that extent the current arrangements achieve the desired results of the agreement.

However, it is not the case that d'Hondt is the only mechanism that can achieve this outcome. The Assembly research paper notes there are other systems that could be used to allocate ministerial positions whilst remaining within the spirit of the 1998 Act. The current arrangements, though not requiring parties to take up their allocations, clearly perpetuate an expectation, and incentive, for them to do so. In that respect, they act as a disincentive to the establishment and operation of a system of opposition in the Assembly.

We consider that the Assembly should look seriously at alternatives to d'Hondt that would achieve the central aims of delivering a cross-community, inclusive executive, whilst being less prescriptive.

With regard to allocating Committee Chairmanships, the same arguments apply. However, there is at present no clear linkage between allocation of ministerial positions and entitlement to chairmanships- they simply use the same system, separately. It would seem sensible in looking to review the arrangements to consider how more of a linkage might be made, for example by introducing a system where a party that chooses not to take up its ministerial allocations would gain extra entitlement to Chairmanships. This would challenge the current expectation that all qualifying parties should take seats in the executive, and provide a more credible alternative role for them, instead of requiring them simply to forgo their entitlements with no recompense.

Whilst giving non-executive parties more committee positions is a sensible reform, it is important to note that the scrutiny role performed by such committees does not constitute the traditional role and function of an official Opposition. As a means of strengthening the broader operation and culture of opposition in the Assembly, it would be desirable, but it is not in our view sufficient.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

Community designation is a factor that continues to highlight the stark divisions of Northern Ireland's politics, and as such can be seen as a barrier to the development of more traditional forms of representative politics in the Assembly. Certainly, it is difficult to see how politics in Northern Ireland can be 'normalised' until the primacy of such designations is reduced.

The need to ensure cross-community support for certain measures is a key feature of the 1998 Act, and designation provides a clear (albeit rather blunt) instrument for achieving this

result. However, an alternative system such as qualified majority voting, which would allow for the removal of formal designations, is clearly more desirable in the longer term.

Nevertheless, the key issue is the way in which designation is currently used, and this is highlighted by the role of Petitions of Concern. As, essentially, a constitutional safeguard, their use should be somewhat exceptional, and restricted to the most important issues. Evidence (including that in Appendix 2 of the Assembly briefing paper) suggests their use has become less infrequent than would be expected for such a mechanism, and seems now to be a feature of regular Assembly politics, rather than a signal of exceptional concern.

The invoking of community designations on a regular basis in this way reinforces sectarian divisions, and seems to go beyond the intended purpose of the mechanism. It would seem appropriate to look at restricting their use by raising the number of petitioners required, or adopting specific criteria which a petition should meet to be accepted by the Speaker.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

We are strongly of the view that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions formally to recognise Opposition, whilst retaining the principles of power-sharing and inclusivity.

Adopting a pure Westminster model is, however, problematic given the particular difficulties of politics in Northern Ireland. However, as argued above, greater incentives for some parties to choose not to take their places in the executive provides a mechanism by which some form of meaningful Official Opposition can develop.

It should be noted that the Westminster model of Opposition grew gradually and informally over many centuries, reflecting the changing behaviour and attitudes of politicians, and the growth of more rigid party groupings. It is therefore appropriate to consider enabling measures to remove barriers to an Opposition, rather than dictating a rigid formula.

Nevertheless, when advising developing democracies around the world (many of which also operate against a backdrop of sectarianism) we are keen to stress the benefits that a system of constitutional opposition brings in terms of 'normalising' the political process. Structures in legislatures must recognise political realities, but they also have a role in shaping them. The current disincentives and lack of mechanisms for opposition can therefore be seen as stifling the development of normal political conditions, and this is an unsatisfactory situation.

Aside from reviewing Committee positions as discussed above, it is our belief there should be official recognition of non-executive parties as opposition parties. Beyond this, and to maintain the principles of inclusivity and power-sharing, it may be possible to devise a mechanism by which recognition of an Official Opposition is conditional on it having a cross-community composition. Historically, the development of regular Opposition at Westminster began with the formation of coalitions of opposition, so this is not a new concept. It could

take the form of simply requiring that the Official Opposition group consist of a minimum quota of MLAs, and may not only be those of one community designation. It could then be for the members of this bloc to determine who should fulfil the role of Leader (and perhaps, Deputy Leader).

The cross-community nature of the Opposition would be necessary for two important reasons: Firstly, to prevent a lapse into entrenched sectarian opposition, which is clearly undesirable; and secondly, to provide an opposition which could, if it chose, present itself as an alternative government. The status of 'government in waiting' is an important part of the role of an opposition, giving voters a credible choice between the incumbent administration and a rival group. In the context of the Assembly, any alternative government could only take office on a cross-community basis, so it is vital that they should be composed in a way that makes this possible.

With regard to other measures, we are aware of concerns about ensuring the impartiality (in action and perception) of the Speaker. We believe the Committee should look at what measures could be taken to strengthen the impartiality of the position.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

Consistent with our belief that the Assembly's structures should not act as a disincentive to opposition, we believe it is a natural and desirable development for opposition parties to be allocated financial resources for their role in scrutinising the executive. The model of 'Short Money' at Westminster provides a model linked to electoral support and number of seats. In addition, there should in our view be additional resources available to the designated Official Opposition (where one chooses to constitute itself), with a salary for its Leader and Deputy Leader, and some additional resources for the running of their office (on top of the 'Short Money' formula). This would provide a clear signal that the Assembly recognises the value to be gained from a formed, Official Opposition, in addition to the merits of opposition parties generally.

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

Our response on this issue was given earlier.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/ Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

The development of a greater role for opposition and the potential for an Official Opposition will clearly require changes in the way speaking rights are managed. Whether mandated by Standing Orders or regulated by the Speaker, the expectation should be that representatives of the Official Opposition are given greater privileges in debate and questioning of ministers. It should be noted that many of the privileges afforded to the Opposition at Westminster are the result of custom and practice, and the Speaker is guided by conventions codified in Erskine May, rather than by Standing Orders. It may be desirable in terms of the Assembly for some elements of the Opposition's extra rights to be contained in Standing Orders, reflecting the fact it would be a conscious change to procedure, rather than the result of gradual change.

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

The de Borda Institute

Assembly and Executive Review Committee
Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

<table>
<tr><td>Stakeholder Name</td><td colspan="4">Telephone Number</td></tr>
<tr><td>Peter Emerson</td><td colspan="4">02890711795
07837717979</td></tr>
<tr><td>Stakeholder Address</td><td colspan="4">Stakeholder Type (Include one or more X)</td></tr>
<tr><td rowspan="5">The de Borda Institute
36 Ballysillan Road
Belfast BT14 7QQ</td><td>Registered Political Party</td><td></td><td>Local Government</td><td></td></tr>
<tr><td>Academic</td><td></td><td>Government</td><td></td></tr>
<tr><td>Legislature</td><td></td><td>Non-Government</td><td>x</td></tr>
<tr><td colspan="3">Other (Please Specify)/ Member of the Public</td><td></td></tr>
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Please provide some background information on your role as a stakeholder

In 1986, I helped to organise the New Ireland Group's People's Conventions, the first a public meeting of over 200 persons, with Unionists (Sir Edward Archdale) and republicans (Alex Maskey, now MLA) – yet this was still eight years before the ceasefire. It was here that the Modified Borda Count (MBC) and matrix vote were first put to the test, and successfully so.

Five years later, in another cross-community conference, the MBC was again trialled, this time with electronic voting. Those present included members of ten political parties, not least the current President of Ireland, Michael D Higgins.

In 1993, another cross-community conference was held, this one on power-sharing, in Dungannon. Participants included Francie Molloy MLA and the late William Thompson MP.

Altogether, then , the list of prominent persons who have witnessed the use of the MBC and/ or matrix vote, apart from many academics like Professor Lord Bew and Dr. Sydney Elliott, have also included the following:

Judge Catherine McGuinness,
Dr. Noel Browne TD
Bairbre de Brún, MEP
Mary Banotti, MEP
Cllr. David Cook,
Sean Farren, MLA
Monica McWilliams, MLA
Jim Wells, MLA

In 1998, the de Borda Institute invited a number of academics to a seminar on the matrix vote, as a contribution to the then Peace Talks. At about the same time, Ulster Marketing

Surveys was commissioned to undertake an all-party MBC social survey, in order to demonstrate that the MBC is not only accurate but also robust.

In 2004, demonstration was given to Belfast City Council, so to suggest that it could become the world's first democratically elected chamber to have provision for electronic preference voting. http://www.deborda.org/belfast-city-council-role-pl/

* * * * *

These voting procedures have often been used, both in demonstration and 'for real'. Furthermore, they have been held at home and abroad, not least in Bosnia. Details may be found in a number of publications, all of which are listed on the de Borda web-site: www.deborda.org

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

(1) **Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons**.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

Review of D'hondt

Outline

The de Borda Institute recommends the d'Hondt procedure should be replaced by the matrix vote. The latter is the only voting procedure so far devised by which a set electorate – an Assembly – can elect an Executive such that:

(a) every MLA is eligible to stand for any or all posts on the executive;

(b) every MLA has an equal say in the choice of that executive, voting not only for whom he/she wishes to be in cabinet, but also for the ministerial post in which he/she wants that nominee to serve.

It is PR and it is 'ethno-colour blind'. Furthermore, it has been fully tested and tried in a number of instances, and is now well recognised in political science and social choice science literature. (Emerson, 2007: 61-85 and 2011: 20-31.) Assuming no-one is subject to bribery or other extraneous circumstances, the outcome is bound to be an all-party, power-sharing cabinet such that:

(i) individually, every minister is the one who, in the consensus of Stormont, is the best person for that department;

(ii) collectively, the Executive represents the Assembly in fair proportion.

The Vote

An example of a ballot paper is as shown below; (Justice and the Office of First Minister and deputy First Minister could also be added if desired). Each MLA would first list his/her nominees in the left-hand ballot paper (here shown in tint). They could then indicate in which post they wish each of these candidates to serve by ticking one of the columns shown in the matrix.

A vote would be considered valid if it contained at least one valid name. A full vote would consist of ten different names and ten ticks, one in each column and one in each row.

		THE PORTFOLIOS									
THE CABINET Names of candidates in order of preference:		Agriculture	Culture	Education	Employment	Enterprise	Environment	Finance	Health http://www.dohc.i	Regional Development	Social Development
1st											
2nd											
3rd											
4th											
5th											
6th											
7th											
8th											
9th											
10th											

The count is run in two stages. The first stage is a PR-STV or, better still, a Quota Borda System (QBS) election, (Emerson, 2010: 197-209) to determine who are the ten most popular MLAs. The second stage is an MBC count of the points scored in the matrix.

Applicability

Iraq recently took 249 days to form a government. Belgium took 541. To rely on a purely verbal process, then, is at least unwise, and it was right for those involved in writing the Belfast Agreement to seek some sort of formula.

Of those rules which have been devised so far – and here we also refer to Bosnia and Lebanon – all have been based on ethno-religious or party distinctions of some sort or other. As with the Belfast Agreement, therefore, all have tended to perpetuate, if not institutionalise, the very sectarianism they were supposed to obviate.

As noted above, the matrix vote is ethno-colour blind. This methodology could therefore be used in other conflict zones – Afghanistan and Kenya, for example – or indeed in those jurisdictions where there is seen to be a need for a government of national unity, calls for which were recently heard in Greece.

It should also be pointed out that one country – Switzerland – has moved to a form of all-party governance without first suffering the trauma of violent conflict. Again, reliance is placed on a formula – the party-based Zauberformel or magic formula – but so far at least, the 'magic' has worked.

It is submitted that in all of the above jurisdictions, the matrix vote would help to overcome some of the extreme problems which can occur when a parliament/assembly forms its government or executive.

Conclusion

Because it is based on the Modified Borda Count, (MBC), the matrix vote encourages those involved to submit full ballots. Secondly, because it is also based on a proportional system, QBS – this works like PR-STV in that parties tend to limit the number of candidates they nominate – it also encourages MLAs to vote on a cross-party basis. It is submitted that this is a pre-requisite for a healthy power-sharing polity.

If, then, an explanation of the matrix vote would be considered helpful, the de Borda Institute would be more than willing to conduct a demonstration. It ran a workshop on this theme in Stormont last year, in Sept. 2012, but despite being sponsored by MLAs from all six parties, it was not well attended. If serious consideration of the matrix vote were required, another demonstration would be in order.

References

Emerson, Peter, (2007), Designing an All-Inclusive Democracy, Springer, Heidelberg.

- (2010), Proportionality without Transference: the Merits of the Quota Borda
- System, Representation, Vol. 46 No 2.
- (2011), The Matrix Vote: Electing an all-party coalition cabinet. Voting Matters, No 29.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

Provisions for Opposition

In 'normal' politics, there are oppositions in many parliaments, and 'oppositions' in most parties. Examples of the latter are legion: Blair and Brown, Heath and Thatcher, Haughey and O'Malley, etc..

The Origins of Adversarial Politics

There were no political parties in ancient Greece. People voted this way and that – it was all done by majority vote – but participants in the forum did not gather into competing blocs.

Nor did the elected representatives in England… in the beginning. Because they used the majority vote, however, the temptation became irresistible. Initially, words like 'whig' and 'tory' were terms of abuse, hurled from one side of the House to the other. Only later were they adopted by those 'abused' to form parties as such.

More Inclusive Structures

In international forums, participants often rely on a purely verbal (and often nocturnal) process, by which they aim to achieve a verbal consensus. When those involved return to their domestic parliaments, however, they revert to a procedure by which consensus is not possible – the binary majority vote, which measures not the degree of consent but its very opposite – so many 'for' and so many 'against' – the degree of dissent.

In theory, though, the processes by which elected representatives identify their collective will, whether purely verbal or partly verbal and partly by voting, should produce roughly similar answers. If consensus voting is used – the MBC – then this is indeed the case.

Conclusion

In any power-sharing administration, there can be and will be constructive opposition, as long as topics are considered as suggested above, in a multi-optional manner.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

Funding

No especial funding is necessary.

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

Allocating Chairs

This too can be done by a matrix vote.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/ Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

In an inclusive political structure, the question would not be relevant.

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

The director of the de Borda Institute, Peter Emerson, has lectured on the theme of consensus politics in universities and other institutions throughout these islands, in East and Southern Africa, across Europe and in North America. He has been published in peer-reviewed journals in Russia (one), Germany (two), Scotland (one), England (three) and the US (one forthcoming). He has also been published in books: two by Springer, six in samizdats, two in anthologies by Ashgate, and one as a co-editor by Routledge.

Most importantly of all, however, were his attempts to prevent violent conflict, not only in Northern Ireland as per the consensus conferences mentioned earlier, but also abroad:

- in 1989, he co-authored a number of articles on consensus politics in Moscow, in newspapers (Moscow News, Pravda etc), journals (Novy Mir and others) and one anthology;
- in 1990, he gave a press conference (in Russian) in Tbilisi, on the need for power-sharing;
- later that year, he published a newspaper article on the same theme in Yugoslavia – (he also speaks some Serbo-Croat);
- in 1991, he invited a native of Sarajevo to the Belfast consensus conference mentioned above and thus, six months before the outbreak of the war in Bosnia, he warned of the dangers of holding such a binary plebiscite in such a divided land;
- and in 2003, on a visit to East Africa, he proposed multi-option alternatives to the policy of exporting majority vote plebiscites – in a word, balkanisation – to Sudan.

Platform for Change

Assembly and Executive Review Committee
Stakeholder 'Call for Evidence' Paper on Review of D'Hondt; Community Designation and Provisions for Opposition

Section 1: Stakeholder Details

<table>
<tr><td>Stakeholder Name</td><td colspan="4">Telephone Number</td></tr>
<tr><td>Platform for Change (www.platformforchange.net)</td><td colspan="4">07771607707 (chair)
07846400961 (secretary)</td></tr>
<tr><td>Stakeholder Address</td><td colspan="4">Stakeholder Type (Include one or more X)</td></tr>
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<tr><td colspan="3">Other (Please Specify)/ Member of the Public</td><td></td></tr>
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Please provide some background information on your role as a stakeholder

Platform for Change was launched in 2010 to promote political realignment and civic renewal in Northern Ireland.

Platform for Change supports:

- a politics focused on the public interest and the common good;
- a cohesive government in which power is genuinely shared;
- an assembly which gives the citizen a real voice; and
- a vision of a tolerant and inclusive society without dividing lines.

This submission should be read alongside the submission made by Platform for Change a year ago to the committee's call for evidence. Taken together, the two submissions amount to a rounded critique of the adequacy of current arrangements allied to a coherent raft of proposed structural reforms.

Section 4

Issues (as set out in Phase 1 of the Committee's Review) and Questions to consider

D'Hondt

(1) **Whether there should be changes in the legislative provision and use of d'Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons**.

In your view, should the d'Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

In your view, should the d'Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?

Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views.

The d'Hondt mechanism for allocating ministerial positions should be replaced for several reasons—the most evident being its uniqueness in the world. That no other country should use this method (the nearest approximation being the Swiss 'magic formula' of pre-allocation of seats in the federal council), even after the many claims made on behalf of the Northern Ireland 'peace process' as the balm for ethnic troublespots across the world, should surely give pause.

The second compelling reason is that the application of d'Hondt to this end was the classic case of the horse designed by committee that became a camel. In the 1998 talks, in the single night of serious negotiations on devolved structures, the Ulster Unionist proposition for no power-sharing executive but an assembly with committee chairs distributed by d'Hondt, acting as department heads, met the SDLP demand for cabinet-style power-sharing with a 'nationalist veto'. The UUP proposal was based on the procedure of the European Parliament and the SDLP demand for power-sharing was also logical. But the camel, a power-sharing executive allocated by d'Hondt, fell foul of the obvious requirements of democratic governance: that there is collective responsibility in the executive, that it can be adequately scrutinised by the parliament/assembly and that the citizens can at elections 'turf the scoundrels out'.

It is thus perfectly correct to retain d'Hondt as a mechanism for distributing assembly committee chairs and vice-chairs. But a better means of executive formation needs to be found, which uses the foundation of collective responsibility to foster a sense of interdependence among ministers drawn from the two sides of the sectarian divide and which provides a model of reconciliation for society to follow—and of a 'joined-up' government in which the public can have confidence. There can be no doubting the public yearning for such exercise of shared political leadership. (Collective responsibility was agreed at the very first meeting of the power-sharing executive in 1974.)

Such mutual commitment is best expressed practically around a programme for government. The belief that Westminster, with its first-past-the-post electoral system and executive domination, represents the model is very unhelpful in this regard. In more typical European countries, an election leads—as indeed was the case in 2010 at Westminster and has become the norm in the other devolved jurisdictions—to negotiations among potential coalition partners as to a programme on which they could be compatible.

Those reluctant to depart from the 'Westminster model' have espoused a 'voluntary' coalition as an alternative to the current arrangements for executive formation. This does not, however, enjoy broad cross-sectarian support and in reality what is needed is a mandatory requirement after an assembly election for an inter-party coalition to be agreed, in a manner which is able to meet the twin requirements of democracy, as identified by the standard-setter the International Institute for Democracy and Electoral Assistance—that it sustains equality of citizenship as well as providing for popular control.

It would be hoped that such arrangements would become so normal over time that they needed no legal buttressing. (In the 1974 power-sharing arrangements, it was simply assumed that the parties to government would vote together in the assembly, thus blocking

any return to sectarian majoritarianism.) But they could be so supported through a variety of potential mechanisms:

(i) a numerical super-majority requirement in the assembly for government formation;

(ii) a requirement in the (too-long-delayed) Northern Ireland Bill of Rights providing for equality of political citizenship, which would then be the basis for judicial review, or

(iii) a '50-50' requirement (as in Belgium) that the executive had to include equal numbers of those of Protestant and Catholic backgrounds.

The last would be the least desirable of these—the evidence in Belgium being that government formation is very protracted and unstable—but at least it would not exclude 'others' and would not require political self-designation of MLAs as 'unionist' or 'nationalist', to which we come below.

It would be desirable for such transformed arrangements to determine government formation after the next assembly election—and, in the process, to ensure that election was actually a debate around the 'bread-and-butter' issues of competing programmes. This would sweep away the invidious provision in the St Andrews Agreement Act for the first minister to be automatically appointed by the largest party in the assembly. This has reinforced sectarian politics by turning elections into an 'arms race' across the divide as to which party will secure the FM position, at the expense of party pluralism and of the partnership ethos which underpinned the original concept in the Belfast agreement of the Office of the First Minister and Deputy First Minister. That would of course depend on legislation being passed to these effects at Westminster in the interim.

Community Designation

(1) **Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly**.

Do you believe that community designation as it currently operates should be retained? If yes, why?

If you believe that changes should be made, what changes do you propose? In particular:

- *Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?*
- *Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?*

Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views.

Communal designation should be abolished in the assembly because it perpetuates the sectarian divide as the axis of political argument in Northern Ireland. Its most obvious comparator is Bosnia-Herzegovina, where the associated mutual-veto arrangements have left government perennially deadlocked. Indeed, an insidious effect of communal designation is that it gives 'ethnic' political parties an incentive to maintain an ethnically divided society to sustain their vote banks and to campaign at election times on the basis of communal assertion rather than on how they will promote the public interest and the common good. It also has an insidious effect on the public, corroding any sense of the fellow citizenship on which democracy depends.

The idea was never entertained in the prolonged public and political debates leading up to the 1974 power-sharing executive and since 1998 it has often had perverse effects: rather than preventing sectarian majoritarianism, as supposed, it has provided a basis—via the exercise, or potential exercise, of the 'cross-community support' test—for individual parties to veto

proposals to which they object. This was exacerbated by the provision in the St Andrews agreement for the test to be imported into government itself, arising from and consolidating the impasse over academic selection.

A more effective mechanism for minority protection would be, as already mentioned, the enactment of a Northern Ireland Bill of Rights, which would replace the 'petition of concern'. This has been stymied by the failure to agree on the communalist notion of 'parity of esteem'. In fact, all minority rights conventions, notably the Council of Europe Framework Convention for the Protection of National Minorities and the Charter for Regional or Minority Languages, which could readily be incorporated into a Bill of Rights justiciable through the Northern Ireland courts, recognise the individual as the subject of all human rights, including when they deem themselves to be 'persons belonging to' minority communities—a recognition of the risk of unwittingly entrenching stereotyped communal conceptions of the Self and Other.

Alternative or additional protection could be provided by a requirement for a super-majority vote in the assembly. This, however, should be confined to issues of strategic significance, so that the procedure could not be abused in an opportunistic manner as indicated. It should therefore be restricted to the appointment of an executive after an election and the agreement of the Programme for Government, which—as in fact stipulated in the Belfast agreement—should once more be subject to annual iteration.

The timescale for these changes would be similar to that identified in the preceding section, requiring again Westminster legislation. To ensure the delay over a Bill of Rights is finally brought to an end, it should simply incorporate the two conventions referred to above—which are otherwise non-justiciable—thereby providing a suite of protections allied to the incorporation of the European Convention of Human Rights in 1998.

Provisions for Opposition

(1) **Whether the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity**.

Do you agree or disagree that the accountability and effectiveness of the Northern Ireland Assembly and Executive could be improved through the introduction of provisions to formally recognise Opposition, while retaining the principles of power-sharing and inclusivity? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?

What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?

Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views.

Platform for Change has been to the forefront of discussion of the issue of an opposition in the assembly. This issue can only be properly understood, however, in the context of the proposed change in the arrangements for executive formation—otherwise it becomes (mis-) conceived through the prism of the 'Westminster model'.

If the executive is to be formed by agreement between the parties comprising it, arising from the results of an assembly election, it follows that not all major parties may join that executive and one or more may elect instead to join minor parties as non-governing parties in the assembly. Their roles in that context should be to bring the executive to account and, at the next election, make the case for their unique programmatic contribution to a transformed governing coalition.

In that sense, the practice in Scotland and Wales is closer to that elsewhere in Europe—including, of course, the Republic of Ireland—where coalition government is the norm and

there is not a winner-takes-all political culture. The key problem at the moment is that, with all main parties in government, there is no significant party to represent alternative perspectives in the assembly—an 'opposition' role often assumed by default by the Belfast Telegraph. Moreover, the committees do not play properly their day-to-day scrutiny role, because every committee has, in effect, an overwhelming government majority.

Were the changes advocated in the two preceding sections to be introduced, those parties not joining an executive after an election would, de facto, become the non-governing parties. Once government formation is transformed and communal designation replaced, in other words, the question of an opposition resolves itself.

It should also be stressed that OFMDFM is currently failing in its statutory duty to ensure there is a Civic Forum which can act as a critical friend to the assembly and executive while engaging civic society. This should be reconstructed on the simple formula envisaged in the Belfast agreement of social partnership, rather than the baroque construction with 11 sectors and several sub-sectors of the largest sector (the voluntary sector) which the unworkable version of the forum constituted under the earlier period of devolution comprised.

Provisions for Opposition

a) **In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties**.

What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?

How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?

Please offer supporting evidence for your views.

The same principle should apply to each of these subsidiary questions. Parties should be publicly resourced according to their assembly strength. Abolition of the role of special adviser, which has blurred the boundary between the partisan (the party) and the impartial (public authority) and had damaging effects on the civil service at senior level would make this a fair arrangement.

Provisions for Opposition

b) **In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition**.

What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?

If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?

Please offer supporting evidence for your views.

The current arrangement for the proportionate distribution of committee positions should be retained.

Provisions for Opposition

c) *In particular, please comment on whether Opposition Parties/Non-Executive Parties should be guaranteed additional time to raise and debate non-Executive business in the Assembly — including priority speaking rights in response to Ministerial Statements and in Question Time.*

Do the current arrangements provide adequate time and speaking rights for Opposition Parties/ Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.

Please offer supporting evidence for your views.

Time in the assembly should also be allocated in proportion to party strength.

Section 5

Additional Information

Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review.

The platform launched in 2010 by Platform for Change, with the support of hundreds of signatories, began:

> It is time for a step change in the politics of Northern Ireland, to realise the overwhelming ambition of its citizens to live in a normal society. This is a modest, and entirely realistic, ambition.
>
> There is a deep yearning to put behind us not just the large-scale violence of the past but also the deep sectarian divisions, intolerance and introversion which still bedevil this society. These prevent us moving forward to a future marked by reconciliation, greater social comfort and the dynamism which our young people expect.
>
> While the Good Friday agreement raised deeply felt hopes that a new future lay ahead, disillusionment has grown in subsequent years, with the post-agreement institutions as often in abeyance as in operation. Commitment to the common good has repeatedly been trumped by a partisan political agenda, frustrating widely shared aspirations for the focus to shift to day-to-day economic and social concerns. Most pressing among these, the political impasse over academic selection has displayed a cavalier attitude to the concerns of parents, teachers and children.
>
> Objectively, the devolved government has been under-performing. The 2008 Programme for Government initiated no significant new policies. Indeed, strategic policies inherited from direct rule were abandoned amid ideological resistance (sustainable development), shelved without any capacity to generate a replacement (A Shared Future) or quietly adopted for lack of an alternative (the anti-poverty strategy). Nor has the programme been annually revised as envisaged in the Belfast agreement, despite the dramatic change in external conditions manifested in the global economic crisis.
>
> Most assembly business has been coming from members themselves, rather than bills proposed by the executive, giving Stormont the air of a debating society. In the absence of significant outcomes on the ground, public engagement and electoral participation, critical to a democratic society, have been falling. And it is fundamentally demeaning to suggest that an absence of politically-motivated violence—indeed, amid political polarisation, violence has been showing a worrying re-emergence—should be the summit of our aspirations for a good life.
>
> Political power must be genuinely shared, not shared out. This requires collective responsibility in government and a commitment to working in a collaborative way to resolving problems which for ordinary citizens cut across the departmental silos. It was intolerable, for example, that there was no single emergency line for distressed householders to ring during the floods of August 2008.
>
> There must be a serious debate about how to make the institutions of governance more flexible, so that they are less fragile. Deadlocking vetoes must be replaced by

incentives to conciliation: it was simply unacceptable that the executive should fail to meet for five months in 2008 as rising unemployment and spiralling fuel prices cried out for an effective, collective response. And electors deserve the right to choice between alternative, cross-communal coalition options.

In such a context, the debate on a bill of rights, which lacks any current definition, can focus as it should on providing safeguards against majoritarian abuse of power, without requiring MLAs to 'designate' in Orange or Green terms. Otherwise the long-term future will be the entrenchment of sectarian division, against the backdrop of a Europe which for two decades has been removing its dividing lines.

It will be clear from this that Platform for Change, like the committee, sees these three questions as interrelated. More, however, we would see them as symptoms of a more profound governance deficit, as it is evident that the arrangements inherited from 1998, exacerbated by the St Andrews agreement of 2006, have significant flaws. They are failing to incentivise democratic behaviours, notably vis-à-vis electoral participation (plummeting worryingly), deliberative dialogue and executive effectiveness.

It is time for a change towards more flexible and fit-for-purpose arrangements, without throwing out the baby of power-sharing and equality of citizenship with the bathwater of departmental autonomy and mutual vetoes. Rethinking the future of politics in Northern Ireland as about European-style, shifting, cross-sectarian coalitions, resulting from electoral choices—as against the outdated, winner-takes-all, 'Westminster model' or its almost extinct, 'consociationalist' alter ego—is essential if the citizens of the region are ever to enjoy normal political life in a reconciled society.

Platform for Change: summary of the argument

Platform for Change was launched in 2010 to promote political realignment and civic renewal in Northern Ireland.

Platform for Change supports:

- a politics focused on the public interest and the common good;
- a cohesive government in which power is genuinely shared;
- an assembly which gives the citizen a real voice; and
- a vision of a tolerant and inclusive society without dividing lines.

In this context, we have advocated interrelated structural reforms of the governance arrangements for Northern Ireland, in a coherent package partly rehearsed in our submission to the committee's previous call for evidence in March 2012, notably with regard to the number and nature of devolved departments. We argued there that these should be reduced to seven policy-focused departments and that the first minister should feel him/herself obliged to give civic leadership to the public as a whole, rather than merely representing the Protestant community politically as now.

In this submission we extend the argument about the nature of the executive to urge the replacement of the obscure d'Hondt mechanism for executive formation—unused for this purpose anywhere else—by a more conventional European norm that a consensual coalition government is formed after an election around an agreed programme. While recognising this as the normality—rather than the 'Westminster model' of winner-takes-all—to which we should aspire, we also recognise our divided legacy as a society by offering a menu of safeguards to ensure that any such executive met the twin democratic requirements of popular control and equality of citizenship, without incentivising deadlocking vetoes.

Such shifting coalitions, sensitive to electoral outcomes and operating on a basis of collective responsibility, do not sit easily with the provision in the St Andrews Act that the first minister position should automatically go to the nominee of the largest party, fostering as this does in our inherited political culture a sectarian 'arms race' for the post and a brake on political pluralism. Nor do they sit easily with the provision for communal designation in the Northern Ireland Act, which serves unwittingly to entrench sectarian mindsets and embed them in the wider society. It should be repealed and replaced by minority-rights protections in the long-awaited Northern Ireland bill of rights, which would then acquire a clear rationale.

This is not a proposal for a 'voluntary' coalition at Stormont but rather that a mandatory coalition be agreed after an election rather than thrown together by the automaticity of d'Hondt. That in turn would leave space for an opposition to emerge, organised around a party or parties which did not wish to accept the potential terms of an agreed coalition programme and elected instead to develop from the opposition benches a coherent critique of the government actually formed, including with an eye to being integral to the formation of a new coalition after a subsequent assembly election. This opening up of government to more effective scrutiny should be extended to the wider society through the reconstitution, on a simpler and more workable basis of social partnership, of the Civic Forum mandated by the Northern Ireland Act.

We would wish to see this package of changes introduced through Westminster legislation in advance of the next assembly election, which could re-engage an increasingly disillusioned electorate and reinvigorate devolved institutions which seem to have lost their momentum.

Dr Robin Wilson

Chair, April 2013

Appendix 5

Correspondence and Other Papers Relating to the Review

Correspondence and Other Papers Relating to the Review

15 January 2013 – Assembly and Executive Review Committee Chairperson to Secretary of State

NI Assembly, Financial Assistance for Political Parties Scheme 2007

29 January 2013 – Financial Assistance for Political Parties Scheme 2012-2013

11 February 2013 – Secretary of State to Speaker of NI Assembly

February 2013 – Publication Of Draft Legislation Northern Ireland (Miscellaneous Provisions)

12 February 2013 – Assembly and Executive Review Committee Chairperson to the First Minister and deputy First Minister

21 February 2013 – Clerk of OFMDFM Committee to Assembly and Executive Review Committee Clerk

5 March 2013 – Secretary of State to Assembly and Executive Review Committee Chairperson

February 2013 – Summary of Responses to Consultation on measures to improve the Operation of the Northern Ireland Office – Northern Ireland Assembly

22 April 2013 – Clerk to Committee on Procedures to Assembly and Executive Review Committee Clerk

23 April 2013 – Assembly and Executive Review Committee Clerk to Clerk of Committee on Procedures

29 April 2013 – Chairperson of Committee on Procedures to Assembly and Executive Review Committee Chairperson

May 2013 – Government Response to NI Affairs Committee Pre-Legislative Scrutiny Report on the draft Northern Ireland (Miscellaneous Provisions) Bill

Committee Chairperson to Secretary of State – 15 January 2013

The Rt Hon Theresa Villiers MP
Secretary of State for Northern Ireland
Northern Ireland Office
Stormont House
Stormont Estate
Belfast
BT4 3SH

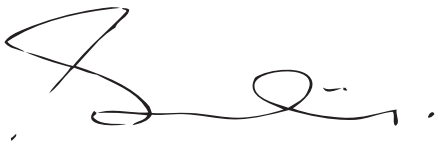
15th January 2013

Dear Ms Villiers

The Assembly and Executive Review Committee is currently undertaking a Review focusing on D'Hondt, Community Designation and the Creation of an Opposition. I am aware that one of the key areas of your 'Consultation on Measures to improve the operation of the Northern Ireland Assembly' is "Government and Opposition".

Given the relevance of that aspect of your consultation to the Assembly and Executive Review Committee's current Review, I am writing to request that a summary of the outcome of the consultation be forwarded to the Committee as soon as it is available.

Yours sincerely,



Stephen Moutray MLA
Chairperson
Assembly and Executive Review Committee

CC. The Speaker of the Northern Ireland Assembly
CC. The First Minister of the Northern Ireland Assembly
CC. The deputy First Minister of the Northern Ireland
CC. The Committee for the Office of the First Minister and the deputy First Minister

Assembly and Executive Review Committee
Room 375, Parliament Buildings, Ballymiscaw, Stormont, Belfast BT4 3XX
Telephone: 028 9052 1735 E-mail: committee.assemblyandexecutivereview@niassembly.gov.uk

Financial Assistance for Political Parties Scheme 2007

REVISED SCHEME LAID BEFORE THE NORTHERN IRELAND ASSEMBLY UNDER SECTION 2(3) OF THE FINANCIAL ASSISTANCE FOR POLITICAL PARTIES ACT (NORTHERN IRELAND) 2000

NIA 26/07-08 £2.00

Financial Assistance for Political Parties Scheme 2007

The Northern Ireland Assembly Commission in exercise of the powers conferred on it by section 1 of the Financial Assistance for Political Parties Act (Northern Ireland) 2000 and all other powers conferred on it in that behalf, hereby makes the following Scheme.

Introduction

1 (1) For the year commencing on 1 April 2007 and for future years financial assistance to political parties for the purpose of assisting members of the Assembly who are connectedwith that party to perform their Assembly duties shall be payable by the Commission in accordance with Articles 2 to 5.

(2) In this Scheme –

a member of the Assembly shall be regarded as connected with a political party if he is a member of that party;

"authorised purpose" means the purpose of assisting members of the Assembly who are connected with that party to perform their Assembly duties;

"member" means a member of the Assembly;

"year" means a period of 12 months starting on 1st April.

Claims for Financial Assistance

2 (1) Any claims for financial assistance shall be made to the Finance Officer under this Scheme in such form and manner as the Commission may require.

(2) As soon as practicable after 31st March in each year, but no later than 30th June in the following year, each political party shall furnish the Finance Officer with the certificate of an independent professional auditor to the effect that all financial assistance received by the party in each year ending 31st March under this Scheme was used exclusively for the authorised purpose.

(3) Where any payment of financial assistance has been made to a political party and it subsequently appears to the Commission that that party was not entitled to the financial assistance (or part of it), the Commission may by notice in writing require the party to repay the financial assistance (or part of it).

Amount of Financial Assistance

3 Subject to Articles 4 and 5, the financial assistance payable in a year to each political party shall be:

(a) £24,000 in respect of the costs incurred by a political party for the authorised purpose where that party has only one connected member;

(b) £48,000 in respect of the costs incurred by a political party for the authorised purpose where that party has two or more connected members;

(c) £3,000 in respect of the costs incurred by a political party for the authorised purpose in respect of each member who is connected with that party who does not hold a ministerial or junior ministerial post;

(d) £15,000 in respect of the costs incurred by a political party in the administration of its Whips' Office for the authorised purpose where that party has more than two but fewer than eleven connected members;

(e) £22,500 in respect of the costs incurred by a political party in the administration of its Whips' Office for the authorised purpose where that party has more than ten but fewer than twenty-one connected members;

(f) £30,000 in respect of the costs incurred by a political party in the administration of its Whips' Office for the authorised purpose where that party has more than twenty connected members;

(g) Where during any year financial assistance is payable to any party under Article 3 (d), (e) or (f), £500 in respect of the costs incurred by a political party to administer its Whips' Office for the authorised purpose in respect of each member who is connected with that party who does not hold a ministerial or junior ministerial post; and

(h) For the purposes of this Scheme any member holding the Office of Speaker shall be considered to be connected with that party unless he gives notice in writing to the Finance Officer.

Annual Uprating

4 (1) For the year commencing on 1st April 2008 and for each subsequent year, the amounts payable under Article 3 shall be increased by the percentage increase in the Retail Prices Index between April in any year and April in the following year

(2) In this paragraph the "Retail Prices Index" means the general index of retail prices, for all items, published by the Office for National Statistics.

Changes in party membership

5 (1) Where during any year a new political party has been formed, the financial assistance payable to that party under Article 3 shall be calculated proportionately.

(2) Where during any year a member ceases to be connected with a political party, the financial assistance payable to that party under Article 3 for the remainder of the year shall be decreased accordingly.

(3) Where during any year a member becomes connected with a political party, the financial assistance payable to that party under Article 3 for the remainder of the year shall be increased accordingly.

(4) For the purposes of this Article vacancies of members during any year arising during a period of dissolution and election of the Assembly shall not be taken into account.

(5) For the year commencing on 1st April 2007 the financial assistance payable under Article 3 shall be reduced proportionately to cover the number of days remaining in the year between the approval of this Scheme by the Assembly and the 31st March 2008 divided by 365.

Revocation

6 The Financial Assistance for Political Parties Scheme 2002 is revoked.

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Financial Assistance for Political Parties 2012-2013 – 29 January 2013

Financial Assistance for Political Parties Scheme 2007

Party	Members**	Ministers	Article 3a	Article 3b	Article 3c	Article 3d	Article 3e	Article 3f	Article 3g	Total	Average per Member
Alliance Party	8	2	£0	£52,687	£19,757	£16,465	£0	£0	£3,293	£92,201	£11,525
DUP	38	6	£0	£52,687	£105,374	£0	£0	£32,929	£17,562	£208,552	£5,488
Green Party	1	0	£26,343	£0	£3,293	£0	£0	£0	£0	£29,636	£29,636
Sinn Féin	29	5	£0	£52,687	£79,030	£0	£0	£32,929	£13,172	£177,818	£6,132
SDLP	14	1	£0	£52,687	£42,808	£0	£24,697	£0	£7,135	£127,326	£9,095
TUV	1	0	£26,343	£0	£3,293	£0	£0	£0	£0	£29,636	£29,636
UKIP	1	0	£26,343	£0	£3,293	£0	£0	£0	£0	£29,636	£29,636
UUP	15	1	£0	£52,687	£46,101	£0	£24,697	£0	£7,683	£131,167	£8,744

Amount of Financial Assistance*

3a £24,000 in respect of the costs incurred by a political party for the authorised purpose where that party has only one connected member;

3b £48,000 in respect of the costs incurred by a political party for the authorised purpose where that party has two or more connected members;

3c £3,000 in respect of the costs incurred by a political party for the authorised purpose in respect of each member who is connected with that party who does not hold a ministerial or junior ministerial post;

3d £15,000 in respect of the costs incurred by a political party in the administration of its Whips' Office for the authorised purpose where that party has more than two but fewer than eleven connected members;

3e £22,500 in respect of the costs incurred by a political party in the administration of its Whips' Office for the authorised purpose where that party has more than ten but fewer than twenty-one connected members;

3f £30,000 in respect of the costs incurred by a political party in the administration of its Whips' Office for the authorised purpose where that party has more than twenty connected members;

3g Where during any year financial assistance is payable to any party under Article 3d, e or f, £500 in respect of the costs incurred by a political party to administer its Whips' Office for the authorised purpose in respect of each member who is connected with that party who does not hold a ministerial or junior ministerial post.

* Please note: Financial Assistance figures are for 2012-13 and include annual uprating based on the Retail Price Index.

** Current Assembly Party membership for 2012-13

Secretary of State to Speaker of NI Assembly – 11 February 2013

Northern Ireland Office

Northern Ireland Office
11 Millbank
London SW1P 4PN
Telephone 020 7210 6460
Facsimile 020 7210 6449
www.nio.gov.uk

Secretary of State for Northern Ireland

William Hay
The Speaker
Northern Ireland Assembly
Room 39
Parliament Buildings
Stormont, Belfast
BT4 3XX

11th February 2013

Dear William

PUBLICATION OF DRAFT LEGISLATION
NORTHERN IRELAND (MISCELLANEOUS PROVISIONS)

As you know, I hope to take forward primary legislation dealing with Northern Ireland matters in the third session of this Parliament. I am writing to announce the publication today of a paper covering a number of draft clauses and accompanying documents. These deal with a number of important issues for Northern Ireland and will form the basis of a Bill which I hope to publish later in the year, following pre-legislative scrutiny by the Northern Ireland Affairs Committee.

The draft Bill does not seek to re-open the Belfast Agreement or its successors. Any kind of significant change to the Agreements could only come about with widespread consensus among the parties represented in the Assembly. Rather, the Government's purpose here is to make a number of useful reforms, which although they are generally of a technical nature, will deliver important improvements in how politics, and the Assembly, function in Northern Ireland

Discussions are ongoing with the Northern Ireland political parties regarding some of the issues on which we consulted in 2012. Today, however, I am publishing draft provisions in respect of the majority of items likely to be covered by any Northern Ireland-specific legislation in the next session. On those issues where final decisions have not yet been taken, the paper sets out my emerging thinking on how to address them.

In addition, I am publishing the responses to the recent consultation on 'Measures to Improve the Operation of the Northern Ireland Assembly' on the NIO website: www.nio.gov.uk I have decided to publish these responses in full, where the respondent has given permission for publication, along with a brief summary document. Analysis of these, and the Government's response to them, is reflected in the policy and draft legislation set out in the paper. This will also be made available on my Department's website today.

I attach copies of the draft legislation paper. I have asked the Northern Ireland Affairs Committee to conduct pre-legislative scrutiny on the draft legislation and there should follow a call for evidence in due course.

Regards

RT HON THERESA VILLIER MP
SECRETARY OF STATE FOR NORTHERN IRELAND

PUBLICATION OF DRAFT LEGISLATION NORTHERN IRELAND (MISCELLANEOUS PROVISIONS)

Presented to Parliament
by the Secretary of State for Northern Ireland
by Command of Her Majesty

February 2013

Cm 8563 £10.75

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FOREWORD

This paper sets out draft legislative clauses relating to a number of matters of concern in Northern Ireland. If Parliamentary time permits, we propose that these provisions form a Bill to give effect to a number of institutional changes in Northern Ireland. These would include ending dual mandates between the Northern Ireland Assembly and the House of Commons; providing more transparency on party funding; and implementing changes to provide greater security of tenure for the NI Justice Minister. In addition, we also plan to use the Bill to implement a number of significant improvements to the administration of elections in NI, following recommendations made by the Electoral Commission and Chief Electoral Officer for NI.

The draft Bill does not seek to re-open the Belfast Agreement or its successors. Any kind of significant change to the Agreements could only come about with widespread consensus among the parties represented in the Assembly. Rather, the Government's purpose here is to make a limited number of useful reforms, generally of a technical nature, that will improve how politics, and the Assembly, function in NI.

The clauses relating to constitutional and institutional matters are the first of that nature in Northern Ireland for many years not to be introduced in an atmosphere of political crisis. They are also the first to be submitted for pre-legislative scrutiny. This has been made possible by the ongoing stability of the political institutions in Northern Ireland, which is unprecedented in recent history. It is testament to the great progress made in Northern Ireland since the early 1990s and to Northern Ireland's political leadership.

There remains widespread commitment to the principles of the Belfast Agreement and St Andrews Agreement at both Westminster and Stormont. This has ensured that there is now a settled institutional structure in Northern Ireland. It is right that the Northern Ireland Executive should take the lead on Northern Ireland's future. The UK Government will support it in any difficult decisions it must make in order to keep moving forward. The relationship between Westminster and Stormont is maturing and this draft legislation reflects that. The measures contained in the draft Bill are important, but unlike virtually all other Northern Ireland Bills since 1998, the motivation for their introduction is not an urgent need to prop up or resuscitate the devolved institutions.

Many of the draft measures included here have already been the subject of public consultation; they have also been discussed with the NI political parties. Most recently, in August last year, the then Secretary of State, Owen Paterson, published a Public Consultation on Measures to Improve the Operation of the Northern Ireland Assembly. The consultation sought responses on four key issues: number of seats in the Assembly, length of Assembly terms (whether the current term should be extended by one year, and whether there should be a move to five year fixed terms), multiple mandates, and the potential for moving to a system of 'government and opposition'.

That consultation closed on 23 October. There were 48 responses in total; 9 of which were from political parties. These responses will be published in full on the NIO website, where the respondent has consented to publication. A summary of consultation responses will be published alongside the individual contributions. A number of other measures in the draft Bill were subject to public consultation at earlier stages.

The context for these reforms is significant. Greater political stability in the Northern Ireland institutions provides the opportunity to move beyond the politics of the peace process and focus on the politics of delivery. In Northern Ireland, the Government is clear that this should mean a greater focus than ever before on the rebalancing of the economy, the promotion of jobs and growth, and the tackling of sectarianism and division to develop a genuinely shared society for everyone. We are determined to continue to work with the Executive to address these issues.

RT HON THERESA VILLIERS MP
SECRETARY OF STATE FOR NORTHERN IRELAND

FEBRUARY 2013

PUBLICATION OF DRAFT LEGISLATION
NORTHERN IRELAND (MISCELLANEOUS PROVISIONS)

Donations and Loans for Political Purposes

1. At present, it is unlawful for the Electoral Commission to release information relating to any NI political donation during a period prescribed by secondary legislation. The prescribed period, which initially lasted for two years from 1 November 2007, has since been extended three times and will expire on 30 September 2014.

2. Currently, when the prescribed period expires, details of the donations and loans reported during that period will be made public. However, most NI parties and the Electoral Commission are opposed to the release of this information. They argue that those making donations from 1 November 2007 were doing so in the belief that these donations would not be released even when the confidentiality arrangements expired. Following public consultation in NI during 2010, the Government committed to increasing transparency and to ensuring that that anonymity of donations during the prescribed period would be maintained.

3. Changes are therefore sought in two areas:

- Take a power enabling modification of the existing scheme during the prescribed period, via secondary legislation, which gives flexibility to make further modifications in the future. For example, the Electoral Commission could be required to publish a list of donations and loans excluding the names and addresses of donors.
- Provide retrospective anonymity for donors who made, or make, donations between 1 November 2007 and 30 September 2014, unless they give their express consent for their identity to become public.

Dual Mandates

4. The majority of respondents to the recent consultation favoured enacting primary legislation to bring an end to ‘double jobbing’ as soon as possible. The Government has always been clear that it wants to see this practice ended. It was a commitment in the Conservative and Unionist Manifesto for Northern Ireland at the 2010 General Election. In its 2009 report, the Commission on Standards in Public Life recommended that legislation to bring the practice to an end should be introduced by the time of the next Assembly elections, due in May 2015.

5. Whilst most parties in NI have signalled that they will voluntarily end the practice of holding dual mandates, and some individuals have moved to resign one seat or the other, double jobbing has not been completely eradicated. There is currently nothing to deter parties from resurrecting the practice should it prove politically expedient in the future. Given the strength of the response on this issue and the previously-expressed commitments

made by the Government, the draft legislation contains clauses which would prevent Members of Parliament from sitting concurrently in the NI Assembly. This will take effect following the dissolution of the current Assembly.

6. No provision barring dual mandates exists in relation to the devolved administrations in Scotland and Wales. Historically, double jobbing has been more prevalent in Northern Ireland. Indeed, the Committee on Standards in Public Life noted that the holding of multiple mandates appears to be "unusually ingrained" in Northern Ireland. This was thought to be both because of the legacy of the Troubles, which discouraged many individuals from getting involved in politics, and because of the recent history of political instability, which led a reluctance to give up seats in Westminster for fear that the local devolution settlement might again collapse. There remain in Northern Ireland a number of MPs/MLAs who hold a dual mandate. By contrast, there are no 'double jobbers' between the House of Commons and the National Assembly for Wales, and no Members of the Scottish Parliament also sit in the Commons. The Government therefore believes that introducing rules which apply specifically to Northern Ireland is objectively and reasonably justifiable and is proportionate to the desired aim.

Northern Ireland Justice Minister

7. Provision is needed to ensure that the NI Justice Minister has the same security of tenure as other NI Executive Ministers and cannot simply be removed by a cross-community vote in the Assembly. The NI Justice Minister is not appointed by the d'Hondt procedure which is used for all other Ministerial offices in the NI Executive. Instead he is appointed through nomination by one or more members of the Assembly and approval by cross-community vote. Currently, the incumbent can be removed if a motion is raised to that effect by either the First and deputy First Ministers acting together, or 30 or more Assembly members, followed by a majority cross-community vote.

8. There were discussions among political parties in Belfast in 2012 prior to the Assembly reaching a conclusion, in accordance with its legal obligations, on the permanent method of appointing a Justice Minister. In light of those discussions the First Minister and deputy First Minister asked my predecessor to bring forward provision to give the Justice Minister the same security of tenure as other ministers. He agreed to do so and the draft Bill gives effect to this.

9. The draft clauses also remedy the current anomaly created by the appointment of the Justice Minister outside the d'Hondt procedure which currently gives the party from which the Justice Minister is appointed an 'extra' Ministerial post to those which it would be entitled under the normal procedure for Ministerial appointments.

Electoral Registration and Administration

10. These provisions are intended to give effect to commitments made by the previous Government following its 20 July 2009 public consultation 'Improving Electoral Registration Procedures in Northern Ireland'. The then Government published its response to this consultation on 24 November 2009. Additionally, the provisions also cover recommendations made by the Electoral Commission in its October 2011 report on elections in Northern Ireland, and by the Chief Electoral Officer for NI. In summary they:

- Remove the requirement to have been resident in NI for three months before being entitled to register to vote;
- Permit people from NI, who qualify to vote under the current franchise and who wish to vote at a UK election whilst living abroad, to declare themselves as either a British or an Irish citizen;
- 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;
- Make providing false information in relation to an electoral ID card application an offence.

11. If legislation is brought forward in the future, as expected, it is also the Government's intention to implement recommendations made by the Electoral Commission in its November 2012 report on the electoral register in Northern Ireland.

Miscellaneous Provisions

12. Any forthcoming Northern Ireland legislation is likely to be the main primary legislative vehicle for Northern Ireland-specific measures in this Parliament. Draft clauses have, therefore, also been prepared to deal with some additional issues. There is provision to ensure that the flexibility exists to partially designate public authorities in NI in relation to statutory equality duties under s75 of the Northern Ireland Act, should that prove necessary in future. This would replicate similar provisions in the Equality Act 2010 which apply to England and Wales. The change proposed would mean that bodies which currently cannot be designated in their entirety (for example because they carry out some functions which must be excepted from the relevant duties) can be considered for designation in the future.

13. Other clauses aim to remedy an anomaly created by administrative changes to approval processes for rules governing Court procedures in NI; and to ensure that DNA samples (gathered under general policing powers) can be used in the interests of national security and for the purposes of a terrorist investigation.

Measures still under consideration for potential inclusion in the Bill

13. The Government has repeatedly made clear that any significant institutional changes – with the exception of ending multiple mandates – could only be made on the basis of a broadly based consensus among the NI parties and the wider community. It is right that consideration is given to how the institutions might be made more effective, but the principles of the Agreements are paramount. As the Prime Minister has stated, any changes must be consistent with power sharing and inclusive government at the heart of the Belfast Agreement.

14. The responses to the consultation indicate that there is a desire to improve the efficacy of the institutions, and to make amendments to their operation with the aim of creating a system which can make decisions and adapt to changing circumstances more easily. To date, however, it is not clear that the widespread agreement necessary to bring about more substantial statutory reform exists.

Size of the Northern Ireland Assembly

15. The number of seats in the Assembly would have automatically gone down from 108 to 96 following the planned reduction in Westminster constituencies flowing from the Parliamentary Voting System and Constituencies Act 2011. Notwithstanding the outcome of that work, commitments were given to parties in the Assembly that a legislative vehicle would be made available to implement any agreement reached on the size of the Assembly, at a later date. The consultation responses indicate that there is a general desire to reduce the number of seats to improve the efficiency of the Assembly and provide better value for money to taxpayers. We will continue to engage with the Northern Ireland political parties to seek an outcome on this matter which commands broadly based support and which could therefore be included in the Bill.

Length of Assembly Terms and Future Election Dates

16. In 2011 the Government also brought forward legislation to introduce fixed-term Parliaments. As a result, the next Westminster election will be held in May 2015, then every five years thereafter. It was recognised during the passage of the Fixed Term Parliaments Act 2011 that May 2015 had already been set as the date of the next Assembly elections. Some concern was expressed in NI over the possibility of three elections being scheduled for the same day.

17. Following consultation with the NI party leaders, the Government decided to await the results of the 2011 triple poll (Assembly, local councils and the AV referendum) before deciding whether any provision to move the date of the poll would be needed. The consultation therefore asked whether the life of the current Assembly should be extended by one year, from 2015 to 2016, to avoid concurrence of Westminster and Assembly elections in May 2015. It also sought views on whether the Assembly should move to a fixed

5-year term permanently, as has already been established at Westminster and for the devolved legislatures in Cardiff and Edinburgh.

Length of Current Assembly Term

18. The Government has consistently made clear that any move to extend the length of 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. Only a small number of consultation responses addressed the issue. While the option remains open in principle, a compelling case for the extension of the Assembly term has not yet been made. As yet, there has been no sufficient indication of widespread public approval for the proposal. We are willing to revisit this issue should this assessment change (which it might, for example, if the Executive were able to demonstrate clearly that an extension of their term would allow them to deliver more on key priorities such as rebalancing the economy and addressing sectarian divisions in Northern Ireland).

Length of Future Terms

19. The scheduling of future Assembly elections is obviously dependent on final decisions on the length of the current Assembly term. The consultation responses were relatively ambivalent on the issue of moving to fixed five-year Assembly terms in the future. However, 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 five year terms for the Assembly.

20. Should the current Assembly term end as scheduled in 2015, one more 4 year term until 2019 with a move to five year terms thereafter would avoid a double poll with the scheduled Parliamentary elections in 2020. However, if the current term is ultimately extended until 2016, then the move to five year fixed terms would take effect on the next Assembly elections in that year. This would make the subsequent Assembly election due in 2021 also avoiding the clash with the 2020 Parliamentary poll.

Government and Opposition

21. The 2011 consultation requested views on whether it was possible or desirable to move towards a more ‘normal’ system that continues to allow for inclusive government but also provides for a formal opposition in the Assembly. As the consultation stated, 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. These are aspects which the current system lacks, notwithstanding much valuable scrutiny work by the Assembly and its Committees.

22. While the Government would welcome moves towards a system of government and opposition, we remain clear that such changes could only come about with the agreement of parties in the Assembly. In addition, such moves must be consistent with the principles of inclusivity and of power-sharing that are central to the Belfast Agreement. We do not believe that there is sufficient consensus for statutory change at present which is why the draft Bill includes no provision on this issue.

23. However, the consultation document also drew attention to the possibility of procedural change within the Assembly aimed at providing for a more effective opposition. The Government notes that the Assembly & Executive Review Committee is examining these questions, amongst other institutional issues. The Assembly Research and Information Service produced a Briefing Paper[1] entitled 'Opposition, Community Designation and d'Hondt' in November 2012. Procedural developments are of course matters for the Assembly itself and not for the Government to seek to impose.

Devolution of responsibilities relating to Arms-Length Bodies

23. Some functions relating to the Civil Service Commissioners for Northern Ireland, the Northern Ireland Human Rights Commission and the District Electoral Areas Commissioner are currently not devolved matters and must still be exercised by the Secretary of State. It may become appropriate to transfer these functions, by agreement, so that they become the responsibility of the Northern Ireland Assembly and Executive at some future date. Any Northern Ireland-specific legislation at Westminster might, then, make provision to allow this transfer of functions to be achieved by future secondary legislation rather than requiring further primary legislation to effect a change.

1 http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/assembly_exec_review/18912.pdf

Northern Ireland (Miscellaneous Provisions) Bill (Draft)

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Make provision about donations and loans for political purposes in connection with Northern Ireland; to make provision disqualifying members of the House of Commons for membership of the Northern Ireland Assembly; to make provision about the appointment of the Northern Ireland Justice Minister; to make provision about the registration of electors and the administration of elections in Northern Ireland; and to make miscellaneous amendments in the law relating to Northern Ireland.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Donations and loans etc for political purposes

1 Donations

(1) In the Northern Ireland (Miscellaneous Provisions) Act 2006—

(a) for section 14 (modifications of the Political Parties, Elections and Referendums Act 2000 to have effect during a prescribed period) substitute—

"14 Special provision in relation to Northern Ireland recipients

Schedule 1 contains amendments of the 2000 Act relating to donations received by Northern Ireland recipients.";

(b) in Schedule 1, in the heading, for "MODIFICATIONS" substitute "AMENDMENTS".

(2) After section 15 of that Act insert—

"15A Power to increase transparency

(1) The Secretary of State may, after consulting the Electoral Commission, by order—

(a) make provision permitting or requiring the Electoral Commission to publish information about donations received by Northern Ireland recipients, or

(b) make other provision for the purpose of increasing transparency in relation to such donations.

(2) Provision made under this section may—

(a) amend, repeal or modify any enactment connected with donations for political purposes (including in particular any of the provisions inserted into the 2000 Act by Schedule 1);

(b) include consequential, supplementary, incidental, transitional, transitory or saving provision.

(3) Provision made under this section may apply in relation to donations received at any time on or after 1 November 2007.

(4) The power to make an order under this section is exercisable by statutory instrument.

(5) No order is to be made under this section unless a draft of the instrument containing the order has been laid before and approved by a resolution of each House of Parliament.

(6) For the purposes of this section and section 15B—

(a) "donation" has the same meaning as in Part 4 of the 2000 Act (see section 50 of that Act);

(b) the time at which a donation is received is to be determined in the same way as for the purposes of that Part;

(c) "Northern Ireland recipient" has the same meaning as in Chapter 6 of that Part (see section 71A of that Act).

(7) Section 15B imposes limits on the provision that may be made under this section.

15B Protection of confidentiality of donations made before 1 October 2014

(1) The provision that may be made under section 15A does not include provision which—

(a) alters the effect of section 71E of the 2000 Act (duty not to disclose contents of donation reports) in relation to the disclosure of protected information,

(b) reduces the maximum penalty for an offence under that section committed in relation to the disclosure of protected information, or

(c) gives a person a right to obtain protected information contained in a register kept by the Commission under that Act.

(2) "Protected information" means information—

(a) which relates to a donation received before 1 October 2014, and

(b) which identifies the donor or from which it is possible to identify the donor.

(3) In this section—

(a) a reference to section 71E of the 2000 Act is to that section as it has effect on the coming into force of this section (and for this purpose the amendment made by section 1(3) of the Northern

Ireland (Miscellaneous Provisions) Act 2013 is treated as in force), and

(b) a reference to a penalty for an offence under the 2000 Act is to that penalty as it has effect on the coming into force of this section."

(3) In section 71E of the Political Parties, Elections and Referendums Act 2000 (duty not to disclose contents of donation reports), after subsection (4) insert—

"(4A) Such information may be disclosed if the Commission believe, on reasonable grounds, that—

(a) the relevant person has consented to the disclosure, and

(b) the consent was given in accordance with any prescribed requirements.

(4B) "The relevant person" means the person who made the donation to which the information relates."

2 Loans etc

(1) In the Electoral Administration Act 2006 (Regulation of Loans etc: Northern Ireland) Order 2008 (S.I. 2008/1319)—

(a) for article 5 (modifications of the Political Parties, Elections and Referendums Act 2000 to have effect during a prescribed period) substitute—

"5 Special provision in relation to Northern Ireland participants

Schedule 1 contains amendments of the 2000 Act relating to loans etc involving Northern Ireland participants.";

(b) in Schedule 1, in the heading, for "MODIFICATIONS" substitute "AMENDMENTS".

(2) In section 71Z4 of the Political Parties, Elections and Referendums Act 2000 (duty not to disclose contents of transaction reports), after subsection (4) insert—

"(4A) Such information may be disclosed if the Commission believe, on reasonable grounds, that—

(a) each relevant person has consented to the disclosure, and

(b) the consent was given in accordance with any prescribed requirements.

(4B) "Relevant person" means a party to the transaction to which the information relates other than—

(a) a registered party whose treasurer is required under this Part to prepare a report to the Commission giving details of the transaction, or

(b) any other party to the transaction who is required under this Part to prepare such a report."

(3) In section 63 of the Electoral Administration Act 2006 (power to make provision for regulation of loans etc: Northern Ireland), after subsection (7)

insert—

"(8) For the purposes of this section, section 1(3) of the Northern Ireland (Miscellaneous Provisions) Act 2013 (which amends section 71E of the 2000 Act) is treated as provision made by the 2006 Act."

Dual mandates etc

3 MPs to be disqualified for membership of Assembly

(1) In section 1(1) of the Northern Ireland Assembly Disqualification Act 1975 (disqualification of holders of certain offices etc) before paragraph (a) insert—

"(za) is a member of the House of Commons;".

(2) After section 1 of that Act insert—

"1A Members of the House of Commons

(1) A person is not disqualified under section 1(1)(za) at any time during the period of 8 days beginning with any day on which the person is returned as a member of the Northern Ireland Assembly.

(2) A recently returned member of the Assembly is not disqualified under section 1(1)(za) at any time during the period of 8 days beginning with any day on which the person is returned as a member of the House of Commons.

(3) A person ("P") is a "recently returned member of the Assembly" if P is returned as a member of the Assembly at any time in the period—

(a) beginning with the day on which P's nomination paper for election as a member of the House of Commons is delivered to the returning officer under rule 6 of Schedule 1 to the Representation of the People Act 1983 (parliamentary election rules), and

(b) ending with the day on which P is returned as a member of the House of Commons.

(4) References in this section to a person being returned as a member of the Assembly are to the person being so returned at an election."

(3) In section 37(1) of the Northern Ireland Act 1998 (effect of disqualification)—

(a) in paragraph (a), after "by virtue of" insert "the Northern Ireland Assembly Disqualification Act 1975 or";

(b) in paragraph (b), after "by virtue of" insert "that Act or".

(4) In section 47(4) of that Act (remuneration of members), for "either House of Parliament" substitute "the House of Lords".

4 Statements by prospective members of Assembly

(1) The Northern Ireland Assembly (Elections) Order 2001 (S.I. 2001/2599) is amended as follows.

(2) In article 6 (vacancies filled by substitutes)—

(a) in paragraph (2), for the words from "state in writing" to the end substitute "make a statement of readiness";

(b) in paragraph (3)—

(i) in sub-paragraph (a)(ii), for the words from "in writing" to "Assembly" substitute "of readiness";

(ii) in sub-paragraph (b) for "is not willing or able to be so returned" substitute "will not make a statement of readiness,";

(c) in paragraph (4)—

(i) for "states in writing" substitute "makes a statement of readiness";

(ii) omit "that he is willing and able to be returned as a member of the Assembly";

(d) in paragraph (5)—

(i) in the opening words: after "a statement" insert "of readiness"; and omit "that he is willing and able to be returned as a member of the Assembly";

(ii) in sub-paragraph (a), for "is not willing and able to be so returned" substitute "will not make a statement of readiness";

(iii) in sub-paragraph (b), for "in writing that he is willing and able to be so returned" substitute "of readiness";

(e) after paragraph (6) insert—

"(7) In this article and article 6B "statement of readiness" means a statement in writing by a person ("P")—

(a) that P is willing and able to be returned as a member of the Assembly,

(b) that P is aware of the provisions of the Northern Ireland Disqualification Act 1975 and section 36 of the Northern Ireland Act 1998, and

(c) that P is, to the best of P's knowledge and belief, not disqualified for membership of the Assembly."

(3) In article 6B (vacancies arising during an Assembly term: members of registered parties)—

(a) in paragraph (3), for the words "in writing" to the end substitute "with—

(a) a statement of readiness, or

(b) a statement in writing that he will not make a statement of readiness.";

(b) for paragraph (4)(a) and (b) substitute—

"(a) does not respond within such period as the Officer considers reasonable with a statement of the kind mentioned in paragraph (3)(a) or (b), or

(b) responds within such a period with a statement of the kind mentioned in paragraph (3)(b).";

(c) in paragraph (6), for the words from "does" to "Assembly" substitute "responds within such period as the Officer considers reasonable with a statement of the kind mentioned in paragraph (3)(a)".

(4) In Schedule 1 (application with modifications of provisions of the Representation of the People Act 1983 etc), in the entry for rule 8 of the parliamentary elections rules (consent to nomination), for the first sentence

substitute "For paragraph (3)(b) substitute—

"(b) shall state that he is aware of the provisions of the Northern Ireland Disqualification Act 1975 and section 36 of the Northern Ireland Act 1998; and

(ba) shall state either—

(i) that he is, to the best of his knowledge and belief, not disqualified for membership of the Assembly, or

(ii) that he is, to the best of his knowledge and belief, disqualified for membership of the Assembly only under section 1(1)(za) of the Northern Ireland Assembly Disqualification Act 1975 (disqualification of MPs); and".

Justice Minister

5 Appointment of Justice Minister

(1) Part 1A of Schedule 4A to the Northern Ireland Act 1998 (department with policing and justice functions) is amended as follows.

(2) For paragraph 3B (modification of section 16A) substitute—

"3B Section 16A(3) has effect as if, for paragraph (b) (and the word "and" before it) there were substituted—

"(aa) once those offices have been filled, the relevant Ministerial office (within the meaning of Part 1A of Schedule 4A) shall be filled by applying paragraph 3D(4) to (8) of that Schedule; and

(b) once that office has been filled, the other Ministerial offices to be held by Northern Ireland Ministers shall be filled by applying section 18(2) to (6).""

(3) In paragraph 3C (section 18 not to apply to relevant Minister)—

(a) the existing provision becomes sub-paragraph (1);

(b) after that sub-paragraph insert—

"(2) But the reference to Ministerial offices in subsection (5) of that section (in the definition of M) shall be taken to include the relevant Ministerial office."

(4) Paragraph 3D (provisions relating to relevant Minister) is amended in accordance with subsections (5) to (8).

(5) In sub-paragraph (3), after "after" insert "section 16B(3) to (7) is applied in relation to the offices of First Minister and deputy First Minister but before".

(6) After sub-paragraph (4) insert—

"(4A) But a member of the Assembly who is a member of a political party may not be nominated unless the nominating officer of the party consents to the nomination within a period specified in standing orders."

(7) In sub-paragraph (11)—

(a) omit the "or" at the end of paragraph (b) and after that paragraph

insert—

"(ba) where consent to the Minister's nomination was required under sub-paragraph (4A), the Minister is dismissed by the nominating officer of the party and the Presiding Officer is notified of the dismissal, or";

(b) at the beginning of paragraph (c) insert "where consent to the Minister's nomination was not required under sub-paragraph (4A),".

(8) After sub-paragraph (17) insert—

"(18) In this paragraph and paragraph 3E "nominating officer" has the same meaning as in section 18."

6 Reappointment of other Northern Ireland Ministers in certain cases

In Part 1A of Schedule 4A to the Northern Ireland Act 1998 (department with policing and justice functions), after paragraph 3D insert—

"Reappointment of other Northern Ireland Ministers in certain cases

3E (1) Where either of the following conditions is met—

(a) all the Northern Ireland Ministers other than the relevant Minister cease to hold office, and

(b) those Ministerial offices must be filled by applying section 18(2) to (6) within a period specified in standing orders.

(2) The first condition is that—

(a) the relevant Minister ceased to hold office by virtue of paragraph 3D(1)(a), and the office was filled by virtue of paragraph 3D(1)(b),

(b) paragraph 3D(1) applied because a resolution was passed under section 30(2) which caused no Ministerial office other than the relevant Ministerial office to become vacant, and

(c) as a result of the events mentioned in paragraph (a) the total number of Ministerial offices held by members of a political party increased or decreased.

(3) The second condition is that—

(a) the relevant Minister ("the former Minister") ceased to hold office otherwise than by virtue of paragraph 3D(1)(a), and the office was filled by virtue of paragraph 3D(14), and

(b) as a result of the events mentioned in paragraph (a) the total number of Ministerial offices held by members of a political party increased or decreased.

(4) But the second condition is not met where—

(a) the former Minister ceased to hold office by virtue of being dismissed by a nominating officer under paragraph 3D(11)(ba),

(b) immediately before the office was filled there was at least one eligible member of the nominating officer's political party, and

(c) each such eligible member failed to fill the office for one or other of the following reasons.

(5) Those reasons are—

(a) that one or more members of the Assembly sought to nominate the eligible member for the office, but consent to the nomination was not given by the nominating officer in accordance with paragraph 3D(4A);

(b) that the eligible member was nominated for the office but did not take it up within the period specified in standing orders under paragraph 3D(7)(a).

(6) References in this paragraph to an eligible member of a political party are to a member of that party who is also a member of the Assembly, but do not include the former Minister."

Electoral registration and administration

7 Registration as an elector: abolition of 3 month residence requirement

(1) The following provisions (which impose or relate to the requirement that persons registering as electors in Northern Ireland must have been resident there for three months) are repealed or revoked—

(a) in the Representation of the People Act 1983—

(i) section 4(2);

(ii) section 7B(5);

(iii) section 7C(1)(b) (and the "and" before it);

(iv) section 10(4A)(c)(ii) (but not the "and" after it);

(v) section 10A(1A)(c)(ii) (but not the "and" after it);

(vi) section 13A(2A)(c)(ii) (but not the "and" after it);

(vii) section 14(2);

(viii) section 17(1)(b) (but not the "and" after it);

(b) in the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 (S.I. 2001/1184)—

(i) regulation 4(2);

(ii) regulation 6(1)(c);

(c) in the Representation of the People (Northern Ireland) Regulations 2008 (S.I. 2008/1741), regulation 25(6).

(2) In consequence of the amendments made by subsection (1)—

(a) in the Elected Authorities (Northern Ireland) Act 1989, in Schedule 1—

(i) in Part 1, for "Section 4(2)" substitute "Section 4(3)";

(ii) in Part 2, omit paragraph 7(1);

(b) in the Representation of the People Act 2000, omit paragraph 7 of Schedule 1.

8 Registration as an overseas elector: declaration of nationality

(1) In the Representation of the People Act 1985, in section 2 (registration of British citizens overseas)—

(a) after subsection (3) insert—

"(3A) An overseas elector's declaration that specifies an address in Northern Ireland under subsection (4) may, instead of or in

addition to including a statement under subsection (3)(b), state that the declarant is an eligible Irish citizen.";

(b) after subsection (8) insert—

"(9) In this section "eligible Irish citizen" means an Irish citizen who—

(a) was born in Northern Ireland, and

(b) qualifies as a British citizen (whether or not he identifies himself as such).

(10) A person found abandoned in Northern Ireland as a new-born infant is, unless the contrary is shown, deemed for the purposes of subsection (9) to have been born in Northern Ireland."

(2) In the Representation of the People (Northern Ireland) Regulations 2008 (S.I. 2008/1741), in regulation 20 (contents of overseas elector's declaration)—

(a) in paragraph (1)—

(i) after "required" insert "or permitted";

(ii) after "2(3)(a) to (d)" insert ", (3A)";

(iii) for "(7)" substitute "(6B)";

(b) after paragraph (5) insert—

"(5A) Where the conditions in paragraph (4)(a) and (b) are not met in relation to a declarant, his overseas elector's declaration shall comply with paragraphs (6) to (6B).";

(c) in paragraph (6) for the words before sub-paragraph (a) substitute "If the declaration includes a statement under section 2(3)(b) of the 1985 Act (statement that declarant is a British citizen), the declaration shall state—";

(d) after that paragraph insert—

"(6A) If the declaration includes a statement under section 2(3A) of the 1985 Act (statement that declarant is an eligible Irish citizen), the declaration shall state—

(a) in the case of a declarant who is the bearer of an Irish passport, the number of that passport together with its date and place of issue, or

(b) otherwise, when and how the declarant acquired the status of Irish citizen, together with the date, place and country of the declarant's birth.

(6B) Where, apart from this paragraph, a declaration would be required to include both a statement under paragraph (6) and a statement under paragraph (6A), the declaration need include only one of those statements.";

(e) omit paragraph (7).

(3) In regulation 22 of those regulations (attestation of certain overseas electors' declarations)—

(a) in paragraph (3) for "the bearer of a British passport which describes his national status as a "British citizen"" substitute "a person";

(b) after paragraph (3)(c) insert "; and

(d) is—

(i) the bearer of a British passport which describes his national status as a "British citizen", or

(ii) an eligible Irish citizen who is the bearer of an Irish passport.";

(c) in paragraph (4), after "British citizen" insert ", or an eligible Irish citizen,";

(d) for paragraph (5)(b) substitute—

"(b) any of the following—

(i) that he is the bearer of a British passport which describes his national status as a "British citizen", together with the number of that passport and its date and place of issue;

(ii) that he is an eligible Irish citizen who is the bearer of an Irish passport, together with the number of that passport and its date and place of issue;

(iii) that he is the bearer of a British passport which describes his national status as a "British citizen" and is an eligible Irish citizen who is the bearer of an Irish passport, together with the number of either of those passports and its date and place of issue;";

(e) in paragraph (5)(f), after "British citizen" insert ", or an eligible Irish citizen,";

(f) after paragraph (5) insert—

"(6) In this regulation "eligible Irish citizen" has the meaning given by section 2(9) and (10) of the 1985 Act."

9 Absent voting

(1) In section 13BA of the Representation of the People Act 1983 (alteration of registers in Northern Ireland: pending elections), omit subsection (4) (which prevents late registration as an absent voter).

(2) In consequence of the amendment made by subsection (1)—

(a) in Part 2 of Schedule 1 to the Elected Authorities (Northern Ireland) Act 1989, omit paragraph 8A;

(b) in Schedule 4 to the Northern Ireland (Miscellaneous Provisions) Act 2006, omit paragraph 7(4).

10 Electoral identity cards

After section 13C of the Representation of the People Act 1983 (electoral identity card: Northern Ireland) insert—

"13CZA Provision of false information: application for electoral identity card

(1) A person who provides false information in connection with an application for an electoral identity card is guilty of an offence.

(2) In relation to a signature, "false information" for the purposes of subsection (1) means a signature which—

(a) is not the usual signature of, or

(b) was written by a person other than,

the person whose signature it purports to be.

(3) A person does not commit an offence under subsection (1) if the person did not know, and had no reason to suspect, that the information was false.

(4) Where sufficient evidence is adduced to raise an issue with respect to the defence under subsection (3), the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(5) A person guilty of an offence under this section is liable on summary conviction to—

(a) imprisonment for a term not exceeding six months, or

(b) a fine not exceeding level 5 on the standard scale,

or to both."

Miscellaneous

11 Equality duties

(1) In section 75 of the Northern Ireland Act 1998 (statutory duty on public authorities), after subsection (3) insert—

"(3A) An order under subsection (3)(a) or (d) may provide that the designated department, corporation, body or other person—

(a) is not subject to, or is only subject to, specified obligations under subsection (1) or (2), or

(b) is not subject to, or is only subject to, specified obligations under subsection (1) or (2)—

(i) when exercising a specified function, or

(ii) when exercising a specified function in specified circumstances or for specified purposes.

(3B) In subsection (3A) "specified" means specified in the order."

(2) In Schedule 9 to that Act (equality: enforcement of duties), in paragraph 4, after sub-paragraph (4) insert—

"(5) But where the public authority is designated by order under section 75(3)(a) or (d)—

"equality of opportunity" does not include equality of opportunity in relation to which (by virtue of the order) the public authority has no obligations under section 75(1);

"the relevant functions" does not include functions of the public authority so far as the obligations imposed by section 75 do not (by virtue of the order) apply to their exercise."

12 Rules of court

(1) In section 56 of the Judicature (Northern Ireland) Act 1978 (control and publication of rules), for subsection (1) substitute—

"(1) Rules made by the Rules Committee—

(a) in the case of rules that are required under section 55A to be submitted to the Lord Chancellor, are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 applies accordingly; and

(b) otherwise, are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954."

(2) In section 53 of that Act (Crown Court Rules Committee) after subsection (3) insert—

"(4) In the application of section 56(1) by virtue of subsection (3), the reference to section 55A includes a reference to section 53A."

(3) The amendments made by this section have effect in relation to rules made on or after the day on which this section comes into force.

13 Regulation of biometric data

In Schedule 1 to the Protection of Freedoms Act 2012 (amendments of regimes other than PACE), in Part 7 (corresponding Northern Ireland provision for excepted or reserved matters etc), in paragraph 8(1) for "2011 or 2012 (whether before or after the passing of this Act)" substitute "2013 or 2014".

Final provisions

14 Amendments that could have been made under existing powers

(1) The amendments made by section 2(1) and (2) are treated, for the purposes of section 63 of the Electoral Administration Act 2006, as made under that section.

(2) Where—

(a) any other provision of this Act amends or revokes subordinate legislation (within the meaning of the Interpretation Act 1978), and

(b) the amendment or revocation could have been made under a power conferred by an enactment,

the amendment or revocation is treated, for the purposes of that enactment, as having been made under it.

15 Extent

(1) The amendment made by section 10 extends to Northern Ireland only.

(2) Any other amendment, repeal, revocation or other modification of an enactment made by this Act has the same extent as the enactment, or relevant part of the enactment, to which it relates.

(3) Subject to subsections (1) and (2), this Act extends to the whole of the United Kingdom.

16 Commencement

(1) The following provisions come into force on the day on which this Act is passed—

(a) in section 1 (donations for political purposes)—
  (i) subsections (1) and (2), and
  (ii) subsection (3) for the purpose of prescribing requirements;
(b) in section 2 (loans etc for political purposes)—
  (i) subsection (1),
  (ii) subsection (2) for the purpose of prescribing requirements, and
  (iii) subsection (3);
(c) section 11 (equality duties);
(d) section 13 (regulation of biometric data);
(e) sections 14 to 17 (final provisions).

(2) The following provisions come into force at the end of the period of two months beginning with the day on which this Act is passed—
section 7 (abolition of three month residence requirement);
section 8 (declaration of nationality);
section 9 (absent voting);
section 10 (electoral identity cards);
section 12 (rules of court).

(3) The following provisions come into force on the first day after this Act is passed on which the Northern Ireland Assembly is dissolved—
section 3 (MPs to be disqualified for membership of the Assembly);
section 4 (statements by prospective members of the Assembly).

(4) Subject to the preceding subsections of this section, this Act comes into force on such day as the Secretary of State may appoint by order made by statutory instrument.

(5) An order under subsection (4)—
(a) may appoint different days for different purposes, and
(b) may make transitional, transitory or saving provision.

17 Short title

This Act may be cited as the Northern Ireland (Miscellaneous Provisions) Act 2013.

NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Northern Ireland (Miscellaneous Provisions) Bill. They have been prepared by the Northern Ireland Office in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes should be read in conjunction with the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. Where a clause does not seem to require any explanation or comment, none is given.

3. A draft of the Bill was published for public consultation on 11 February 2013 (Cm 8563).

SUMMARY

3. The Bill makes provision in relation to the following:

- donations and loans for political purposes in connection with Northern Ireland;
- ending the practice of MPs holding a dual mandate to sit concurrently as Members of the Northern Ireland Assembly;
- changes to the process of appointment and dismissal for the Northern Ireland Justice Minister;
- registration of electors and electoral administration in Northern Ireland; and
- amendments to certain order making powers in respect of Northern Ireland.

COMMENTARY ON CLAUSES

CLAUSES 1 AND 2: DONATIONS AND LOANS ETC FOR POLITICAL PURPOSES

4. These clauses give effect to commitments made by the Government following a public consultation: '*Donations and Loans to Northern Ireland Political Parties – The Confidentiality Arrangements*', published on 3 August 2010.[1] The Government published its response to this consultation on 17 January 2011.

5. Northern Ireland political parties, like parties elsewhere in the UK, must report donations and loans above a certain threshold to the Electoral Commission. However, in contrast to Great Britain, the Electoral Commission is under a strict statutory obligation not to disclose any information that relates to these donations or loans, including donor identities. These arrangements, which were introduced to protect donors and lenders from intimidation, apply only during the 'prescribed period'. This period began on 1 November 2007 (prior to that the regulatory scheme had been disapplied in respect of Northern Ireland). The period was extended on 1 August 2010 and again on 1 March 2011. The prescribed period is due to expire on 28 February 2013. The Government has laid a further order before Parliament to extend the prescribed period until 30 September 2014 to allow for primary legislation on this issue to be introduced.

6. In its January 2011 consultation response, the Government noted that, while a majority of responses were in favour of moving directly to the system used in Great Britain, there were a number of responses which expressed continued concern about the security implications of such a change. The provisions of this Bill implement 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.

7. The August 2010 consultation also sought views on the retrospective disclosure of donor information. At present, the details of donations and loans reported to the Electoral Commission during the prescribed period can be made public when that period ends. In response to the consultation, the majority of political parties, as well as the Electoral Commission, acknowledged the need to prevent retrospective disclosure of this information, arguing that those making donations from 1 November 2007 were doing so in the belief that these donations would not be released even when the confidentiality arrangements expired. In its response to the consultation, the Government committed to introducing primary legislation to ensure that the identities of those who made donations and loans during the prescribed period – including any extended periods - would not be released after the expiry of that period.

[1] http://www.nio.gov.uk/Public-Consultation/Article?id=314

Clause 1: Donations

8. Clause 1 makes amendments to the Northern Ireland (Miscellaneous Provisions) Act 2006 ("NIMPA") and the Political Parties, Elections and Referendums Act 2000 ("PPERA").

9. Subsection (1) makes the temporary provisions inserted into PPERA by section 14 of and Schedule 1 to NIMPA permanent.

10. Subsection (2) inserts a new section 15A into NIMPA, giving the Secretary of State the power to amend or modify the current donations regime to increase (but not to reduce) transparency. It gives the Secretary of State the power to amend, repeal or modify any enactment connected with political donations, provided that the overall effect is to increase transparency. Any secondary legislation made under this power will be subject to the affirmative resolution procedure.

11. Subsection (2) also inserts a new section 15B into NIMPA. This restricts the power of the Secretary of State to increase transparency in relation to "protected information", which is information from which it is possible to identify a person who made a donation before 1 October 2014 (during the prescribed period). The Secretary of State cannot (a) permit or require the publication of protected information; (b) reduce the maximum penalty for an offence of disclosure of protected information; or (c) allow persons to access protected information in the Electoral Commission's register. Section 15B does not prevent the Secretary of State from permitting or requiring the publication of other information which would not reveal the identity of a person who made a donation before 1 October 2014. For example, the Secretary of State could require the publication of some information, such as the size of donations, the nationality of donors, or whether the donor was an individual or a corporation.

12. Subsection (3) creates an exception to the provisions preventing disclosure of information reported to the Electoral Commission. Any information contained in reports submitted to the Electoral Commission, including information that would reveal the identity of a person who made a donation before 1 October 2014, can be published if the Electoral Commission has reasonable grounds to believe that the donor has consented to information being disclosed.

Clause 2: Loans

13. Clause 2 makes provision for loans, equivalent to that set out in section 1 for donations.

14. Subsection (1) makes the temporary provisions set out in Schedule 1 to the

Electoral Administration Act 2006 (Regulation of Loans etc: Northern Ireland) Order 2008 (S.I. 2008/1319) permanent.

15. There is no express statement of the Secretary of State's power to increase transparency in respect of the loans regime. This is because, under section 63 of Electoral Administration Act 2006, the Secretary of State can make provision in respect of loans corresponding or similar to any provision relating to donations for political purposes which is made by or which may be made under NIMPA. Accordingly, once the new section 15A and 15B of NIMPA in clause 1(2) are in force in respect of donations, the Secretary of State will have the power to make corresponding or similar provision in respect of loans.

16. Subsection (2) creates an exception to the provisions preventing disclosure of information reported to the Electoral Commission. Any information contained in reports submitted to the Electoral Commission, including information that would reveal the identity of a person who made a loan before 1 October 2014, can be published if the Electoral Commission has reasonable grounds to believe that the lender has consented to information being disclosed.

CLAUSES 3 AND 4: DUAL MANDATES

17. These clauses prevent a member of the Northern Ireland Assembly (a Member of the Legislative Assembly or "MLA") from holding office simultaneously as a MLA and a member of the House of Commons. This practice, commonly known as "double jobbing" has been the source of some criticism, particularly in the wake of the expenses scandal. In its 2009 report on 'MPs' Expenses and Allowances: Supporting Parliament, safeguarding the taxpayer', the Committee on Standards in Public Life examined the issue and came to the following conclusions:

12.18 The holding of multiple mandates, or 'double jobbing' as it is known in Northern Ireland, appears to be unusually ingrained in the political culture there because of:

- *The legacy of 'the Troubles', which discouraged many individuals from getting involved in politics, leaving it to a small minority to participate.*

- *The recent history of political instability, which led the political parties to be fearful of giving up seats in Westminster in case the local devolution settlement collapsed, as it has more than once already.*

12.19 The Committee expressed the view in Chapter 11 of this report that

MPs should not be prohibited from earning income from limited activity outside the House of Commons, provided that the activity does not interfere with the primary role as an MP, is completely transparent to electors and does not present a conflict of interest.

12.20 We do not think these conditions are met in the case of multiple mandates. There is transparency – the issue has been widely aired in the Northern Ireland media. But the Committee questions whether it is possible to sit in two national legislatures simultaneously and do justice to both roles, particularly if the MP concerned holds a ministerial position in one of them.

18. The Committee went on to recommend '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.' Former Secretary of State for Northern Ireland Owen Paterson pledged to bring an end to the procedure in 2011, and his commitment was reiterated by the current Secretary of State Theresa Villiers in 2012.

Clause 3 – MPs to be disqualified for membership of the Assembly

19. Section 1 of the Northern Ireland Assembly Disqualification Act 1975 ("NIADA 1975") provides that a person is disqualified for membership of the Assembly who for the time being holds the offices, memberships and employments described in section 1(1). Clause 3(1) of the Bill inserts new section 1(1)(za) into NIADA 1975, adding membership of the House of Commons to the list. The effect is that MPs are disqualified for membership of the Assembly, subject to the exception created in clause 3(2).

20. Clause 3(2) of the Bill provides a limited exception to the disqualification of MPs for membership of the Assembly. Its object is to ensure that a person may stand for election both to the Assembly and to the House of Commons, and then decide which membership to pursue if successfully returned to both. It equally ensures that a person who is already an MP may stand for nomination to the Assembly, and may then choose which membership to pursue if subsequently returned to the Assembly.

21. Clause 3(2) of the Bill accordingly inserts into the NIADA 1975 a new section 1A(1), which provides that a member of the House of Commons is not disqualified for membership of the Assembly for a period of 8 days following his return to the Assembly. This short period of grace is given so that the MP, should he wish to do so, may divest himself of his seat in the Commons in order to pursue membership of the Assembly. Alternatively, the MP may use the grace period to resign his membership as an MLA. If he

does nothing, the MP will automatically be disqualified for membership of the Assembly upon the expiry of the period in section 1A(1) NIADA 1975.

22. It may be that a person who is already an MLA wishes to seek election to the House of Commons. In general, an MLA who chooses to stand for membership of the Commons will, on successful return to Westminster, automatically be disqualified for membership of the Assembly. There is no exception provided in such a case other than that contained in new section 1A(2) NIADA 1975 for persons recently returned to the Assembly. New section 1A(2) ensures that a person who has been recently returned to the Assembly following an election may also take the benefit of the 8 day period of grace. The saving is provided so that a person who finds himself elected both as an MP and an MLA following a combined Assembly and Westminster election has the benefit of the full 8 day period to decide which membership to pursue and to achieve any necessary resignation. Otherwise, it is possible that such a person would be returned as a MLA first, and as an MP sometime after, thus depriving him of the benefit of the full period.

23. Clause 3(2) of the Bill also inserts a new section 1A(3) into NIADA 1975, providing a definition of a "recently returned member of the Assembly". The effect is that the exception to disqualification will only apply where a person is returned to the Assembly after sending their nomination papers for Westminster but before they are returned as a member of the House of Commons.

24. Clause 3(2) of the Bill further provides, through the insertion of a new section 1A(4) NIADA 1975, that the exceptions in new section 1A(1) and (2) NIADA 1975 will only apply to a person who is returned as a member of the Assembly following an election. This means that a person who is returned to fill a vacancy in the Assembly's membership via methods prescribed by the Secretary of State under section 35 of the Northern Ireland Act 1998 ("the 1998 Act"), for example by substitution, can not take the benefit of the 8 day period unless that vacancy was filled by the method of election. This is because such a person will have sufficient time under the amended provisions in Articles 6-6B of the Northern Ireland Assembly (Elections) Order 2001 (S.I. 2001/2599) to resign their seat in Westminster before returning a statement of readiness (see paragraphs 27-30 below).

25. Section 37 of the 1998 Act makes provision for the effects of disqualification for membership of the Assembly and gives the Assembly certain powers to provide for relief from disqualification. Clause 3(3) of the Bill makes an amendment to section 37(1) of the 1998 Act to make clearer that the provisions about the effects of disqualification and relief apply where a person has been disqualified under the NIADA 1975 under provision inserted into that Act after the 1998 Act was passed.

26. Clause 3(4) of the Bill makes an amendment to section 47(4) of the 1998 Act. Section 47(4) requires the Assembly to make provision in respect of salaries payable to Assembly members who are also members of the House of Commons. This provision is rendered unnecessary by clause 3 of the Bill, as Assembly members are now effectively disqualified from holding a dual mandate in the House of Commons.

27. Clause 4 of the Bill amends the Northern Ireland Assembly (Elections) Order 2001 (S.I. 2001/2599) ("the 2001 Order"). The 2001 Order (as amended by the Northern Ireland Assembly (Elections) (Amendment) Order 2009 (S.I. 2009/256)) provides for a system of substitutes and nominees to avoid the need for a by-election where the seat of a member of the Assembly falls vacant.

28. By Articles 6 and 6A of the 2001 Order, the Chief Electoral Officer will contact substitutes to fill the vacancies of independent candidates who gave such a list. Clause 4(2) of the Bill will require a person who wishes to be returned under the Article 6 procedure to make a written "statement of readiness". The person will be required to indicate (as he was previously) that he is willing and able to be returned to the Assembly, but will now in addition be required to state both that he is aware of the provisions of the NIADA 1975 and section 36 of the 1998 Act, and that he is to the best of his knowledge and belief not disqualified for membership of the Assembly. This will ensure that a person may only consent to be returned to the Assembly under the Article 6 procedure when he has divested himself of any disqualifying office, including that of MP. Through the inclusion of a statement regarding disqualification, the statement of readiness now more closely reflects the statement that is given by a candidate when he consents to nomination for election to the Assembly under Rule 8 of the Parliamentary Election Rules (themselves contained in Schedule 1 to the Representation of the People Act 1983) as modified by Schedule 1 to the 2001 Order.

29. Clause 4(3)(a) of the Bill similarly amends article 6B of the 2001 Order (vacancies arising during an Assembly term: members of registered parties) to provide that a member of a registered party who is nominated to fill a vacancy under the procedure in Article 6B of the 2001 Order will be required to make an equivalent "statement of readiness". Again, this will ensure that a person may only consent to be returned to the Assembly under the Article 6B procedure when he has divested himself of any disqualifying office, including that of MP.

30. Article 6B of the 2001 Order required the nominated person to respond within 7 days to the Chief Electoral Officer's request that he was willing and able to be returned as a member of the Assembly. Clause 4(3)(b) of the Bill substitutes the 7 day rule with a more flexible period: the person is required to respond within "such period as the Officer considers reasonable". This

amendment is made so that a person nominated under Article 6B may have sufficient time to divest himself of any disqualifying office (including that of MP) before he is required to make the statement of readiness. In so doing, it brings the period for response to the Chief Electoral Officer's request into line with the period set for responses from substitutes under Art 6 of the 2001 Order.

31. Clause 4(4) of the Bill modifies the statement required from those seeking election to the Assembly, which is governed by Rule 8(3) of the Parliamentary Election Rules as modified by Schedule 1 to the 2001 Order. Previously, a person was required to state that he was not disqualified from membership of the Assembly. The statement is now modified to enable a person to indicate either that he is not disqualified, or instead that he is disqualified, but only by virtue of being an MP. This amendment is necessary to allow an MP to consent to nomination for the Assembly notwithstanding new section 1(1)(za) of the NIADA 1975 introduced by clause 3(1) of the Bill. Clause 4(4) of the Bill also amends the statement to acknowledge the fact that a person may be disqualified under section 36 of the 1998 Act as well as under NIADA 1975.

CLAUSES 5 AND 6: JUSTICE MINISTER

32. These clauses give effect to an agreement between the Northern Ireland political parties to amend the Northern Ireland Act 1998 (the "1998 Act") to change the means by which the Minister of Justice for Northern Ireland (the "Justice Minister") is appointed, and to remove the anomaly whereby the party of which the Justice Minister is a member has one extra seat in the Northern Ireland Assembly (the "Assembly") than that which it would have pursuant to the d'Hondt formula.

33. The 1998 Act sets out the majority of the devolution settlement with Northern Ireland. Whilst certain matters were transferred to the competence of the Assembly in 1998, other matters were transferred later. Of particular note, was the transfer of policing and justice to the Assembly in 2010. This transfer is not straight forward, with related national security matters continuing to be excepted and therefore largely outside the competence of the Assembly. Given this complexity, and the fact that policing and justice remains a politically sensitive issue, the provisions in the 1998 Act for the appointment of the Justice Minister are complex and the Justice Minister is not dealt with in the same way as the other Northern Ireland Ministers.

34. The Justice Minister is not appointed by the d'Hondt procedure, but through nomination by one or more members of the Assembly and approval by cross-community vote. Currently, the incumbent can be removed if a motion is raised to that effect by either the First Minister and deputy First Minister (the

"FM/dFM") acting together, or 30 or more Assembly members, followed by a majority cross-community vote. The Bill amends this process to give the Justice Minister the same security of tenure as that of the other Ministerial posts, although the process is not exactly the same due to the different appointment system.

Existing law

35. Section 21A of the 1998 Act sets out a number of possible appointment mechanisms for the Justice Minister, one of which may be selected and provided for by an Act of the Assembly. The Assembly enacted legislation in 2010 (the Department of Justice Act (Northern Ireland) 2010) which opted for the mechanism set out in section 21A(3A) of the 1998 Act. The Justice Minister is appointed by virtue of a nomination made by one or more members of the Assembly, and approved by a cross-community vote. Part 1A of Schedule 4A to the 1998 Act applies to this appointment, creating certain differences between this appointment and the appointment of other Northern Ireland Ministers.

36. First, the Justice Minister is appointed after the other Northern Ireland Ministers. The d'Hondt procedure, which ensures that each party is responsible for appointing a number of Ministers in proportion to the number of seats they hold in the Assembly, governs all Ministerial appointments, save for that of the Justice Minister. The Justice Minister's appointment is made outside the parameters of the d'Hondt procedure, which means that the party from which the Justice Minister is appointed will have an 'extra' Ministerial post.

37. Second, the incumbent Justice Minister can be removed if a motion is raised to that effect by either the FM/dFM acting together, or 30 or more Assembly members, followed by a majority cross-community vote. This is in contrast to other Ministers, who are appointed by their party's Nominating Officer, who has the power to dismiss the incumbent and refill the Ministerial position. The effect of the current provisions is that the position of the Justice Minister is less secure than that of the other Ministers in the Assembly.

38. The Bill amends the appointment procedure to give the Justice Minister the same security of tenure as that of the other Ministerial posts, and to rectify the anomaly in respect of the relationship between the representation of parties in the Assembly and appointment to Ministerial office.

Clause 5: Appointment of Justice Minister

39. This clause makes changes to Schedule 4A to the 1998 Act.

40. Subsection (2) sets out the appointment procedure for the Justice Minister

post, with reference to paragraph 3D(4) to (8) of Schedule 4A to the 1998 Act. The Justice Minister is to be nominated by one or more members of the Assembly and is to be approved by a resolution of the Assembly passed by a cross-community vote (paragraph 3D(4) and (5)). A further nomination can only be made if the initial nomination does not take effect or the nominated person does not take up office within a period specified in standing orders (paragraph 3D(6) and (7) of Schedule 4A). This procedure shall be applied as many times as necessary to secure the office of Justice Minister is filled (paragraph 3D(8)).

41. Subsections (2), (4) and (5) provide for the order in which Ministerial positions are filled. The Justice Minister will now be appointed immediately after the First Minister and deputy First Minister posts are decided upon. This means that the formula for working out the number of Ministerial offices to which each party is entitled can be amended (subsection (3)) to take into account the position of Justice Minister. The effect of this amendment is that the party of which the Justice Minister is a member will no longer have an 'extra' Ministerial position: the Justice Minister post will now be factored into the d'Hondt allocation.

42. Subsection (6) gives a power of veto to the Nominating Officer for the party of which a nominated candidate for the position is a member, by providing that the Nominating Officer must consent to the nomination.

43. Subsection (7) provides for security of tenure. Where the appointed Justice Minister is a member of a political party who was nominated with the consent of a Nominating Officer, that official can now remove the Justice Minister. However, where the Justice Minister is not be a member of a political party, the incumbent can be removed if a motion is raised to that effect by either the FM/dFM acting together, or 30 or more Assembly members, followed by a majority cross-community vote.

Clause 6 – Reappointment of other Northern Ireland Ministers in certain cases

44. This clause deals with the procedures to be followed in the event that the Justice Minister position becomes vacant. The new paragraph 3E means that if the Justice Minister ceases to hold office (otherwise than by exclusion) and the effect is to create a change in the total number of Ministerial offices held by members of a political party, then all Ministers will cease to hold office, and the d'Hondt procedure will be re-run again after a new Justice Minister has been appointed. This is to ensure that any potential anomaly in the number of Ministerial offices held by a political party is avoided.

45. The effect of new paragraph 3E(4) is that if the Justice Minister is dismissed by the Nominating Officer of his party, and there is an eligible member of that party who could fill the position but does not do so, either because the

Nominating Officer does not consent to the nomination, or the potential replacement fails to take up the position, then all the other Ministers will remain in office and d'Hondt will not be re-run. Should the party fail to replace a dismissed Justice Minister with an eligible member from their ranks, then no steps will be taken to redress any imbalance in Ministerial seats which may result.

CLAUSES 7-10: ELECTORAL REGISTRATION AND ADMINISTRATION

46. These clauses give effect to commitments made by the Government following its 20 July 2009 public consultation: '*Improving Electoral Registration Procedures in Northern Ireland*'. The Government published its response to this consultation on 24 November 2009. These clauses also give effect to recommendations made by the Electoral Commission in its October 2011 report on elections in Northern Ireland.

47. A number of measures simplify registration and voting procedures, bringing Northern Ireland closer to the system used in Great Britain. In view of reduced concern about electoral fraud in Northern Ireland, the requirement for electors to have been resident for at least three months is abolished. The prohibition on application for an absent vote during the late registration period is also removed.

48. The Bill also includes provision for a number of matters specific to Northern Ireland. Changes are made to the nationality declaration for overseas electors in order to adequately reflect the provisions of the Belfast Agreement. There is also provision to close a loophole in the law on electoral identity cards.

Clause 7 – Abolition of the 3-month residence requirement

49. The requirement that persons registering as electors in Northern Ireland must have been resident in Northern Ireland for at least three months has been in force in one form or other since 1949. However, it has the effect of disenfranchising a small number of individuals. The requirement to provide evidence of residence also places an additional burden on those wishing to register to vote. The residence requirement is no longer needed to prevent fraud, following the introduction of a system of individual registration in 2002. No objections were made to the proposal to remove it during a public consultation in 2009.

50. Subsection (1) removes the 3-month residency requirement for registration in respect of all elections held in Northern Ireland, including elections to Parliament, the European Parliament, the Northern Ireland Assembly and local government.

51. Subsection (2) makes relevant consequential amendments.

Clause 8 – Registration as an overseas elector: declaration of nationality

52. Section 1 of the Representation of the People Act 1985 (the "1985 Act") makes provision for the eligibility of persons resident outside the UK to vote at parliamentary elections in the UK (including in Northern Ireland). A person qualifies as an "overseas elector" if certain conditions are met. One of those conditions is that the person is a British citizen (section 1(1)(b)(ii)). Section 2 of the 1985 Act provides for the registration of overseas electors. As part of the registration process, section 2(3)(b) requires an overseas elector to make a declaration that he is a British citizen.

53. The Belfast (Good Friday) Agreement 1998 (the "Agreement") recognises "*the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose*". To ensure consistency with the terms of the Agreement, clause 8 allows persons born in Northern Ireland to identify themselves as British citizens or Irish citizens or both when making a declaration under section 2 of the 1985 Act. Clause 8 does not remove the requirement in section 1 of the 1985 Act that persons born in Northern Ireland must have the legal status of British citizens in order to register as overseas electors.

54. Subsection (1) inserts subsections (3A), (9) and (10) into section 2 of the 1985 Act to provide for a possible alternative declaration for persons who are on the electoral register in Northern Ireland. Instead of declaring that they are British citizens, such persons can declare that they are "eligible Irish citizens".

55. The definition of "eligible Irish citizen" does not encompass all Irish citizens. Instead, "eligible Irish citizen" denotes a person who is an Irish citizen under Irish law, who was born in Northern Ireland and who also qualifies as a British citizen under UK law. In general, under British nationality law, persons born in Northern Ireland before 31 December 1982 will qualify as British citizens, regardless of their parentage; persons born after that date will qualify as British citizens if they have at least one parent who was a British citizen or who was otherwise settled in the United Kingdom at the time of their birth. This results in a slightly broader range of persons being entitled to make a declaration than are covered by the Agreement.

56. Subsection (2) makes amendments to regulation 20 of the Representation of the People (Northern Ireland) Regulations 2008 (the "2008 Regulations"), which reflect the contents of the new alternative declaration available to persons born in Northern Ireland who are on the Northern Ireland electoral register. Eligible Irish citizens are required to provide equivalent evidence

and information to that required of British citizens. There is no additional burden on those who declare themselves to be both British and Irish; such persons can make a choice about which information that they provide.

57. Subsection (3) makes similar amendments to the 2008 Regulations in respect of those who are required to attest overseas electors' declarations. Such persons can also identify themselves as eligible Irish citizens (as defined in the amendment made by subsection (1)(b)) for the purpose of attesting an overseas declaration made by another individual, whether that individual declares himself to be British or Irish.

Clause 9 – Absent Voting

58. Section 13A of the Representation of the People Act 1983 (the "1983 Act") provides for the procedure to be followed for the alteration of an electoral register (for example, for a change of address or addition to the register). Having received an application for registration, the registration officer must determine whether to allow the application, taking into account any objections. The process of determining each application for registration can take some time. If the registration officer allows an application, he shall issue a notice specifying the appropriate alteration in the register. The alteration will take effect in the register between 2 weeks and 6 ½ weeks after the application has been allowed.

59. Section 13BA of the 1983 Act provides for alterations to be made where an election is pending. In normal circumstances, alterations which would take effect after the 'final nomination day' (the 11th working day before the poll) will have no effect for the purpose of that election unless the alterations are due to an appeal or a clerical error. However, there is a "late registration period" between the final nomination day and the 11th calendar day before the poll. Persons who want their details to be altered in the register in time for the election must submit additional evidence to the registration officer before the end of the "late registration period". The alteration (if approved) will take effect on the 5th or 6th calendar day before the poll, which gives the registration officer time to consider the application and additional evidence before publishing the alteration.

60. There is an additional limitation in Northern Ireland. A person whose registration took place as a result of an alteration made during the 'late registration' period is not entitled as an elector to an absent vote at that election and must not be shown in the absent voters list for that election. This restriction has the effect of disenfranchising a small number of people who register or change their details on the register during the late registration period, but are unable to attend a polling station in person.

61. Subsection (1) removes the current bar on those who register during the late

registration period from applying for an absent vote. Persons who register during the late registration period will be able to apply for an absent vote on the same basis as persons who were already on the electoral register and made no alteration during the late registration period. Subsection (2) makes consequential amendments.

62. This clause does not amend the more general closing dates for applications for an absent vote, which are set out in regulation 61 of the 2008 Regulations, paragraph 11 of Schedule 2 to the Local Elections (Northern Ireland) Order 1985 and paragraph 8 of the European Parliamentary Elections (Northern Ireland) Regulations 2004.

Clause 10 – Electoral Identity Cards

63. In order to exercise the right to vote in any election in Northern Ireland, registered persons must provide a prescribed form of identification to the presiding officer or clerk at the polling station before being provided with a ballot paper. One of the acceptable documents that can be produced is an 'electoral identity card', which is issued by the Chief Electoral Officer for Northern Ireland under section 13C of the 1983 Act. To obtain an electoral identity card, persons registered (or who are applying to be registered) on the register of parliamentary or local electors in Northern Ireland can submit an application to the Chief Electoral Officer in accordance with the requirements set out in regulation 13 of the 2008 Regulations.

64. Section 13D of the 1983 Act provides that a person who for any purpose connected with the registration of electors provides to a registration officer any false information is guilty of an offence. However, there is a lack of clarity as to whether this provision would cover the provision of false information in an application for an electoral identity card. This is because an application for an electoral identity card might be made when a person is already registered to vote. In addition, an application for an electoral identity card must contain some information that is not required for registration purposes, such as a photograph certified as being a true likeness. Clause 10 closes this potential loophole in the law.

65. Clause 10 inserts section 13CZA into the 1983 Act, which provides that it is an offence to provide false information in connection with an application for an electoral identity card. The offence is similar to the existing offence under section 13D of the 1983 Act, with the same defence open to a defendant, the same evidential burden on the defendant and the same maximum penalty.

CLAUSES 11-13: MISCELLANEOUS

66. These clauses amend various order making powers in relation to Northern Ireland.

Clause 11 – Equality Duties

67. Section 75 of the 1998 Act imposes a statutory duty to promote equality of opportunity on public authorities. Section 75(3) lists a number of public authorities to whom the statutory duty applies and contains powers (but not any obligation) for the Secretary of State to designate by order other persons or bodies as public authorities for that purpose. Currently, the power under section 75 only allows the Secretary of State to make a 'full' designation – that is, for all of a person's functions and without exceptions. The effect of the current law is that even where it might be sensible to designate a person for certain functions only, that option is not available.

68. Clause 11 amends the power of the Secretary of State under section 75 to enable persons to be designated in respect of certain of their functions only or to apply to certain elements of the equality duty only. This means that persons or bodies who it is currently considered cannot be designated in their entirety (because, for example, certain of their functions must be excepted from the duty) can be considered for designation in the future. This clause facilitates designation in a manner similar to that permitted by the Equality Act 2010 in England and Wales.

69. Clause 11 does not alter the position of any persons who have already been designated for the purpose of section 75. It does not identify the persons who might be designated by the Secretary of State in future for certain of their functions only.

Clause 12 – Rules of Court

70. The Bill amends the Judicature (Northern Ireland) Act 1978 to make provision regarding the parliamentary procedure to be followed for rules of court relating to excepted matters. Currently such rules are subject to negative resolution in the Northern Ireland Assembly. The amendment makes them subject to negative resolution of either House of Parliament. This change remedies an oversight in the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (the "2010 Order").

71. The 1998 Act sets out the majority of the devolution settlement with Northern Ireland. Substantive issues are either excepted (Schedule 2), reserved (Schedule 3) or transferred (everything else). The legislative competence of the Assembly in relation to primary legislation is set out in sections 5-8, providing that the Assembly may legislate on reserved matters, and on excepted matters to the extent that they are ancillary to other provisions dealing with reserved or transferred matters, in both cases with the consent of the Secretary of State.

72. Although many aspects of policing and justice were transferred to the devolved administration in 2010, certain issues were not, and in particular national security and counter-terrorism continue to be excepted. This has resulted in split order-making or rule-making powers in a number of areas, with the Secretary of State (or the Lord Chancellor) retaining the power when it relates to an excepted matter, (and in some instances but not always, when it relates to a reserved matter too), but otherwise the power has passed to a devolved Minister or department, usually the Northern Ireland Department of Justice.

73. One of the rule-making powers devolved under the 2010 Order was the power to approve court rules. The Department of Justice, rather than the Lord Chancellor, shall approve court rules, save where those rules relate to excepted matters. The amendments to the 2010 Order provided that the parliamentary procedure to be followed for all court rules is the negative resolution procedure in the Northern Ireland Assembly. This was an oversight, as it should have provided that rules dealing with an excepted matter are subject to the negative resolution procedure in the Westminster Parliament.

74. Clause 12 rectifies that error in relation to rules of court. It amends sections 53 and 56 of the Judicature (Northern Ireland) Act 1978 to ensure that rules dealing with an excepted matter are subject to the negative resolution procedure in the Westminster Parliament.

Clause 13 – Regulation of Biometric Data

75. Clause 13 makes a minor and technical amendment to paragraph 8 of Schedule 1 to the Protection of Freedoms Act 2012 (the "2012 Act"). Paragraph 8 of Schedule 1 contains two order making powers that enable the Secretary of State to make an order regarding the retention, use and destruction of DNA samples and profiles, fingerprints and footwear impressions (biometric data) in Northern Ireland for excepted or reserved purposes (in particular, in the interests of national security or for the purposes of a terrorist investigation) if an Act of the Northern Ireland Assembly made in 2011 or 2012 makes provision regarding the retention and use of biometric data for transferred (devolved) purposes. The order may also make provision in respect of a transferred matter where that matter is ancillary to an excepted or reserved matter. By virtue of paragraph 8(6) and (7) the order is subject to the affirmative resolution procedure if it amends or repeals primary legislation and to the negative resolution procedure if it does not.

76. Clause 13 amends paragraph 8 of Schedule 1 to the 2012 Act to enable the order to be made by the Secretary of State if the Act of the Assembly is made in 2013 or 2014 (rather than 2011 or 2012). The amendment is necessary

because the Assembly did not pass the relevant legislation before the end of 2012 and because the Assembly is expected to legislate in 2013 or 2014.

PART 6 – FINAL PROVISIONS

Amendments by existing powers

77. The Bill amends certain provisions of subordinate legislation. Clause 14 provides that those amendments are to be treated as having been made under the relevant power to make subordinate legislation. This is to ensure that any such provisions can be amended again by subordinate legislation in future.

Territorial Extent

78. Clause 15 makes provision about extent. The main impact of the Bill's provisions is on Northern Ireland. However, because many of the enactments upon which the Bill operates extend to the whole of the UK, as a technical matter much of the Bill extends to the whole of the UK. The exceptions are provisions modifying enactments with a different extent. Those provisions have the same extent as the enactments being modified.

Commencement

79. Clause 16 provides for the commencement of the clauses in the Bill. Subsection (1) sets out the clauses that will be commenced on Royal Assent. Subsection (2) sets out the clauses that will be commenced two months after Royal Assent. Subsection (3) provides for commencement of clauses 3 and 4 on the first day after the Bill is passed on which the Northern Ireland Assembly is dissolved. Subsections (4) and (5) provide for the remaining provisions to be commenced by order of the Secretary of State.

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Committee Chairperson to the First Minister and deputy First Minister – 12 February 2013

Northern Ireland Assembly

First and deputy First Minister
Room G50
Stormont Castle
Stormont Estate
Belfast
BT4 3WT

12 February 2013

Dear Sirs,

At its meeting on 12th February, the Assembly and Executive Review Committee agreed the Terms of Reference for its Review of D'Hondt, Community Designation and Provisions for Opposition.

I now invite you to submit your views, using the 'Call for Evidence' pro forma (which includes the Terms of Reference for the Review), for the Committee's consideration.

The 'Call for Evidence' paper is provided as an attachment in the email from the Committee Secretariat, and is also available on the Assembly and Executive Review Committee's webpage:

http://nia1.me/1br

The deadline for the return of the Call for Evidence is **Wednesday, 27th March**.

Should you have any queries in relation to making a submission, please contact the Committee Clerk, whose contact details can be found at the end of the Call for Evidence pro forma.

On behalf of the Committee, I look forward to receiving your views.

Yours sincerely,

Stephen Moutray MLA
Chairperson
Assembly and Executive Review Committee

Assembly and Executive Review Committee
Room 375, Parliament Buildings, Ballymiscaw, Stormont, Belfast BT4 3XX

Telephone: 028 9052 1928 E-mail: committee.assemblyandexecutivereview@niassembly.gov.uk

Clerk of OFMDFM Committee to AER Committee Clerk – 21 February 2013

Committee for the Office of First Minister and Deputy First Minister
Room 435
Parliament Buildings

From: Alyn Hicks
Clerk to the Committee for the Office of the First Minister and Deputy First Minister

Date: 21 February 2013

To: John Simmons
Clerk to the Assembly and Executive Review Committee

Subject: Review of D'Hondt, Community Designation and Provisions for Opposition

At its meeting of the 20 February 2013, the Committee for the Office of the First Minister and deputy First Minister considered correspondence from the Assembly and Executive Review Committee (AERC) in relation to its Review of D'Hondt, Community Designation and Provisions for Opposition.

Committee members indicated they were content for parties to make submissions to AERC on this matter.

Regards,

Alyn Hicks
Committee Clerk

Secretary of State to Committee Chairperson – 5 March 2013

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5th March 2013

Dear Stephen

Thank you for your letter dated 24 January 2013. I published a summary of the responses to the Consultation on Measures to Improve the Operation of the Northern Ireland Assembly and the full text of all responses where permission to publish was granted on my Department's website on 11 February 2013.

I am enclosing a copy of the summary document with this letter. You can also access the summary and responses at:http://www.nio.gov.uk/PublicConsultation/Responses-to-the-Consultation-on-Measures-to-Impro

I am pleased to hear that the Committee is looking at the issue of Government and Opposition in the Assembly and I look forward to reading your report in due course.

Regards

THE RT HON THERESA VILLIERS MP
Secretary of State for Northern Ireland

Northern Ireland Office

Summary of Responses to Consultation on measures to improve the operation of the Northern Ireland Assembly

February 2013

A. Introduction

1. In August 2012, the Northern Ireland Office published a consultation paper on measures to improve the operation of the Northern Ireland Assembly. The consultation closed on 23 October 2012 and a total of forty eight responses were received from various groups and individuals. This document summarises the content of those responses.

2. This document is available on the NIO website: www.nio.gov.uk under Public Consultation. Printed copies of this response may also be obtained free of charge from:

   Summary of Responses to Consultation on the NI Assembly
   Constitutional and Political Group
   11 Millbank
   London
   SW1P 4PN

3. You may make additional copies of this response without seeking permission. This document can also be made available on request in different formats for individuals with particular needs. Please call 0207 210 6566 for any queries in relation to this response. The NIO textphone number is 02890 527668.

B. Summary of Responses

4. In total, there were 48 responses: 10 of which are from political parties; 5 from other organisations; and the remaining 33 from private individuals – of which 2 were anonymous.

Number of Seats in the Assembly

5. The number of seats in the Assembly would have automatically reduced from 108 to 96 following the planned reduction in Westminster constituencies flowing from the Parliamentary Voting System and Constituencies Act 2011. Notwithstanding the outcome of that work, commitments were given to parties in the Assembly that a legislative vehicle would be made available to implement any agreement reached with them on the size of the Assembly at a later date. The consultation asked what the size of the future Assembly should be.

6. There were 31 individual responses to this specific question. All but two favour some form of reduction in size. Suggestions for an appropriate number of seats varied from anything between 96 to 'as small as possible'. The most popular suggestions were reductions to 90, 80 or 72 seats, each of which was favoured by 5 people. Some of those who proposed 72 seats were also content with 64, should the number of Westminster constituencies reduce. There seems to be a general desire to maintain the link with the Westminster constituencies, although there were some proposals for various other means of cutting the size.

7. The Democratic Unionist Party response said that party would prefer to maintain the link with Westminster constituencies and believes that the number of MLAs per constituency should reduce to 4, giving a total of 72 seats. However, they indicated that a reduction to 5 x 18 constituencies and therefore a total of 90 MLAs would be an acceptable interim measure.

8. The Alliance Party would also prefer to maintain the link with Westminster constituencies and proposed that the number of MLAs should reduce to 5 per constituency, giving a total of 90 seats. However, in the longer term, it would favour the Assembly reducing to 80 seats.

9. The Ulster Unionist Party also favours a reduction in the size of the Assembly to 96 at the next election, as a step on the way to a greater, unspecified reduction at a later date.

10. The Social Democratic and Labour Party would prefer the number of seats to remain at 108.

11. Among the other political parties and groups, the Labour party favours a reduction to 90 seats – 5 MLAs per constituency, whilst the Northern Ireland Conservatives suggest a

reduction to a 64 seat model over 3 elections – resulting eventually in 4 MLAs x 16 putative Westminster constituencies. The Green Party favours a reduction to 80 seats, but only in conjunction with electoral reform. The Ulster Young Unionist Council (UYUC) did not want to see the number of seats reduced.

Combination of Elections/Length of Assembly Term

12. The consultation asked, firstly, whether the life of the current Assembly should be extended by one year, from 2015 to 2016, to avoid duplication of Westminster and Assembly elections in May 2015 and, secondly, whether the Assembly should move to a fixed 5-year term permanently, as has already been established at Westminster and for the devolved legislatures in Cardiff and Edinburgh. The Government has consistently made clear that any move to extend the length of 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. Whilst there were only a small number of consultation responses on this issue, they do tend to suggest that there does not exist, as yet, significant agreement to this proposal.

13. The 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. There was somewhat less strength of opinion on the issue of moving to a 5 year fixed term, but a slight majority were against the idea. Given the proportion of responses favouring Assembly elections in 2015, the issue of decoupling did not really arise, and most people did not answer this question directly.

14. Amongst the parties, the DUP favours extending the current term by one year and holding the next Assembly elections in 2016. It suggests that it is undesirable to hold Westminster and Assembly elections on the same day, as this could lead to voter confusion, and so, should the date be moved to 2016, it would also favour moving to 5 year fixed terms for the Assembly, to avoid a clash in 2020.

15. The Alliance Party believes that the current term should be extended to 2016 and should move thereafter to 5 year fixed terms.

16. The UUP does not want the current term to be extended but does favour moving to 5 year fixed terms after the scheduled elections in 2015.

17. The SDLP does not want an extension of the current term and considers that further consultation on a move to 5 year fixed terms would be necessary before the next Assembly elections.

18. The Labour Party does not oppose decoupling or extending the current term, but acknowledges that there are opposing views on the issue in Northern Ireland, although the NI branch of the party feels that extending the current term would be undemocratic. The NI Conservatives would prefer to maintain the status quo and hold the election for another 4 year term as planned in 2015. The Green Party would prefer that the next Assembly elections are held in March 2015 and that there should not be a move to 5 year fix terms. The UYUC also would prefer to maintain the status quo.

Double Jobbing

19. The Government has always been clear that it wants to see this practice ended by agreement if possible but by legislation if necessary. In its 2011 report, the Commission on Standards in Public Life recommended that legislation to bring the practice to an end should be introduced by the time of the next Assembly elections due in May 2015. The consultation asked how this could best be achieved, and whether any such ban should extend to the House of Lords as well as the Commons.

20. The majority of respondents favoured enacting primary legislation as soon as possible to ban double jobbing: of those who answered these questions – 28 in total - only two people felt that dual mandates were acceptable. A smaller number also favoured banning the practice in the Lords as well.

21. The DUP reiterated its intention to end dual mandates among its members by 2015. It would prefer that the practice was ended by agreement, however feels it would be 'prudent' to take a power enabling legislation if such an agreement was not forthcoming or proved unsuccessful. The party is against banning double jobbing between the Lords and Assembly.

22. The Alliance Party favours immediate legislation to end double jobbing between the Commons and Assembly. It is, however, less concerned about dual mandates in the Lords and feels that this issue is best considered in the wider context of Lords reform.

23. The UUP would also prefer legislation to end double jobbing to be implemented prior to the next set of elections, and also sees merit in banning dual mandates between the Lords and the Assembly.

24. The SDLP would like an end to dual mandates, but with a particular exemption for a party leader who is a MLA and MP.

25. The NI Conservatives would prefer to see double jobbing between both Lords and Commons and the Assembly banned by legislation before 2015; the Labour Party also wants to see the practice ended but is silent as to how this should be achieved. The UYUC also favours primary legislation as soon as possible, but makes no mention of the situation in the Lords. The Green Party would like to see all dual mandates ended by immediate legislation.

Opposition

26. Finally, the consultation document also requested views on whether it was possible or desirable to move away from the current Executive system of multi-party coalition with Ministers appointed by the d'Hondt procedure in relation to the Assembly strengths of the parties, towards a more 'normal' system that allows for inclusive government but also opposition in the Assembly.

27. Given the complexity of the issues and practicalities of moving to a system of government and opposition, it is perhaps not surprising that this question created the most controversy and generated the greatest diversity of response. The majority of respondents favoured making changes to the current system – and were for the most part fairly negative about the efficacy of the current Executive – but there were widely varying ideas about what could be done to improve it. A small number wanted a return to direct rule from Westminster, others expressed frustration that those they perceived to be terrorists were in government, and some were concerned that any move to create an opposition would destroy the principles of inclusivity and powersharing set out in the Good Friday Agreement.

28. The DUP favours the creation of a voluntary coalition at Stormont involving both a Government and an Opposition. Given that gaining cross-community support for this change is unlikely in the near future, it urges the Government to legislate at Westminster to allow, in due course, the Assembly to legislate for changes to the devolved institutions, albeit with the consent of the Secretary of State for Northern Ireland.

29. The Alliance Party also supports the transition to a 'government and opposition' model of governance. Like the DUP, it believes that it may be legitimate to introduce enabling legislation at Westminster at this stage, on the understanding that implementation will depend on a request being formally received from the Assembly.

30. The UUP also favours the introduction of an 'Official and Loyal Opposition, loyal to the institutions of Assembly and Executive' although it does not expand on how this might be achieved.

31. The SDLP concludes that an opposition option should be built into the structures of the Assembly in a future mandate. It would not be 'mandatory'; that an opposition is formed. Parties would be guaranteed their d'Hondt entitlement under powersharing arrangements if a party chooses to claim that entitlement. FM/DFM would be elected by cross community vote to ensure a government representing both main political traditions.

32. The NI Conservatives agree that an opposition should be created; whilst the Labour party did not express a concrete view. The UYUC also advocates introducing an opposition by legislating for an opportunity for parties to opt out of mandatory coalition, with the attachment of special speaking rights, financial resources and privileges for doing so – similar measures to those advocated by the Conservatives. The Green Party also advocates establishing a formal coalition.

Clerk to Committee on Procedures to AERC Clerk – 22 April 2013

Internal Memo

From: Alison Ross
Clerk to Committee on Procedures

Date: 22 April 2013

To: John Simmons
Clerk to the Assembly and Executive Review Committee

Petitions of Concern: Standing Order 60 and Establishment of Ad-Hoc Committees

1. At its meeting of 19 March 2013, the Committee on Procedures, while considering legal advice provided in respect of the above matter, noted that the Assembly and Executive Review Committee (AERC) had recently issued a call for evidence to stakeholders. This, it noted, was issued as part of the AERC's inquiry into "Review of D'Hondt; Community Designation and Provisions for Opposition".

2. The item of particular interest to the Committee on Procedures discussion was listed at paragraph 3.16 of the call for evidence document, where the AERC asks stakeholders, *"Do you believe that there should be changes to the "rules" governing Petitions of Concern? If so, what changes do you propose?"*

3. Given that the AERC inquiry was already underway, the Committee on Procedures recognised its primacy, and agreed to take no action at this point, but agreed rather to instruct the Clerk to contact the Clerk of the AERC with a view to advising the AERC of the important information that had come to Committee on Procedures attention. The Committee was concerned to note that the AERC call for evidence officially closed on 27 March, and directed the Clerk to determine, given the importance of the information, whether it could still be submitted for consideration.

4. I thought it may be helpful to provide you with some background on the genesis of this issue in the Committee of Procedures together with some of the basic information included in general briefings to it. For clarity this is included separately, as Appendix 1 to this memo.

5. While the Committee received full legal advice on the topic, AERC colleagues will be aware of the well established protocol that such advice is subject to legal privilege and therefore cannot be detailed as part of this memo or shared with third parties.

6. However, no such restriction exists for sharing research papers, and a copy of such a paper has been included as Appendix 2 of this memo. For information, this paper was shared with colleagues from legal services and was taken into account when the legal advice was prepared.

7. The Committee on Procedures meets again at 13h00 on 23 April 2013, and would be grateful for at least an initial indication of whether the AERC will include this issue in its inquiry for its meeting on this date. To facilitate this I am of course happy to discuss any or all aspects of this memo further in person, if that would be helpful.

Alison Ross

Documents Included:

Appendix 1 – Background to the Committee on Procedures deliberations

Appendix 2 - Research Paper (not attached)

Appendix 3 - Graduate Student Themed Report - Trasa Canavan (not attached)

Appendix 1

Background to the Genesis of this Correspondence

1. At its meeting on 27 November 2012, a question in relation to the genesis and application of Standing Order (SO) 60 was raised by a Member of the Committee on Procedures.

1. Up to that point, 38 Petitions of Concern (POC) had been tabled during the life of the current Assembly (see table 1, below for details). However, up until 19 November 2012, SO 60 had never been used, and was invoked for the first time in respect of the Welfare Reform Bill on that date[1]. In this lone example, the establishment of the Ad-Hoc Committee on Conformity with Equality Requirements (ACER) was as a result of a motion from the Committee on the Welfare Reform , not as a result of the POC on the motion.

Table 1. Summary of Petitions of Concern Tabled

Party	1998 - 2002	2007 - 2011	2011 - Dec 2012	Total
Total	7	22	9	38

2. Members subsequently requested legal advice and received briefing papers in respect of this issue, largely because of an apparent disparity between established practice and possible interpretation of SO 60(4) in terms of POCs.

3. Clear, common, well understood practice is that POCs trigger a cross community vote on specific motions, amendments or legislative proposals; but do not, however, generate a question to establish an ACER. However, the Committee noted that both the Belfast Agreement and the Northern Ireland Act 1998 (the 1998 Act), appear to require the Assembly to vote on whether a measure can proceed or should be referred to an ACER every time there is a petition of concern.

4. In terms of the genesis, the Assembly's SOs relating to the establishment of ACERs, these arise from interpretation of Paragraphs 11 to 13 of the Belfast Agreement (the Agreement) and Section 42(3) of the Northern Ireland Act 1998 (the Act). The Act itself, of course, ranks above the Agreement and Standing Orders in the legislative hierarchy.

5. Even in the earliest versions of Assembly SOs available[2] the result of this interpretive process was the development of three distinct SOs, namely SO28, SO35 and SO60 (previously numbered as SO55).

6. Beyond this, very little information exists to explain or clarify this genesis and no corporate memory has survived in respect of this issue. It is most likely that the purpose of the segregation was to ensure the principle was applied in all the circumstances where it might arise i.e. voting (SO 28), legislative process (SO35) and committee matters (SO 60). While this would have been well intentioned, the Committee on Procedures considered, as part of its deliberations, the informal view that there may now be an argument for revisiting the drafting to provide a composite SO which gives clarity to application of the underlying policy.

1 Official Report (Hansard) – Tuesday 20 November 2012 (Volume 79,No 6)

2 Northern Ireland Assembly Standing Orders 2001

AERC Clerk to Clerk to Committee on Procedures – 23 April 2013

Assembly and Executive Review Committee
Room 242
Parliament Buildings
Tel: 028 9052 1787

From: John Simmons
Clerk to Assembly and Executive Review Committee

Date: 23 April 2013

To: Alison Ross
Clerk to the Committee on Procedures

Standing Order 60 – Petitions of Concern and Establishment of Ad Hoc Committees

1. Thank you for your memo of 22nd April 2013, regarding the AERC's current review in relation to the above.

   You are, of course, correct that the Review's consideration of the legislation provision and use of community designation includes the "rules" governing Petitions of Concern and the Call for Evidence Paper asked stakeholders for views on any changes in this area. However the specific issue highlighted in your memo was not cited in the Call for Evidence Paper.

2. The Call for Evidence closed on 27th March 2013 and, to date, 17 responses have been received. None of these responses directly addressed the specific issue of Petitions of Concern and the Establishment of Ad Hoc Committees as set out in Standing Order 60. On 9 April 2013 reminder letters were issued to the leaders of the Assembly's Political Parties and to Independent Members who have not yet submitted responses. Also, as yet, this issue has not been raised in the Committee deliberations on this Review which have included three oral evidence sessions with academic experts.

   All responses will of course be included in the Committee's Report, along with the Hansard records of Committee deliberations, including the subject of Community Designation and Petitions of Concern and any recommendations or conclusions in this regard.

3. The Committee considered your memo and attached paper at today's meeting and agreed that the issue is relevant to the Committee's current work and that it would be appropriate to consider this as part of its Review.

4. Thank you for drawing this matter to the attention of AERC and I am happy to further discuss this matter with you.

John Simmons
Clerk to the Committee

Chairperson of Committee on Procedures to AER Committee Chairperson – 29 April 2013

Committee on Procedures
Room 428
Parliament Buildings
Tel: 028 9052 1436

Mr Stephen Moutray MLA
Chairperson
Assembly and Executive Review Committee
Room 242
Parliament Buildings

29 April 2013

Dear

Standing Order 60 – Petitions of Concern and Establishment of Ad Hoc Committees on Conformity with Equality Requirements

1. You will already be aware of correspondence issued from the Clerk to the Committee on Procedures (COP) to the Clerk to the Assembly and Executive Review Committee (AERC) dated 22 April 2013 under my instructions.

2. The correspondence related to matters that had come to the attention of the COP during its consideration of Standing Order 60 and its requirements around Petitions of Concern and establishment of Ad Hoc Committees on Conformity with Equality Requirements, which seemed directly relevant to the AERC's ongoing Review of D'Hondt; Community Designation and Provisions for Opposition.

3. The COP subsequently considered the response provided by the Clerk to the AERC at its meeting of 23 April 2013, in which it advised that the AERC considered the issue relevant to its Review and that it would be appropriate to include it.

4. As this correspondence was between Clerks, the COP, having considered the memo from the Clerk to the AERC at its meeting on 23 April, agreed that I should write to confirm that it is content for AERC to take this matter forward as part of its Review.

5. Should amendments to Standing Orders be considered necessary on completion of the Review, the Committee on Procedures will of course take this forward on receipt of instructions.

Yours sincerely

Gerry Kelly
Chairperson, Committee on Procedures

Government Response to the Northern Ireland Affairs Committee Pre-Legislative Scrutiny Report on the draft Northern Ireland (Miscellaneous Provisions) Bill

Presented to Parliament
by the Secretary of State for Northern Ireland
by Command of Her Majesty

May 2013

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Introduction

1. The draft Northern Ireland (Miscellaneous Provisions) Bill was published on 11 February 2013 for pre-legislative scrutiny.

2. The draft Bill had its origins in consultations published by the Northern Ireland Office on *Measures to Improve the Operation of the Northern Ireland Assembly* (August 2012) and on *Donations and Loans to the Northern Ireland Political Parties* (August 2010). It contained a number of draft measures to effect institutional change in Northern Ireland, including ending dual mandates between the Northern Ireland Assembly and the House of Commons; providing more transparency in party funding; and implementing changes to the arrangements for the appointment and dismissal of the Northern Ireland Justice Minister. The draft Bill also contained draft measures which would implement a number of significant improvements to the administration of elections in NI, following recommendations made by the Electoral Commission and Chief Electoral Officer for NI.

3. The Northern Ireland Affairs Committee, which undertook pre-legislative scrutiny, took oral evidence from 15 sets of witnesses at Stormont and Westminster. Its report, containing 24 recommendations, was published on 25 March 2013.

4. The Government is most grateful to the Committee for its consideration of the provisions in the draft Bill, and particularly for the comprehensive analysis which was produced in the short time available to them. The recommendations cover various issues, which have been considered carefully.

5. This response addresses each recommendation, following the order of the Committee's report.

Recommendations and Government response

Political donations and loans

Recommendation 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 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)

The Government has discussed this recommendation with the Electoral Commission. The Commission voiced concerns about the change, which would create a strict liability offence. This would mean that Electoral Commission staff would have no defence in court if information were disclosed when consent had not actually been given, whatever the circumstances in which this happened and however reasonable their belief that consent had been given. In a situation where there was strong evidence that consent had been given but this was not in fact the case (for example if the Commission received paperwork signed by the donor with an assurance of validity from the recipient, which was later discovered to be forged) Electoral Commission staff would still face a real risk of criminal conviction. To manage that risk would require additional identity checks to be imposed, which would be disproportionately burdensome for the Commission, parties and donors. The proposed change would also create inconsistency with other provisions on the release of information on donations and loans elsewhere in the Political Parties Elections and Referendums Act 2000 (PPERA), for example section 71E(4) (duty not to disclose contents of donation reports).

For these reasons, the Government has decided to retain the original drafting of Clause 1(3). However, we will make specific provision for the consent arrangements that will apply to disclosure of information about past donations and loans in secondary legislation.

Recommendation 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)

If the provisions of the Bill are not brought into force and the prescribed period is not extended, Northern Ireland would become subject to the rules operating elsewhere in the UK from October 2014; with full transparency over political donations. The Government considered the possibility of responding to this recommendation by limiting the application of the Bill provisions to donations made before October 2014 and retaining the current arrangements for the rest of the donations regime. However, while such a change would permit the Secretary of State to decide in October 2014 between retaining anonymity and full transparency, it would prevent the possibility of implementing any intermediate options between these two extremes. We feel the security situation continues to justify a different regime for Northern Ireland and therefore wish to retain flexibility as to how much transparency to provide after October 2014.

We have, therefore, decided to retain the original drafting, which removes the automatic reversion to the GB regime, but allows the Secretary of State maximum flexibility in setting the donations regime after October 2014, in light of the circumstances then prevailing. In light of the Committee's report, we will consider very carefully any restrictions on transparency after October 2014.

Recommendation 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 [previous] recommendation. (Paragraph 34)

We agree with the Committee that it would be important to consult with the appropriate security authorities, such as the Police Service of Northern Ireland (PSNI), before making changes to current confidentiality arrangements. We would certainly carry out the consultations recommended but feel that there is no need to enshrine this commitment in legislation.

Recommendation 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)

The Government accepts the Committee's recommendation. We will introduce draft secondary legislation allowing for the publication of anonymised donations once the Northern Ireland (Miscellaneous Provisions) Bill is passed.

Care will be needed to ensure that no information is published which enables the identity of donors to be worked out.

We agree that it would be preferable for that information to indicate where multiple donations have been made by the same donor. However, initial consultations suggest that it may not be possible to do this reliably because the information that donors are required to report to the Electoral Commission under the Political Parties, Elections and Referendums Act 2000 does not include a unique identifier. We will consider this matter further as secondary legislation is developed. Secondary legislation put forward in this area will be subject to consultation to assist in resolving questions of this nature.

Recommendation 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)

Section 71B of the Political Parties Elections and Referendums Act 2000 gives the Secretary of State the power to prescribe in secondary legislation the conditions under which Irish citizens or bodies are permissible donors to Northern Ireland parties, providing they would be entitled under Irish law to donate to an Irish political party. This is not therefore a matter on which primary legislation is required. We are giving further consideration to this recommendation and we are discussing the options with colleagues in the Irish Government.

Dual Mandates

Recommendation 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)

Recommendation 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)

Acting to end double jobbing between the House of Commons and the Assembly is a proportionate response to the significant concerns expressed regarding this practice over a number of years. Concern on a similar scale is not present in relation to peers and we do not propose to introduce a bar on dual mandates between the Lords and the Assembly. The differences between the Lords and the Commons mean that there are not compelling reasons to treat the two Houses in the same way with regard to the rules on dual mandates. Membership of the House of Lords is not time limited by the electoral cycle. Peers are not elected; they have no constituency role; and continuance of careers outside Parliament has long been a feature of the House of Lords.

Recommendation 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)

The Government accepts the Committee's concerns and acknowledges that barring the holding of dual mandates between the Assembly and the House of Commons, but not the Dáil Éireann, would be difficult to justify. In response to this recommendation, we have amended the provisions put forward in the draft Bill to add in a clause to end dual mandates with the Dáil Éireann. As the Government is not making provision to end dual mandates between the Northern Ireland Assembly and the House of Lords, no provision is made to ban members of the Seanad Éireann (the Irish upper House) from also sitting in the Northern Ireland Assembly. The Government notes that later this year the Irish Government is likely to hold a referendum on the abolition of the Seanad.

Recommendation 9

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. (Paragraph 76)

Recommendation 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)

The Government is not aware of any ongoing concern regarding the holding of dual mandates between the European Parliament, the Commonwealth legislatures, and any of the devolved Parliaments or Assemblies in the United Kingdom. If there is a need to legislate, though, we do not believe that a Northern Ireland-specific Bill would be the appropriate vehicle, and that consideration would need to be given as to whether action should be taken on a UK-wide basis. No provision to this effect is included in the Northern Ireland (Miscellaneous Provisions) Bill.

Recommendation 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 issue of dual mandates between Westminster and the Scottish Parliament is not one which could be appropriately addressed in a Northern Ireland-specific piece of legislation. No provision to this effect is included in the Northern Ireland (Miscellaneous Provisions) Bill.

The Secretary of State for Wales announced in March 2013 that the Government will bring forward legislation to prohibit Members of the Welsh Assembly from sitting simultaneously as Members of the House of Commons at the earliest opportunity.

Justice Minister

Recommendation 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)

Recommendation 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)

While the Committee's recognition of the importance of the Justice Minister's position is shared by the Government, the appointment of Ministers in the Northern Ireland Executive relies on the major Northern Ireland political parties agreeing to work together once Ministers take up their posts. The arrangements for the selection of the Justice Minister were the subject of careful and protracted negotiation prior to the devolution of policing and justice in 2010, and the First and deputy First Minister confirmed in 2012 that they wished to see the existing arrangements continue.

We are not aware of any potential mechanism for the appointment of the Justice Minister in the absence of the agreement of the political parties, as the Committee has recommended, which would command broadly based support amongst the political parties in Northern Ireland. While we appreciate the concerns expressed by the Committee, we do not feel that the change advocated is needed at this time and therefore would not propose re-opening the settlement agreed on policing and justice.

Electoral Registration and Administration

Recommendation 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 needed on the face of the substantive Bill to ensure that honest voters are not penalised by this clause. (Paragraph 101)

This provision – which creates a new offence of providing false information in an application for an electoral identity card – has no direct equivalent in Great Britain. However, the proposed section 13CZA of the Representation of the People Act 1983 replicates language already used in section 13D and section 13CA of that Act in relation to provision of false information for any purpose

connected with the registration of electors. Section 13D applies to the whole of the UK.

Section 10A(1B) of the Representation of the People Act 1983 makes clear that the Chief Electoral Officer for Northern Ireland may dispense with the requirement for a signature to be provided in relation to an application for electoral registration if he is satisfied that it is not reasonably practicable for a person to sign in a consistent or distinctive way. In general therefore, persons suffering from serious illnesses or learning difficulties such that they are unable to sign their name consistently should not be required to provide a signature for registration purposes.

We also believe that a person who signed with a signature which was different to one they had used in the past would not fall within the offence in new section 13CZA (or the offence in section 13D) simply because their signature had changed. This is because the new signature would be their 'usual' signature at the time of signing; the fact that it had changed from what it was because of illness, would not engage the offences associated with these provisions. Furthermore, both the new section 13CZA and the existing section 13D provide that a person does not commit an offence if he did not know, or had no reason to suspect, that the information was false. The Government considers that a person suffering from serious illness or disability is likely to fall into that category and therefore would not be committing an offence. We have made clear that this is our intention in the Explanatory Notes to the Bill.

Given the UK-wide application of the offence in section 13D, the Government also believes that changes to the law on providing false information for electoral purposes should be considered on a UK-wide basis, which is not within the scope of this Bill. We are grateful to the Committee for raising the issue in its recommendations, and for the opportunity to provide clarification on the effect of the clauses, but we believe that this should be sufficient to allay any concerns. Provision has not, therefore, been included in the NI (Miscellaneous Provisions) Bill along the lines suggested by the Committee.

Recommendation 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)

In line with the Committee's recommendations, the Government intends to introduce amendments to the Representation of the People (Northern Ireland) Regulations 2008 to enable data sharing between the Chief Electoral Officer

for Northern Ireland and the Northern Ireland Statistics and Research Agency (NISRA), including the use of electoral registration information for the purposes of statistical work connected to the census. The substantive Bill also now contains provision to extend Schedule 2 of the Electoral Registration and Administration Act 2013 to Northern Ireland. This will allow the Secretary of State to make regulations about the sharing of data obtained from individuals or other public authorities for the purpose of electoral registration, following consultation with the Electoral Commission, the Information Commissioner and any other person the Secretary of State deems appropriate.

Recommendation 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)

The Government has made provision in the Bill giving the Secretary of State a power to introduce objectives or performance standards for the Chief Electoral Officer for Northern Ireland by order, rather than through primary legislation. The Government has chosen this route, rather than extending the performance standards immediately, because the results of the current pilot are not yet available and, although the Northern Ireland parties have been asked for views on this change, no response has yet been received. The current reporting system reflects the Chief Electoral Officer's position as a statutory office holder. The Government will need to consider carefully how best to amend the current reporting requirements on the Chief Electoral Officer, to avoid an excessive bureaucratic burden, while maintaining those links between the Chief Electoral Officer and the Secretary of State, which are essential for each to fulfil their duties in law.

Equality Duties

Recommendation 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)

The intention of the clauses relating to the designation of persons or bodies under section 75 is to permit partial designation where none is currently possible, thus extending the range of bodies which might be subject to section 75 duties. The Government can outline the principles under which bodies

might be partially designated as required when the Bill progresses through Parliament, but full consideration and consultation around the potential partial designation of a given authority can only properly take place when the Secretary of State is considering such a designation at a later date.

We can, however, be clear now that there is no intention to partially designate any public authorities which are already subject to full designation in Northern Ireland. While this confirmation does not require redrafting of the clauses as published for pre-legislative scrutiny, clarification of these points has been included in the Explanatory Notes accompanying the Bill.

Regulation of Biometric Data

Recommendation 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)

As the Committee has noted, this recommendation is effectively for the devolved administration in Northern Ireland to consider as it sees fit.

Size of the Assembly

Recommendation 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 the 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. (Paragraph 129)

The Government has continued to engage with the political parties in Northern Ireland on this issue. It is unfortunate that the Northern Ireland Executive has been unable to reach a concluded view on the number of Members of the Legislative Assembly (MLAs) in the future, particularly as we believe that a reduction would have considerable public support.

However, a provision is included in the Bill which would have the effect of making reductions in the size of the Assembly a 'reserved' rather than an 'excepted' matter. This would mean that if the Northern Ireland parties were to agree to a reduction at some point in the future, further primary legislation at Westminster would not be required to implement this reform. Reduction in the numbers of MLAs could be implemented by an Act of the Assembly, followed by the Secretary of State granting consent and bringing forward an Order in Council. Such an Order would be subject to the affirmative resolution procedure in Parliament.

Length of current Assembly term

Recommendation 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)

The Fixed Term Parliaments Act 2011 introduced a fixed electoral cycle for the House of Commons and the next Westminster election will take place in May 2015. It was recognised during the passage of this Act that 7 May 2015 was set out in legislation as the date of the next elections to the devolved administrations in Northern Ireland, Scotland and Wales. Provision was made to extend the term of the current Scottish Parliament and National Assembly for Wales terms in the 2011 Act, following votes in those assemblies where a two thirds majority expressed support for the proposal.

The Government committed to revisit the issue of the length of the current term for the Northern Ireland Assembly following the 'triple poll' in May 2011 (Northern Ireland Assembly and local council elections, and the referendum on the Alternative Vote).

The Secretary of State has stated that a term extension could be provided if the Northern Ireland Executive was able to demonstrate broadly based support for the plan. On 12 June 2012 Northern Ireland's First Minister Peter Robinson, deputy First Minister Martin McGuinness and Justice Minister David Ford wrote to then Secretary of State Owen Paterson making clear the view of their respective parties that they wished to see the current term of the Northern Ireland Assembly extended until May 2016, in common with the Scottish Parliament and Welsh Assembly elections. That position was confirmed in a letter to the current Secretary of State dated 15 April 2013 from the First Minister and deputy First Minister.

The Government has concluded that Northern Ireland should be treated the same as Scotland and Wales and the Bill will therefore propose an extension of the current Assembly term. It establishes consistency in the electoral cycle for each of the devolved institutions across the United Kingdom.

Future election dates

Recommendation 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)

The Government notes the Committee's recommendation. Given the move toward five year fixed terms at Westminster and for the National Assembly for Wales, and the views of the Northern Ireland political parties, we are content that it is sensible to make provision in the Bill which would have the effect of also moving the Northern Ireland Assembly to five-year fixed terms.

Recommendation 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)

The Government recognises the importance of ensuring that electoral administrators have sufficient time to plan. The timing of some elections is not within our control, but we aim to ensure that legislation is in place six months before elections in Northern Ireland wherever possible.

Recommendation 23

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. (Paragraph 151)

The combination of polls is a matter of wider Government electoral policy and we agree that it should be considered in that context. Some cite the benefits of combination including convenience for electors and the cost savings which can be achieved through administering polls together. The Law Commission is conducting a review of electoral law on behalf of the Cabinet Office, and is looking at the combination of elections as part of its review. The Government will consider the recommendations of the Law Commission's review.

Government and Opposition

Recommendation 24

We note that Assembly and Executive Review Committee 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 principle in the Belfast (Good Friday) Agreement.
(Paragraph 158)

The Government notes the Committee's comments. We recognise that system of Government and Opposition as traditionally understood may promote a more effective and innovative system at Stormont, and hope that the Northern Ireland parties will continue to consider potential methods which might further improve the operation of the institutions. It is clear that sufficient consensus does not exist amongst the parties at present for the Government to legislate on this matter. We will, of course, work with the parties should they agree any changes to the institutions along these lines which would require Westminster legislation in the future.

Devolution of responsibility for Arms-Length Bodies

Recommendation 25

We note that the Government has not yet consulted on the proposed devolution of responsibilities for arms-length bodies. The Northern Ireland Human Rights Committee 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)

The Government recognises the institutional significance of the NIHRC and the importance of its work. We note the Committee's comments. The Bill includes provision to re-categorise certain functions relating to the arms-length bodies in question as 'reserved' matters under the terms of the Northern Ireland Act 1998. This change will enable any future devolution of functions to be achieved without further primary legislation, and for the Assembly to legislate in relation to these matters with the consent of the Secretary of State. The substantive Bill does not actually devolve responsibilities. The Government is committed to consulting formally on any

future devolution of responsibilities relating to the NIHRC and the other arms-length bodies discussed, prior to any such devolution taking place.

Recommendation 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)

The Government accepts the Committee's recommendation and commits to considering this issue prior to any future devolution of responsibilities for the NIHRC taking place. No decision on devolution will be taken which risks the international standing of the NIHRC.

Recommendation 27

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.
(Paragraph 170)

The Government agrees with the Committee's recommendation and will ensure that the NIHRC retains its responsibility for the scrutiny of non-devolved matters relating to Northern Ireland in the event of any future devolution of responsibilities for the institution.

Treatment of the Bill in the House

Recommendation 28

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. (Paragraph 172)

Recommendation 29

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.
(Paragraph 173)

The Government notes the Committee's recommendations.

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Appendix 6

Assembly Research and Information Service Papers

Research and Information Service
Briefing Paper

Paper 000/00 4 December 2012 NIAR 899-12

Ray McCaffrey & Tim Moore

Opposition, community designation and D'Hondt

1 Background

This briefing paper has been prepared for the Assembly and Executive Review Committee following its meeting on 20 November 2012. The Committee has recently completed a review of Parts 3 and 4 of the Northern Ireland Act 1998 and this paper will inform the Committee's Terms of Reference for its next review in 2013.

The paper provides information on the following topics with regard to the Northern Ireland Assembly and, where appropriate, other legislatures:

- Opposition
- Community designation
- D'Hondt

The paper explores the issues in question and highlights areas that the Committee may find useful in its deliberations.

2 Introduction

In a seminal 1966 study of the operation of political oppositions, Robert Dahl[1] observed how opposition was found in different patterns in modern democracies; more recent studies[2] have also underlined the range of opposition models that exist in advanced democracies.

1 Dahl R 'Political Oppositions in Western Democracies' Yale University Press, 1966

2 For examples see Ludger Helms Five Ways of Institutionalizing Political Opposition: Lessons from the Advanced Democracies http://www.sciencespo.site.ulb.ac.be/dossiers_supports/opposition-et-democratie1.pdf

In spite of this variation, the traditional Westminster (with a capital O) model of opposition is the benchmark against which the operation of the Assembly is most frequently compared. It has, for example, been noted that:

> *…criticism of Northern Ireland's inclusive executive design is that the new Assembly has a rather small part of its membership free to serve as an opposition for standard adversarial parliamentary debating in the classic Westminster model: 'by making the mistake common in ethnic conflicts of failing to distinguish inclusion in the "political community" from inclusion in government, the arrangements left the Assembly bereft of any effective opposition to challenge executive dominance'[3].*

In the traditional Westminster model, the party which has the most non-government members in parliament/house of parliament becomes the opposition party and its leader becomes the Leader of the Opposition. In broad terms, the role of the Opposition, as its name suggests, is to oppose the Government and form an 'alternative government' if the existing government loses the confidence of the House. Any consideration of the establishment of an opposition in the Assembly must, however, recognise the consociational framework which underpins the workings of the Assembly and the Executive.

Four common characteristics of consociational democracies (grand coalition, proportionality, segmental autonomy and mutual (minority) veto have been identified and it has been noted that:

> *What these characteristics indicate is that political decision-making is not based on a victory by a majority, but on a consensus involving all, or at least as many as possible, of the opposing segments. In other words: in a consociational democracy there is no shortage of ideological opposition, but…this opposition involves some kind of elite cooperation rather than competition[4].*

The same research goes on to state that although opposition has not been widely studied within consociational models, the following hypotheses apply:

- In order to facilitate cooperation and accommodation, governments will tend to include all or most of the pillar parties, and thus will be oversized or 'grand' coalitions rather than aiming at minimum size.
- Hence, the parliamentary opposition tends to be small in size, and mainly composed of parties that do not represent a particular pillar and its constituent organisations. Often the parties in the parliamentary opposition will have an anti-establishment or even anti-system profile, given the 'closed' or 'blocked' nature of their political system.
- Elections will tend to be only mildly competitive as, on the one hand, citizens will not vote for a party not representing their own pillar, and the campaign primarily serves to mobilise the party's natural constituency. On the other hand, election results also do not strongly influence a party's chances to enter government. Good relations with the other pillar parties are more important to get access to offices, policies and public goods.
- The parliamentary opposition, especially the non-pillar parties, will be powerless vis-a-vis the cartel of pillar parties in government that may have installed oligopolistic parliamentary rules that constrain the opposition role of small parties.
- The opposition is not only weak in parliament, but neither is it capable of mobilising large sections of the population for extra-parliamentary opposition activities, unless a pillar party in opposition decides to mobilise the members of its pillar's organisations and media when it feels that other pillar parties do not respect the rules of the consociational game.

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3 Wilson and Wilford, 'Northern Ireland: A Route to Stability?', p. 8

4 Rudy B. Andeweg, Lieven De Winter & Wolfgang C. Müller Parliamentary Opposition in Post-Consociational Democracies: Austria, Belgium and the Netherlands in Journal of Legislative Studies, 2008

- As the media, interest groups, and 'old' social movements are to a large extent also pillarised, and the latter have privileged access to pillar elites in the political as well as the corporatist arenas, they do not tend to engage in extra-parliamentary opposition activities, unless a pillar party in opposition decides to mobilise the members of its pillar's organisations and media.

In spite of such hypotheses, some commentators maintain that 'Nothing about consociation, properly understood, precludes parliamentary opposition[5]' and in this context have argued that:

> *Mechanisms for rigorous accountability exist. Ministers face an Assembly Committee in their jurisdiction headed by a representative of another party. (The 1998 Northern Ireland Act prevents the committees from being chaired or deputy-chaired by ministers or junior ministers. The committees are required, where feasible, to be organized in such a way that the chair and deputy chair be from parties other than that of the relevant minister). This inhibits full-scale party fiefdoms in any functional sector – which cannot be said for the Westminster system[6].*

In addition to the work of the committees, the same authors have argued that '… the d'Hondt mechanism ensures that not every party is in the executive, so there are automatically some opposition backbenchers and it is up to parties to choose to be in government or in opposition…or to play both sides of the track… and be rewarded or punished by voters accordingly'[7].

3 Formal Opposition

Erskine May provides some historical background to the role of formal opposition within the Westminster context:

> *The importance of the Opposition in the system of parliamentary government has long received practical recognition in the procedure of Parliament…In 1937 statutory recognition was accorded through the grant of a salary to the Leader of the Opposition. The prevalence (on the whole) of the two-party system has usually obviated any uncertainty as to which party has the right to be called the 'Official Opposition'; it is the largest minority party which is prepared, in the event of the resignation of the Government, to assume office[8].*

Erskine May also adds that: "The Speaker's decision on the identity of the Leader of the opposition is final (under the Ministerial and other Salaries Act 1975)".

Therefore the current Official Opposition is the Labour Party (which forms the Shadow Cabinet). The other opposition parties are the DUP, Scottish National Party, Sinn Féin, Plaid Cymru, SDLP, Alliance and the Green Party of England and Wales.

The term 'opposition' appears only once in the Scotland Act 1998 and does not feature in the Government of Wales Act 2006 or Northern Ireland Act 1998. Section 97 of the Scotland Act 1998 outlines the assistance to be provided to opposition parties[9].

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5 J. McGarry and B. O'Leary 'Consociational Theory, Northern Ireland's Conflict, and its Agreement (Part 2). What Critics of Consociation can Learn from Northern Ireland', Government and Opposition vol 41, No 2 pp249-277, 2006

6 J. McGarry and B. O'Leary 'Consociational Theory, Northern Ireland's Conflict, and its Agreement (Part 2). What Critics of Consociation can Learn from Northern Ireland', Government and Opposition vol 41, No 2 pp249-277, 2006

7 As above

8 Erskine May 'Parliamentary Practice', 24th Edition, Lexis Nexis, 2011

9 The use of headings in Acts of Parliament did not start until 1845. In Acts passed thereafter the headings can be said to 'constitute an important part of the Act itself'. When an Act does have headings, any of the sections under such a heading must be interpreted in the light of all the sections under that heading. (from How to Understand an Act of Parliament by DG Gifford and John Salter, Cavendish Publishing, 1996

The Labour Party in Scotland and the Conservatives in Wales have, however, designated themselves as the 'Shadow Cabinet'[10]. This is important because unlike in the Northern Ireland Assembly there is the potential for a vote of 'No Confidence' in the incumbent administration, and in such circumstances an alternative government must be ready to take power.

However, unlike Westminster, there is no recognition of an Official Opposition in the Scottish Parliament or the National Assembly for Wales, although as this paper describes, there is provision for non-Government parties in relation to parliamentary time etc. The role of opposition or non-Executive parties in the UK and Ireland Parliaments/Assemblies (with the exception of the Northern Ireland Assembly) is largely outlined in Standing Orders, rather than legislation. Separate legislation exists regarding the funding of political parties to carry out their functions.

Internationally, the South African Constitution provides an example where the role of opposition is entrenched in the supreme law of the land[11]. Article 57 of the constitution provides for recognition of the leader of the largest opposition party in the Assembly as the Leader of the Opposition. In addition, Article 178 provides that at least three members of opposition parties represented in the Assembly must be appointed to the Judicial Service Commission. Rule 21 of the of the National Assembly of South Africa states that 'The leader of the largest opposition party in the Assembly must be recognised as the Leader of the Opposition'[12].

Financial assistance to opposition

Political parties with non-Executive or Government roles are usually allocated additional money to assist in their Parliamentary/Assembly duties. Political parties in Northern Ireland already receive funding under the Financial Assistance Scheme. In the event of an opposition emerging at some point in the future, consideration may need to be given to reviewing the scheme to ensure that non-Executive parties are adequately funded.

House of Commons

Short money – funding to support opposition parties in the House of Commons – was introduced in 1975. It is made available to all parties in the Commons that secure either two seats, or one seat and more than 150,000 votes at the previous UK Parliamentary election. The scheme is administered via a 1999 resolution of the House and has three main components:

- **Funding to assist an opposition party in carrying out its Parliamentary business**: the amount payable to qualifying parties from 1 April 2011 is £15,039.85 for every seat won at the last election plus £30.04 for every 200 votes gained by the party
- **Funding for the opposition parties' travel and associated expenses**: the total amount payable under this component of the scheme for the financial year commencing on 1 April 2011 is £165,218 apportioned between each of the Opposition parties in the same proportion as the amount given to each of them under the basic funding scheme set out above

10 http://www.scottishlabour.org.uk/shadowcabinet accessed 26 November 2012

11 Constitution of South Africa: http://www.info.gov.za/documents/constitution/1996/index.htm accessed 21 November 2012

12 Rules of the National Assembly: http://www.parliament.gov.za/content/NA%20Rules%207th%20edition~1.pdf accessed 27 November 2012

- **Funding for the running costs of the Leader of the Opposition's office**: under the third component of the scheme, £700,699 is available for the running costs of the Leader of the Opposition's office for the financial year commencing on 1 April 2011[13]

In addition, the Leader of the Opposition, the Opposition Chief Whip and a maximum of two Assistant Opposition Whips in the House of Commons receive a salary from public funds, on top of their parliamentary salary.

Scottish Parliament

Short money is an informal term for the scheme of assistance for registered non-Executive political parties in the Scottish Parliament.

All payments for financial assistance are made under a transitional order - The Scottish Parliament (Assistance for Registered Political Parties) Order 1999 (the Order). The Order makes provision for the Scottish Parliamentary Corporate Body (SPCB) to make payments to qualifying parties for the purpose of assisting Members of the Scottish Parliament connected with those parties to perform their parliamentary duties. Qualifying parties are those registered political parties with whom any MSP is connected.

The Order provides that an MSP and a registered political party are to be regarded as connected if the MSP was returned at the previous general election, or at a subsequent election to fill a constituency vacancy, after contesting it as a candidate for that party or was included in the party's regional list for that general election and as such was returned to fill a subsequent regional vacancy.

The maximum amount which may be paid to each qualifying party in any period is calculated by reference to the number of MSPs connected with that party multiplied by a fixed amount. This amount will be increased annually in line with increases in the retail prices index.

The Order also provides that the fact that any MSPs who are connected with a qualifying party and are also members of the Scottish Executive or junior Scottish Ministers is to be disregarded if the number of such MSPs connected with that party who are also members of the Scottish Executive or junior Scottish Ministers is not more than one fifth of the total number of members of the Scottish Executive or junior Scottish Ministers. The Order provides that in calculating the total amount payable to such parties any MSP connected with that party who are also Members of the Scottish Executive or junior Scottish Ministers should be disregarded.

Should the number of MSPs connected with a qualifying party who are also members of the Scottish Executive or junior Scottish Ministers be equal to or more than one fifth of the total number then that party will not be entitled to receive any payments under the Order.

National Assembly for Wales

Section 24 provides for assistance to groups of Assembly members. It requires the Assembly Commission to make payments to political groups for the purpose of assisting them to perform their functions as Assembly members. In July 2011 the National Assembly for Wales Remuneration Board published a report which detailed the various payments to Members and political groups. The report recognised the role of non-Executive parties:

13 House of Commons research paper 'Short Money': http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-01663.pdf

Leader of a political group without an executive role: The additional office holder's salary is to be calculated as follows: a base level of £12,420 plus an additional £1,000 for every Member of the group to a maximum salary of £41,949[14].

It also detailed other payments that were to be made available:

- (a) a group of three or more Members, which **is** represented by a Member in the Welsh Government, is entitled to £127,390; or
- (b) a group of between three and ten Members, which is **not** represented by a Member in the Welsh Government, is entitled to £199,048 and
- (c) a group of more than ten Members, which is **not** represented by a Member in the Welsh Government, is entitled to the amount in sub-paragraph b) and an additional £30,866 for each additional five members of the group (or part thereof)[15].

Standing Order 1.3 states that for the purposes of the Government of Wales Act, a political group is:

(i) a group of Members belonging to the same registered political party having at least three Members in the Assembly; or

(ii) three or more Members who, not being members of a registered political party included in Standing Order 1.3(i), have notified the Presiding Officer of their wish to be regarded as a political group[16].

The Presiding Officer must decide any question as to whether any Member belongs to a political group or as to which political group he or she belongs.

Dail Eireann

According to the Standards in Public Office Commission:

The Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001 ("the Party Leaders Allowance Act") provides for the payment of an annual allowance to the parliamentary leader of a "qualifying party" in relation to expenses arising from the parliamentary activities, including research, of the party. The allowance, which is referred to as the Party Leaders Allowance, is paid by the Department of Finance…

A "qualifying party" is defined in the Party Leaders Allowance Act as a political party registered in the Register of Political Parties which contested the last general election or any subsequent by-elections and which had at least one member elected to Dáil Éireann or elected or nominated to Seanad Éireann at that general election or at any subsequent by-election.

The allowance is calculated for each parliamentary leader by reference to the party's representation in Dáil and Seanad Éireann. If a qualifying party forms part of the Government, the combined allowances in respect of its members of the Dáil, only, is reduced by one-third.

The Party Leaders Allowance Act provides for an allowance of €48,547 per member for each of the first ten members of a qualifying party elected to Dáil Éireann, €38,837 per member for each member from 11 to 30 members, and €19,423 for each member over 30 members.

14 National Assembly for Wales Remuneration Board Determination July 2011. The Board's report on Office Holder Remuneration makes reference to opposition.

15 As above

16 Standing Orders of the National Assembly for Wales, October 2012: http://www.assemblywales.org/clean_sos.pdf

The Party Leaders Allowance Act provides for an allowance of €31,743 per member for each of the first five members elected or nominated to Seanad Éireann, and €15,872 for every member thereafter.

The Party Leaders Allowance Act provides for an allowance of €27, 934 for non-party members of the Dáil and an allowance of €15,872 for non-party members of the Seanad. Non-party members of the Dáil and Seanad are not required to make returns to the Standards Commission accounting for their expenditure of the allowance and the Standards Commission has no role in relation to the monitoring of such expenditure[17].

Composition of Committees

Committees provide a vital method for scrutinising the government of the day. The Chairs and Deputy Chairs of committees within the Northern Ireland Assembly are currently chosen via the D'Hondt method, as is the case in the Scottish Parliament for convenors (Chairs). In the House of Commons, the government is allocated the majority of Chairs. In the context of a move towards a formal opposition in the Northern Ireland Assembly, is there an argument that opposition parties should be granted the Chairmanship of more committees, or should this continue to be administered on a proportional basis?

House of Commons

The House of Commons provides the following information on the composition of select committees:

Most select committees in the House of Commons have around a dozen members, though some committees have more and some fewer. Ministers, opposition front-bench spokesmen and party whips do not normally serve on most select committees.

The membership of committees in the Commons reflects the party balance in the House as a whole, meaning that a majority of each committee will be MPs from the governing party or parties. At the moment, for a typical 11-member committee the composition might be five Conservatives and one Liberal Democrat, and five Labour or four Labour and one from another opposition party.

Chairs of select committees have few formal powers and can only vote in the event of a tie but they play a key role in leading the committee's work and setting the agenda.

The allocation of chairs to different parties is also made to reflect the relative party strengths in the House as a whole. Chairs of most select committees receive an additional salary for their work[18].

Following the 2010 UK Parliamentary election "the House agreed a motion in the name of the Prime Minister, the Leader of the Opposition and the Deputy Prime Minister, allocating the chairs of each of the select committees covered by Standing Order No. 122B to a specific party"[19]. MPs then put themselves forward for the election of Committee Chairs.

17 Standards in Public Office Commission website accessed 28 November 2012

18 House of Commons Brief Guide 'Select Committees' August 2011 accessed 26 November 2012

19

Scottish Parliament

Membership of committees in the Scottish Parliament is decided on a roughly proportional basis. Furthermore, the allocation of convenors (Chairpersons) is undertaken using the D'Hondt method[20].

National Assembly for Wales

Section 29 of the Government of Wales Act 2006 legislates for the composition of committees[21]. The membership of each committee must reflect (so far as is reasonably practicable) the balance of the political groups to which Assembly members belong. If a proposal for the composition of a particular committee is not supported by two-thirds of the Assembly in a vote, then the d'Hondt formula will be used to determine the membership of that Committee. SO 17.4 states that in deciding the chairs of committees the Business Committee must have regard to the need to ensure that the balance of chairs across committees reflects the political groups to which Members belong. SO 17.6 states that no motion to agree the membership of a committee can be passed unless the membership reflects (so far as is reasonably practicable) the balance of the political groups to which Members belong; and (if the motion for it is passed on a vote), at least two-thirds of the Members voting support it[22].

Dail Eireann

Standing Orders of Dail Eireann are silent on the allocation of TDs to committees. However, the website of the Oireachtas states that: "Each House decides the Orders of reference, membership and powers of Committees. It is the practice for Committee membership to be proportionally representative of the House which sets it up"[23].

Parliamentary/Assembly time

A key consideration with respect to opposition parties would be the guarantee of time to raise non-Executive business. The House of Commons, Scottish Parliament and National Assembly for Wales guarantee time for non-Government business.

House of Commons

Standing Order 14 outlines the arrangement of public business in the House:

14.—(1) Save as provided in this order, government business shall have precedence at every sitting.

(2) Twenty days shall be allotted in each session for proceedings on opposition business, seventeen of which shall be at the disposal of the Leader of the Opposition and three of which shall be at the disposal of the leader of the second largest opposition party; and matters selected on those days shall have precedence over government business…[24]

20 Scottish Parliament Guidance on Committees: http://www.scottish.parliament.uk/parliamentarybusiness/20956.aspx accessed 26 November 2012

21 Government of Wales Act 2006

22 Standing Orders of the National Assembly for Wales November 2012

23 http://www.oireachtas.ie/viewdoc.asp?fn=/documents/leaflet/comm.htm

24 Standing orders of the House of Commons, September 2012: http://www.publications.parliament.uk/pa/cm201213/cmstords/180912.pdf

Prime Minister's Questions

At Prime Minister's Questions, the Leader of the Opposition is allowed to ask six supplementary questions and the leader of the next largest opposition party is allocated two[25].

Scottish Parliament

Standing Orders require parliamentary time to be provided to parties not in Government and the Parliamentary Bureau must ensure that:

- on 12 half sitting days in each Parliamentary year, the business of committees is given priority over the business of the Scottish Executive at meetings of the Parliament;
- **on 16 half sitting days in each Parliamentary year, meetings of the Parliament consider business chosen by political parties which are not represented in the Scottish Executive or by any group formed under Rule 5.2.2; and**
- at each meeting of the Parliament there is a period of up to 45 minutes for any Members' Business[26]

First Minister's Questions

The Scottish Parliament has produced guidance on the process to be followed at Question Time. Regarding First Minister's Question Time, the guidance states[27]:

The Presiding Officer considers the following criteria when selecting FMQs

- Questions should be topical and suitable for supplementary questions;
- A reasonable political balance between the parties is maintained over time;
- Other than for party leaders, diary questions are avoided;
- There should be no duplication with questions to be asked at Topical, General or Portfolio Questions in the same week;
- Members record of selection for FMQs.

National Assembly for Wales

Standing Order 11.21 guarantees Chamber time for non-Government business:

11.21 Time must be made available in each Assembly year for debates on the following items of business:

(i) the UK Government's legislative programme (in accordance with section 33 of the Act);

(ii) the policy objectives and legislative programme of the government;

(iii) **motions proposed on behalf of political groups who are not political groups with an executive role (and the time allocated to each political group for motions proposed by it must so far as possible be in proportion to the group's representation in the Assembly);**

25 http://www.parliament.uk/Templates/BriefingPapers/Pages/BPPdfDownload.aspx?bp-id=SN05183

26 Standing Orders of the Scottish Parliament, November 2012: http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/SO4_Revisions_Complete.pdf

27 The Scottish Parliament, 'Guidance on Parliamentary Questions', August 2012: http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/GuidanceOnPQs-rev.pdf

(iv) **motions proposed by any Member who is not a member of the government**[28];

There is no published guidance or protocol that entrenches the role of the Opposition in the Chamber. Plenary operates with reference to the Chamber Handbook which is an internal document only and states that the timing and structures are agreed by the Presiding Officer according to the structures outlined below. The length of time allowed for a debate is ultimately a matter for the Presiding Officer's discretion during Plenary.

The Leader of the largest opposition party is not described as "the Leader of the Opposition" in the Record of Proceedings but as "the Leader of the Welsh Conservatives".

Dail Eireann

A relatively recent innovation allows each leader in opposition time to ask questions of the Government:

27. (a) At the commencement of Public Business on Tuesdays and Wednesdays, the Ceann Comhairle may permit, at his or her discretion, a brief question not exceeding two minutes from each Leader in Opposition to the Taoiseach about a matter of topical public importance and in respect of which the following arrangements shall apply:

(i) the Taoiseach shall be called upon to reply for a period not exceeding three minutes,

(ii) the Leader in Opposition who asked the original question may then ask a brief supplementary question not exceeding one minute,

(iii) the Taoiseach shall then be called upon to reply in conclusion for a period not exceeding one minute[29].

A leader in opposition means a political group within the Dail as defined in Standing Orders:

120 (1)(a)any Party which had not less than seven members elected to the Dáil at the previous General Election or which, if it had less than seven, attained the number of seven members as a result of a subsequent bye-election, or

(b) a majority of the members of the Dáil who are not members of a group as defined in paragraph (1)(a), being not less than seven in number, who request formal recognition as a group in writing to the Ceann Comhairle: Provided that such request shall be signed by all such members. The Ceann Comhairle shall grant formal recognition as a group to such members as soon as possible thereafter[30].

Private Members' Business

Each week the Dáil sets aside three hours, between 7.30 – 9.00 pm on Tuesdays and Wednesdays. During this time the opposition parties and groups can bring forward their own Private Members' Bills and motions for discussion. These usually concern major political issues of the day. On the first Friday of each month the Dáil sits to consider legislation introduced by any member of the Dáil except for a Minister or Minister of State. This debate happens at the second stage. This is a general debate on the principles of the Bill and what else could be put into the Bill or what should be taken out. If more than one Bill is submitted for consideration then a lottery takes place to decide which Bill will be discussed[31].

28 Standing Orders of the National Assembly for Wales, October 2012 accessed 28 November 2012

29 Standing Orders of Dail Eireann accessed 28 November 2012

30 As above

31 www.oireachtas.ie/parliament/.../Parliamentary-Guide-Eng-(web).pdf

4 Community designation

The Northern Ireland Act 1998 and Assembly Standing Orders make provision for Members to designate themselves as 'Nationalist', 'Unionist' or 'Other' at the first meeting of the Assembly after an election.

Section 5(A) of the Northern Ireland Act 1998 states:

> *[(5A) Standing orders of the Assembly shall provide that a member of the Assembly designated in accordance with the standing orders as a Nationalist, as a Unionist or as Other may change his designation only if—*
>
> *(a) (being a member of a political party) he becomes a member of a different political party or he ceases to be a member of any political party;*
>
> *(b) (not being a member of any political party) he becomes a member of a political party.*
>
> *"designated Nationalist" means a member designated as a Nationalist in accordance with standing orders of the Assembly and "designated Unionist" shall be construed accordingly.*

Standing Order 3 details the procedure to be followed in designating as Nationalist, Unionist or Other:

- (7) After signing the Roll a member may enter in the Roll a designation of identity, being "Nationalist", "Unionist" or "Other". A member who does not register a designation of identity shall be deemed to be designated "Other" for the purposes of these Standing Orders and the Northern Ireland Act 1998.
- (8) A member may change his or her designation of identity only if -
- (a) (being a member of a political party) he or she becomes a member of a different political party or he or she ceases to be a member of any political party;
- (b) (not being a member of any political party) he or she becomes a member of a political party.
- Any such change takes effect immediately after notification in writing is submitted to the Speaker.
- (9) The Clerk shall draw up a list of the party affiliations of the members. Each member shall have the opportunity to confirm or correct his or her affiliation as stated in that list[32].

There is disagreement on the principle behind the use of community designation in the Assembly. Critics have argued that:

…the designation system (acts) to "entrench communalist politics"[33]. According to critics, consociationalists promote group vetoes, because they assume that Northern Ireland will remain "forever divided, requiring skilful and continual management, rather than becoming a united, (though) diverse community with common interests and shared goals"[34]. Specifically, the system is seen as according more weight to nationalist and unionist votes than those members who do not wish to be 'pigeonholed' in communal terms, thereby providing a deterrent for cross-community parties and politics to emerge[35].

However:

…advocates of consociationalism argue that they are merely legislating for what is already there and that any successful accommodation of competing ethno-nationalisms in Northern

32 Standing Orders of the Northern Ireland Assembly October 2012

33 Wilson and Wilford quoted in Nagle and Clancy 2010

34 Farry quoted in Nagle and Clancy 2010

35 Nagle, John; Clancy, Mary-Alice C.. 2010., Shared Society or Benign Apartheid?: Understanding Peace-Building in Divided Societies. [online]. Palgrave Macmillan

Ireland has to begin by accepting the saliency and relative historical fixity of ethno-national identities…Accordingly, consociationalists are apt to portray their clique as "pragmatists who, in accepting existing divisions within ethnically divided societies, strive to regulate them through complex constitutional engineering"[36].

The 1998 Act sets out how community designation provides for a test of cross-community support for key decisions within the Assembly

4(5)In this Act—

"the Assembly" means the New Northern Ireland Assembly, which after the appointed day shall be known as the Northern Ireland Assembly;

"cross-community support", in relation to a vote on any matter, means—

(a) the support of a majority of the members voting, a majority of the designated Nationalists voting and a majority of the designated Unionists voting; or

(b) the support of 60 per cent of the members voting, 40 per cent of the designated Nationalists voting and 40 per cent of the designated Unionists voting;

The relationship between the PR voting system and community designation and the consequences of their use have been explained in a theoretical way as follows:

The principle of parity and the principle of proportionality imply roughly the same outcome for representation, or for decision-making power, only when the relevant peoples have roughly the same number of valid voters. Imagine that two key peoples in a polity are roughly balanced in size: people A comprises 47 per cent of the electorate; and people B comprises 43 percent; others (neither As nor Bs) comprise 10 per cent. Imagine further that all voters in each category vote for just one party of their ethnic category under a system of pure proportional representation (PR). In this example, achieving both proportionality, according to equality among individual voters, and parity between the peoples A and B, seems to be not too difficult.

In this case, the use of PR to elect legislators, and of a PR system to determine the executive, can be combined with a concurrent majority decision-making rule among the two peoples, A and B, over key matters.

Such concurrent majority decision-making can be achieved explicitly through corporate naming (or 'designation') of the peoples, such as: 'A majority of those deputies who represent people A and a majority of those deputies who represent people B as well as a majority in the parliament shall agree before legislation is passed regulating any aspect of policing or internal security.'

Such a rule, however, has consequences for the voting power of 'the others' (neither As nor Bs) who may not be pivotal—that is, capable of being decisive in the outcome of a vote[37].

Addressing these consequences in the operation of the Assembly some commentators have argued that:

In effect, there are two orders of Assembly members: in relation to key decisions there are those whose votes always "count" and those whose votes never do so. Not only is this patently undemocratic, in the particular case of the Alliance Party it is also richly ironic. Since its inception, it has been bi-confessional and committed to the promotion of positive cross-community relations and yet it is a casualty of this anomalous and wholly unnecessary

36 Kerr quoted in Nagle and Clancy

37 C. McCrudden & B. O'Leary, 'Courts and Consociations', Oxford University Press, (forthcoming), pp14-15

procedure which could easily be surrendered in favour of weighted majority voting on key issues[38].

However, others contend that these concerns are overstated:

In fact, the votes of others always count – they count towards the majority (or supermajority) threshold. Similarly, (it has also been argued) that "in practice the parallel consent rule implies that once a majority is secured within the assembly, the 'others' no longer count; at such a point, all that matters is whether or not there is a majority within both communities". Again, this is a very misleading way of characterising the cross-community consent procedures. It is true that once a majority is secured in a cross-community vote, the votes of others no longer count. But it is equally true that under a simple-majority decision the votes of others do not count once a majority is otherwise secured.

Perhaps what critics…really mean to say is that the votes of designated unionists and nationalists are more decisive than the votes of designated others.

This much is suggested by the Alliance Party in its 2001 submissions to the Review of the Northern Ireland Assembly. As the Alliance Party points out, the cross-community consent procedures effectively count the votes of designated unionists and designated nationalists twice – first with respect to the overall threshold in the Assembly, and again with respect to the community designation thresholds.

So, in so far as the votes of others may be necessary to meet the majority or supermajority thresholds, their votes are not, strictly speaking, irrelevant. However, on a cross-community vote, the votes of designated unionists and nationalists are more likely than the votes of others to have a determinative effect on the outcome. This line of argument, at least, suggests a more precise way of formulating the problem[39].

A number of votes which cross-community support are specifically set out in the Northern Ireland Act 1998:

- changes to the schedule of reserved, transferred or excepted matters (Section 4(3))
- determination of the number of Ministers and their portfolios (Section 17(5))
- changes to the Ministerial Code (Section 28A(4))
- exclusion of Ministers from Office and exclusion of parties from holding Ministerial Office (Section 30)
- election of Presiding Officer (Section 39(7)) (also Principal Deputy Speaker and Deputy Speakers under Standing Orders)
- making, amending or repealing Standing Orders (Section 41(2))
- Petitions of Concern (Section 42)
- resolutions about reduction in remuneration (Section 47A(9))
- resolutions about reduction in financial assistance (Section 51A(8))
- censure resolutions (Section 51D(5))
- financial Acts of the Assembly (Section 63(3))
- draft budgets (Section 64)[40]

38 Rick Wilford 'Northern Ireland: The Politics of Constraint', Parliamentary Affairs vol 63 p137

39 Alex Schwartz 'How unfair is cross-community consent? Voting power in the Northern Ireland Assembly'

40 Northern Ireland Act 1998 as amended

Regarding petitions of concern Section 42 (1) of the 1998 Act states that:

(1) If 30 members petition the Assembly expressing their concern about a matter which is to be voted on by the Assembly, the vote on that matter shall require cross-community support[41].

Standing Order 28[42] of the Assembly details the procedures to be followed in respect of Petitions of Concern:

> *28. Petition of Concern*
>
> *(1) A Petition of Concern in respect of any matter shall be in the form of a notice signed by at least 30 members presented to the Speaker. No vote may be held on a matter which is the subject of a Petition of Concern until at least one day after the Petition of Concern has been presented.*
>
> *(2) Other than in exceptional circumstances, a Petition of Concern shall be submitted at least one hour before the vote is due to occur. Where no notice of the vote was signalled or such other conditions apply that delay the presentation of a Petition of Concern the Speaker shall determine whether the Petition is time-barred or not.*

To date in the 2011-2015 mandate, nine Petitions of Concern have been tabled (six Unionist and three Nationalist). In the 2007-2011 mandate, 33 Petitions of Concern were tabled (20 Unionist and 13 Nationalist). Appendix 2 provides the title and date considered in plenary of all Petitions since 2007. It also signifies the political designation of those Members bringing the petition.

Since 2007, the DUP have had the required numbers to present Petitions of Concern without the need to seek the support of other parties or Independents[43]. Currently, Sinn Féin requires the support of one other Member outside its party if it wishes to present a Petition of Concern. Table 1 shows the relative strength of each Assembly party in relation to cross-community support.

Table 1: Party strength in relation to cross-community support

Party	No. of Members	Designation	Percentage of total Members	Percentage of voting block (Nationalist or Unionist)
Alliance	8	Other	7.4	-
DUP	38	Unionist	35.2	67.9
Green	1	Other	0.9	-
Sinn Féin	29	Nationalist	26.9	67.4
SDLP	14	Nationalist	13.0	32.6
TUV	1	Unionist	0.9	1.8
UUP	15	Unionist	13.9	26.8
Independents	2	Unionist	1.9	3.6

Research from 2003 raised the prospect of replacing community designation with a weighted majority voting system:

41 Section 42 of the Northern Ireland Act 1998 as amended

42 Standing Orders of the Northern Ireland Assembly: http://www.niassembly.gov.uk/sopdf/2007mandate/standingorders.htm

43 The DUP obtained 30 seats following the 2003 Assembly election but the Assembly did not meet.

In terms of changing parliamentary voting procedures, it would be a constructive step forward if the parallel consent mechanism for key decisions was removed and replaced with qualified majority voting, with a sufficiently high threshold (e.g., three-fifths or two-thirds of assembly members present and voting). This would still ensure that no decision could be taken against significant opposition in one of the two communities. It would also mean that the principle of designation could be removed - a small but significant symbolic step towards breaking down sectarian divisions in the Assembly[44].

The use of community designation is not unique to the Northern Ireland Assembly, Belgium provides another example, like Northern Ireland, of consociational democracy in which:

proportional representation, executive power-sharing and grand coalitions, minority vetoes are key elements…At the national level in Belgium, in response to Francophones' fear that they might be outvoted and dominated politically by the Flemish majority, Belgium has put in place a variety of institutional mechanisms that prevent Flemish domination through majority rule[45].

As part of the consociational arrangement, the Belgian Parliament is divided into a French-speaking group and Dutch-speaking group:

For critical political decision-making in the Belgian government, the elected members of each of the two houses of the legislature were divided into a French-language and a Dutch-language group…When the parliamentary language groups had a role to play, the constitution required a concurrent majority of votes in each language group of each house, but that concurrent majority was further qualified. The total of the affirmative votes cast in the two language groups was required to amount to at least two-thirds of the votes cast. In addition, there was an "alarm bell" procedure, which to be triggered, required a motion signed by at least three-quarters of the members of one of the language groups to be moved, stating that the provisions of a specified bill were likely to be seriously detrimental to relations between the two language communities. Upon the alarm bell being rung, parliamentary proceedings were suspended and the motion was referred to the Cabinet, which was required to give a reasoned opinion on it within thirty days and to request the parliamentary chamber concerned to vote either on this opinion or on the Bill. These provisions were designed primarily to protect the speakers of the country's minority language, i.e. French. The Cabinet was required to have as many French-speaking as Dutch-speaking Ministers[46].

The provisions relating to language designation are given effect in the Rules of the Belgian Parliament[47]. The procedure therefore bears similarities to that operating in the Northern Ireland Assembly, but the threshold appears to be set higher and applies only to legislation, rather than ordinary motions. There is nothing similar to a petition of concern which in certain circumstances may in effect allow a single party a veto on any issue.

5 D'Hondt

The consociational nature of the Belfast (Good Friday) Agreement was based on the need to accommodate competing political views "where the wider social and political context is inimical to majoritarianism, as is typical of deeply divided societies"[48].

In the Northern Ireland Assembly, Chairs and Deputy Chairs of committees and Executive Ministers are assigned using D'Hondt.

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44 http://cain.ulst.ac.uk/ethnopolitics/wolff03.pdf

45 Robert Mnookin & Alain Verbeke 'Persistent nonviolent conflict with no reconciliation: the Flemish and Walloons in Belgium' 2009 (available at www.law.duke.edu/journals/lcp)

46 C. McCrudden & B. O'Leary, 'Courts and Consociations', Oxford University Press, (forthcoming), p.50

47 http://www.dekamer.be/kvvcr/pdf_sections/publications/reglement/reglementE.pdf

48 Rick Wilford „The Assembly in A guide to the Northern Ireland Assembly: agreeing to disagree? Edited by Robin Wilson, TSO 2001

Consequently, coalition government in Northern Ireland is not based on inter-party negotiations following an election. Rather, membership of the Executive is "an automatic entitlement of electoral strength, determined… by the application of the mechanical D'Hondt divisor"[49] which allocates seats on the basis of the highest average (the number of seats each party wins at an Assembly election is divided initially by one and thereafter by one more than the number of seats won, until all seats are allocated).

The Belfast/Good Friday Agreement and subsequent legislation ensured that parties which won a significant number of votes stood a good chance of participating in government. This particular application of d'Hondt appears unique to Northern Ireland as "nowhere else in the world is government formed by the d'Hondt rule, whose more normal role is the allocation of top-up seats under additional member systems of PR"[50].

Previous research has suggested changes to the application of D'Hondt:

The D'Hondt formula should be used for the nomination of the FM and DFM. This would mean that the first and second largest parties would nominate the FM and DFM – so they could come from any party, not just a unionist or nationalist party. We would, however, commend one important qualification: parties rather than MLAs should designate themselves as nationalist or unionist if they so wished. The rule governing the nomination of the premiers should then be that the two premiers could not both be unionist or nationalist.

The research goes on to state that:

Alternatively, the executive could be constituted by the Sainte-Lague mechanism, which is more advantageous for small parties than D'Hondt[51].

It could be argued that the use of D'Hondt to distribute Ministerial portfolios does not lend itself to an opposition model. However, there is nothing that requires parties to take a seat in the Executive – they can refuse and the seat will be offered to the next eligible party. In effect, there is no practical barrier to parties withdrawing from the Executive if they wish, the question then becomes to what extent will those parties be afforded the traditional role and resources allocated to opposition parties?

An alternative to the sitting Government?

A criticism of the current Executive design in Northern Ireland is that it does not allow for a government in waiting to assume power if the current administration falls. There is no provision for a vote of no confidence in the Executive as there is in the House of Commons (by convention) and Dail Eireann (Standing Orders). The Scottish Parliament also provides for a vote of no confidence:

Under the standing orders (Rule 8.12), any MSP can lodge a motion that the Scottish Government or a specific Cabinet Secretary or Minister no longer enjoys the confidence of the Parliament. These are known as motions of no confidence. If notice of a motion of no confidence is supported by at least 25 MSPs, it has to be considered at a meeting of the Parliament. A motion of no confidence needs only a simple majority in order to be passed. (That is, it will be passed if more MSPs vote for the motion than against it. No account is taken in this context of those voting to abstain or not voting.)

When a motion is passed that the Scottish Government no longer enjoys the confidence of the Parliament, the First Minister, all Cabinet Secretaries and Ministers must resign (The

49 Paul Mitchell 'Transcending an ethnic party system? In Aspects of the Belfast Agreement', edited by Rick Wilford, Oxford University Press 2001

50 Robin Wilson 'The Executive Committee' in A Guide to the Northern Ireland Assembly, edited by Robin Wilson, TSO 2001

51 J. McGarry and B. O'Leary 'Consociational Theory, Northern Ireland's Conflict, and its Agreement (Part 2). What Critics of Consociation can Learn from Northern Ireland', Government and Opposition vol 41, No 2 pp249-277, 2006

Scotland Act 1998, sections 45, 47 and 49). When a motion of no confidence directed at a named member of the Scottish Government is passed, that Cabinet Secretary or Minister would be expected to resign, but they are not obliged to do so by law.

Passing a motion of no confidence in the Scottish Government does not mean an automatic general election. However, there would be a general election if the Parliament then failed to nominate a First Minister for appointment by HM The Queen within 28 days.

The Parliament can also vote to dissolve itself, as distinct from simply passing a motion of no confidence. Section 3 of the Scotland Act states that if two-thirds of the Parliament (at least 86 MSPs) vote for it, the Parliament will be dissolved and a general election will be called[52].

Similar provisions exist in the National Assembly for Wales.

Any move towards a similar mechanism in Northern Ireland would be a significant departure from the status quo and would likely require a review of the D'Hondt mechanism for the allocation of ministerial portfolios.

52 http://www.scottish.parliament.uk/help/17019.aspx

Appendix 1 – Financial Assistance Scheme in Northern Ireland

Northern Ireland

The Assembly Commission administers the Financial Assistance for Political Parties Scheme. The following tables outline the structure of the Scheme (2007 is the latest publication date for the Scheme).

Table 2: Article 3 of the Financial Assistance for Political Parties Scheme 2007

(a) £24,000 in respect of the costs incurred by a political party for the authorised purpose where that party has only one connected member (authorised purpose means the purpose of assisting members of the Assembly who are connected with that party to perform their Assembly duties)
(b) £48,000 in respect of the costs incurred by a political party for the authorised purpose where that party has two or more connected members
(c) £3,000 in respect of the costs incurred by a political party for the authorised purpose in respect of each member who is connected with that party who does not hold a ministerial or junior ministerial post
(d) £15,000 in respect of the costs incurred by a political party in the administration of its Whips' Office for the authorised purpose where that party has more than two but fewer than eleven connected members
(e) £22,500 in respect of the costs incurred by a political party in the administration of its Whips' Office for the authorised purpose where that party has more than ten but fewer than twenty-one connected members
(f) £30,000 in respect of the costs incurred by a political party in the administration of its Whips' Office for the authorised purpose where that party has more than twenty connected members
(g) Where during any year financial assistance is payable to any party under Article 3(d), (e) or (f), £500 in respect of the costs incurred by a political party to administer its Whips' Office for the authorised purpose in respect of each member who is connected with that party who does not hold a ministerial or junior ministerial post;
(h) For the purposes of the Scheme any member holding the Office of Speaker shall be considered to be connected with that party unless he gives notice in writing to the Finance Officer

The following table details how changes to party membership affects the payments:

Table 3: Article 5 of the Financial Assistance for Political Parties Scheme 2007

(1) Where during any year a new political party has been formed, the financial assistance payable to that party under Article 3 shall be calculated proportionately.
(2) Where during any year a member ceases to be connected with a political party, the financial assistance payable to that party under Article 3 for the remainder of the year shall be decreased accordingly.
(3) Where during any year a member becomes connected with a political party, the financial assistance payable to that party under Article 3 for the remainder of the year shall be increased accordingly.
(4) For the purposes of this Article, vacancies of members during any year arising during a period of dissolution and election of the Assembly shall not be taken into account.
(5) For the year commencing on 1st April 2007 the financial assistance payable under Article 3 shall be reduced proportionately to cover the number of days remaining in the year between the approval of this Scheme by the Assembly and the 31st March 2008 divided by 365.

Appendix 2 – Petitions of Concern

	Petition	Brought by Nationalists or Unionists?	Signatories to Petition	Date considered in Plenary
Mandate 2011-2015				
Party representation following election: DUP: 38 SF: 29 UUP: 16 SDLP: 14 Alliance: 8 Green: 1 TUV: 1 Independent: 1	FCS - Criminal Justice Bill (NIA 10/11-15) - Amendment 1	Nationalist and Other	Sinn Fein/ Alliance/Green	12/03/2013
	Establishment of an Ad Hoc Committee	Unionist	DUP	26/02/2013
	CS - Criminal Justice Bill - Amendment 26	Nationalist	Sinn Féin/SDLP	25/02/2013
	CS - Criminal Justice Bill - Amendment 24	Nationalist	Sinn Féin/SDLP	25/02/2013
	CS - Criminal Justice Bill - Amendment 21	Nationalist	Sinn Féin/SDLP	25/02/2013
	National Crime Agency	Nationalist	Sinn Féin/SDLP	01/02/13
	Commitment to Inclusivity, Mutual Respect, Peace and Democracy - Amendment 1	Nationalist	Sinn Féin/SDLP	21/01/2013
	Report on complaints against Mr Jim Wells MLA	Unionist	DUP	19/11/2012
	Ad Hoc Committee on Conformity with Equality Requirements - Welfare Reform Bill	Nationalist	Sinn Féin/SDLP	19/11/2012
	Ad Hoc Committee on Conformity with Equality Requirements - Welfare Reform Bill - Amendment 1	Nationalist	Sinn Féin/SDLP	19/11/2012
	Marriage Equality (Revised Wording)	Unionist	DUP	01/10/2012
	Retention and Release of Information from Police Officers	Unionist	DUP	29/11/2011
	Murder of Pat Finucane - Amendment 1	Unionist	DUP/UUP	08/11/2011
	Murder of Pat Finucane	Unionist	DUP/UUP	08/11/2011
	A5 Dual Carriageway Project - Amendment 1	Nationalist	Sinn Féin/SDLP	07/06/2011
	A5 Dual Carriageway Project	Unionist	DUP	07/06/2011

	Petition	Brought by Nationalists or Unionists?	Signatories to Petition	Date considered in Plenary
Mandate 2007-2011				
Party representation following election: DUP: 36 SF: 28 UUP: 18 SDLP: 16 Alliance: 7 Green: 1 PUP: 1 Independent: 1	Planning Bill - Amendment 2	Unionist	DUP	21/03/2011
	Final Stage - Local Government (Disqualification) Bill	Unionist	DUP	09/03/2011
	Planning Bill - Amendment 102	Unionist	DUP	08/03/2011
	Planning Bill - Amendment 20	Unionist	DUP	08/03/2011
	Justice Bill - Amendment 11	Unionist	DUP/UUP	07/03/2011
	Justice Bill - Amendment 10	Unionist	DUP/UUP	07/03/2011
	Justice Bill - Amendment 9	Unionist	DUP/UUP	07/03/2011
	Justice Bill - Amendment 8	Unionist	DUP/UUP	07/03/2011
	Justice Bill - Amendment 6	Unionist	DUP/UUP	07/03/2011
	Justice Bill - Amendment 5	Unionist	DUP/UUP	07/03/2011
	Armed Forces and Veterans Bill - Clauses 2 through to 8 and the Long Title	Nationalist	Sinn Féin/SDLP	15/02/2011
	Armed Forces and Veterans Bill - Clause 1	Nationalist	Sinn Féin/SDLP	15/02/2011
	Caravans Bill - Amendment 15	Unionist	DUP	25/01/2011
	Caravans Bill - Amendment 14 New Clause	Unionist	DUP	25/01/2011
	Caravans Bill - Amendment 13	Unionist	DUP	25/01/2011
	Caravans Bill - Amendment 12	Unionist	DUP	25/01/2011
	Second Stage - Victims and Survivors (Disqualification) Bill	Nationalist	Sinn Féin/SDLP	14/12/2010
	Final Stage - Local Government (Disqualification) Bill	Unionist	DUP	07/12/2010
	Irish Language Strategy	Unionist	DUP/UUP	08/11/2010

	Petition	Brought by Nationalists or Unionists?	Signatories to Petition	Date considered in Plenary
	Proposed Rose Energy Incinerator at Glenavy	Unionist	DUP	27/09/2010
	Safe Passage to Gaza for the MV Rachel Corrie	Unionist	DUP	07/06/2010
	40th Anniversary of Disbanding of B-Specials and Formation of UDR	Nationalist	Sinn Féin/SDLP	24/05/2010
	Northern Ireland Human Rights Commission	Nationalist	Sinn Féin/SDLP	03/11/2009
	'Act on CO2' Advertising Campaign	Unionist	DUP	30/03/2009
	Dual Mandates	Unionist	DUP	10/03/2009
	North-South Ministerial Council	Nationalist	Sinn Féin/SDLP	09/02/2009
	Civic Forum	Nationalist and Unionist	Sinn Féin/SDLP/ PUP	03/02/2009
	Irish Medium Primary School	Nationalist	Sinn Féin/SDLP	24/06/2008
	Irish Medium Schools in Dungannon / South Tyrone	Nationalist	Sinn Féin/SDLP	13/05/2008
	Forkhill Military Site	Nationalist	Sinn Féin/SDLP	07/04/2008
	FIFA Eligibility Proposal	Nationalist	Sinn Féin/SDLP	11/12/2007
	Irish-Medium Club Bank	Nationalist	Sinn Féin/SDLP	13/11/2007
	Irish Language	Nationalist	Sinn Féin/SDLP	09/10/2007

	Petition	Brought by Nationalists or Unionists?	Signatories to Petition	Date considered in Plenary
Assembly suspended October 2002-May 2007				
Mandate 1998-2003				
Party representation following election: UUP: 28 SDLP: 24 DUP: 20 Sinn Féin: 18 Alliance: 6 UKUP: 5 PUP: 2 Northern Ireland Women's Coalition: 2 Independent: 3	Strategic Investment and Regeneration of Sites Bill	Unionist	N/A (Assembly suspended from this date)	14/10/2002
	Election of First Minister and Deputy First Minister	Unionist/ Nationalist/Other	UUP/SDLP/ Alliance	05/11/2001
	Motion to amend Standing Orders	Unionist	DUP/UKUP	05/11/2001
	Northern Ireland Human Rights Commission	Nationalist and Other	SDLP/Sinn Féin/ Alliance	25/09/2001
	No Confidence in Minister of Education	Nationalist	SDLP/Sinn Féin	08/05/2001
	Display of Easter Lilies in Parliament Buildings	Nationalist and Other	SDLP/Sinn Féin/ Alliance/NIWC	10/04/2001
	Union Flag	Nationalist and Other	SDLP/Sinn Féin/ Alliance	6/06/2000

Northern Ireland Assembly

Research and Information Service
Briefing Paper

Paper 000/00 2 May 2013 NIAR 303-13

Ray McCaffrey

Additional information on Petitions of Concern

1 Introduction

This briefing provides further information on Petitions of Concern. The Assembly and Executive Review Committee requested this information at its meeting on 23 April 2013. The information is presented in a series of tables.

2 Petitions of Concern

The following table shows the numbers of Petitions of Concern by session and by community designation. Two Petitions submitted have been joint Unionist/Nationalist.

Table 1: Petitions of Concern submitted by community designation from 1998 to 2013

Session	Unionist	Nationalist	Joint Unionist/Nationalist
1998-99	0	0	0
1999-00	0	1	0
2000-01	0	2	0
2001-02	1	1	1 (Election of First Minister and Deputy First Minister)
2002-03	1	0	0
	Suspension October 2002 – May 2007[1]		
2003-04			
2004-05			
2005-06			
2006-07			
2007-08	0	6	0
2008-09	2	1	1 (Civic Forum)
2009-10	1	2	0
2010-11	17	3	0
2011-12	4	1	0
2012-13[2]	3	8	0
Total	**29**	**25**	**2**

1 At times during the period of suspension the Assembly operated in 'shadow' form in preparation for a return to devolved government.

2 Up to and including 30 April 2013

There is a fairly even split between Petitions submitted in respect of motions and legislation. However, it should be noted that almost half of petitions submitted against legislation relate to the Caravans Bill and the Justice Bill where Petitions have been submitted in respect of various amendments to these Bills.

Figure 1: Breakdown of Petitions of Concern by type

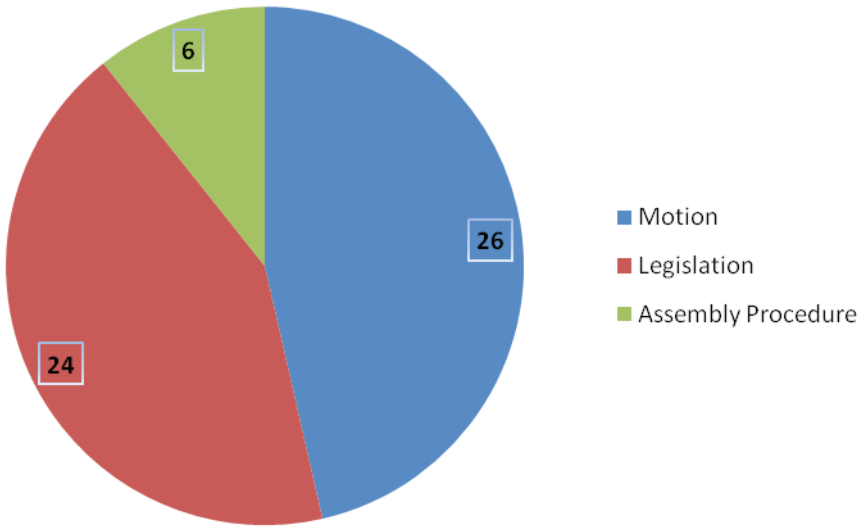

Table 2 places the number of Petitions in the context of the number of plenary sessions held in a session. Commentary is also provided in relation to periods of suspension.

Table 2: Petitions of Concern by session and mandate including number of plenaries by session and mandate and comments on periods of suspension

Number of plenaries by session and mandate		Petitions of concern by session and mandate
2011-15 mandate up to and including 30 April 2013	**Plenaries**	**Petitions of Concern**
2011-12	81	5
2012-13	67	11
Total	148	16
2007-11 mandate	Plenaries	Petitions of Concern
2006-07	18	0
2007-08	70	6
2008-09	69	4
2009-10	79	3
2010-11	52	20
Total	**288**	**33**
Hain and Transitional Assembly	Plenaries	Petitions of Concern
Hain Assembly	3	0
Transitional Assembly	16	0
Total	19	0

Number of plenaries by session and mandate		Petitions of concern by session and mandate
Comments Northern Ireland Assembly suspended: 14 October 2002 to 8 May 2007. Following the passing of the Northern Ireland Act 2006 the Secretary of State created a non-legislative fixed-term Assembly, whose membership consisted of the 108 members elected in the November 2003 election. This met for the first time on 15 May 2006, its remit was to make preparations for the restoration of devolved government to Northern Ireland and for a fully restored Assembly. Its discussions informed the next round of talks called by the British and Irish Governments, held at St Andrews in October 2006. The St Andrews Agreement of 13 October 2006 led to the establishment of the Transitional Assembly. The Northern Ireland (St. Andrews Agreement) Act 2006 set out a timetable to restore devolution in Northern Ireland.		
1998-2003	Plenaries	Petitions of Concern
1998-99	15	0
1999-00	21	1
2000-01	61	3
2001-02	63	3
2002-03	12	0
Total	172	7
Overall Total	**627**	**56**
Comments The Northern Ireland Assembly was elected on 25 June 1998 under the terms of the Northern Ireland (Elections) Act 1998 and met for the first time on 1 July 1998. The Assembly met in 'Shadow' form until legislative powers were transferred from 2 December 1999. Assembly suspended: 11 February to 30 May 2000. 24-hour technical suspension: 10 August 2001. 24-hour technical suspension: 22 September 2001.		

Table 3 provides more detailed information including:

- Subject of Petition
- Whether Petition brought by Unionists or Nationalists
- Signatories by party
- Date considered in plenary

Table 3: Details of Petitions of Concern submitted since establishment of Assembly in 1998

	Petition	Brought by Nationalists or Unionists?	Signatories to Petition	Date considered in Plenary
Mandate 2011-2015				
Party representation following election: DUP: 38 SF: 29 UUP: 16 SDLP: 14 Alliance: 8 Green: 1 TUV: 1 Independent: 1	FCS - Criminal Justice Bill (NIA 10/11-15) - Amendment 1	Nationalist and Other	Sinn Fein/Alliance/Green	12/03/2013
	Establishment of an Ad Hoc Committee	Unionist	DUP	26/02/2013
	CS - Criminal Justice Bill - Amendment 26	Nationalist	Sinn Féin/SDLP	25/02/2013
	CS - Criminal Justice Bill - Amendment 24	Nationalist	Sinn Féin/SDLP	25/02/2013
	CS - Criminal Justice Bill - Amendment 21	Nationalist	Sinn Féin/SDLP	25/02/2013
	National Crime Agency	Nationalist	Sinn Féin/SDLP	01/02/13
	Commitment to Inclusivity, Mutual Respect, Peace and Democracy - Amendment 1	Nationalist	Sinn Féin/SDLP	21/01/2013
	Report on complaints against Mr Jim Wells MLA	Unionist	DUP	19/11/2012
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	Retention and Release of Information from Police Officers	Unionist	DUP	29/11/2011
	Murder of Pat Finucane - Amendment 1	Unionist	Sinn Féin/SDLP	08/11/2011
	Murder of Pat Finucane	Unionist	DUP/UUP	08/11/2011
	A5 Dual Carriageway Project - Amendment 1	Nationalist	Sinn Féin/SDLP	07/06/2011
	A5 Dual Carriageway Project	Unionist	DUP	07/06/2011
Mandate 2007-2011				

	Petition	Brought by Nationalists or Unionists?	Signatories to Petition	Date considered in Plenary
Party representation following election: DUP: 36 SF: 28 UUP: 18 SDLP: 16 Alliance: 7 Green: 1 PUP: 1 Independent: 1	Planning Bill - Amendment 2	Unionist	DUP	21/03/2011
	Final Stage - Local Government (Disqualification) Bill	Unionist	DUP	09/03/2011
	Planning Bill - Amendment 102	Unionist	DUP	08/03/2011
	Planning Bill - Amendment 20	Unionist	DUP	08/03/2011
	Justice Bill - Amendment 11	Unionist	DUP/UUP	07/03/2011
	Justice Bill - Amendment 10	Unionist	DUP/UUP	07/03/2011
	Justice Bill - Amendment 9	Unionist	DUP/UUP	07/03/2011
	Justice Bill - Amendment 8	Unionist	DUP/UUP	07/03/2011
	Justice Bill - Amendment 6	Unionist	DUP/UUP	07/03/2011
	Justice Bill - Amendment 5	Unionist	DUP/UUP	07/03/2011
	Armed Forces and Veterans Bill - Clauses 2 through to 8 and the Long Title	Nationalist	Sinn Féin/SDLP	15/02/2011
	Armed Forces and Veterans Bill - Clause 1	Nationalist	Sinn Féin/SDLP	15/02/2011
	Caravans Bill - Amendment 15	Unionist	DUP	25/01/2011
	Caravans Bill - Amendment 14 New Clause	Unionist	DUP	25/01/2011
	Caravans Bill - Amendment 13	Unionist	DUP	25/01/2011
	Caravans Bill - Amendment 12	Unionist	DUP	25/01/2011
	Second Stage - Victims and Survivors (Disqualification) Bill	Nationalist	Sinn Féin/SDLP	14/12/2010
	Final Stage - Local Government (Disqualification) Bill	Unionist	DUP	07/12/2010
	Irish Language Strategy	Unionist	DUP/UUP	08/11/2010
	Proposed Rose Energy Incinerator at Glenavy	Unionist	DUP	27/09/2010

	Petition	Brought by Nationalists or Unionists?	Signatories to Petition	Date considered in Plenary
	Safe Passage to Gaza for the MV Rachel Corrie	Unionist	DUP	07/06/2010
	40th Anniversary of Disbanding of B-Specials and Formation of UDR	Nationalist	Sinn Féin/SDLP	24/05/2010
	Northern Ireland Human Rights Commission	Nationalist	Sinn Féin/SDLP	03/11/2009
	'Act on CO2' Advertising Campaign	Unionist	DUP	30/03/2009
	Dual Mandates	Unionist	DUP	10/03/2009
	North-South Ministerial Council	Nationalist	Sinn Féin/SDLP	09/02/2009
	Civic Forum	Nationalist and Unionist	Sinn Féin/SDLP/PUP	03/02/2009
	Irish Medium Primary School	Nationalist	Sinn Féin/SDLP	24/06/2008
	Irish Medium Schools in Dungannon / South Tyrone	Nationalist	Sinn Féin/SDLP	13/05/2008
	Forkhill Military Site	Nationalist	Sinn Féin/SDLP	07/04/2008
	FIFA Eligibility Proposal	Nationalist	Sinn Féin/SDLP	11/12/2007
	Irish-Medium Club Bank	Nationalist	Sinn Féin/SDLP	13/11/2007
	Irish Language	Nationalist	Sinn Féin/SDLP	09/10/2007

	Petition	Brought by Nationalists or Unionists?	Signatories to Petition	Date considered in Plenary
Assembly suspended October 2002-May 2007				
Mandate 1998-2003				
Party representation following election: UUP: 28 SDLP: 24 DUP: 20 Sinn Féin: 18 Alliance: 6 UKUP: 5 PUP: 2 Northern Ireland Women's Coalition: 2 Independent: 3	Strategic Investment and Regeneration of Sites Bill	Unionist	N/A (Assembly suspended from this date)	14/10/2002
	Election of First Minister and Deputy First Minister	Unionist/Nationalist/ Other	UUP/SDLP/Alliance	05/11/2001
	Motion to amend Standing Orders	Unionist	DUP/UKUP	05/11/2001
	Northern Ireland Human Rights Commission	Nationalist and Other	SDLP/Sinn Féin/Alliance	25/09/2001
	No Confidence in Minister of Education	Nationalist	SDLP/Sinn Féin	08/05/2001
	Display of Easter Lilies in Parliament Buildings	Nationalist and Other	SDLP/Sinn Féin/Alliance/ NIWC	10/04/2001
	Union Flag	Nationalist and Other	SDLP/Sinn Féin/Alliance	6/06/2000

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