

## Notes on provision of opposition and accountability to the Northern Ireland Assembly

Assembly and Executive Reform (Assembly Opposition) Bill

Dr. Eoin O'Malley  
School of Law and Government,  
Dublin City University.

### *Introduction*

1. Opposition in most parliamentary democracies has three primary roles: 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 our 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.

### *Accountability mechanisms*

2. Ministerial responsibility is a near universal doctrine in parliamentary democracies. This relies on three principles: confidence, confidentiality and unanimity.
3. Executives are normally formed on the basis of a programme that secures the support of a majority in the legislature. This is the principle of confidence. The legislature is supposed to provide a number of roles, the most important of which is possibly to hold the government to account. If as a result of this the legislature no longer has confidence the government will typically be required to resign. It often does not do this in the open because the majority on parliament and the government are one in the same, and the former has no incentive to expose the weaknesses of the latter.
4. However we expect a good deal of scrutiny will happen within cabinet, or at least within the policy-making structures of government. This will often happen in secret. This is confidentiality, based on the idea is that government should be allowed to debate freely within cabinet (but we might extend that to policy-making more broadly) without fear that any divisions will be exposed.
5. There is then the requirement that government is unanimous in its position. That is once a government agrees a policy ALL members of the government must support and defend that policy. This emerged in order to strengthen the executive in its relationship with the Crown, but now is used to strengthen it in its relationship with parliament. It also has the effect of incentivising scrutiny within government.
6. In parliamentary democracies subject to this doctrine an opposition will emerge to provide an alternative government. Without this it might be thought that a policy is less democratic as there is no possibility to alternate government, thus limiting the choice for voters. It might also be problematic not having an opposition because there will be no actors with the incentive to scrutinise government.

7. The opposition's ability to scrutinise government will depend on the resources available to it. These resources will come in the way of money made available to opposition parties, staff and other services.

#### *Northern Ireland*

8. The way in which the Northern Ireland Executive and Assembly operate deviates markedly from what we might term conventional parliamentary democracies. That said there is no 'right' or pure form and each country usually adapts to conform with the needs of their society and existing practice.
9. Because governments are not formed on the basis of securing the confidence of the Assembly, and because parties in government do not have a mutual veto on the others' inclusion
10. There are two ways in which the Northern Ireland Executive and Assembly deviate most obviously is the absence of collective government, and the absence of an opposition that has both the ability and the incentive to scrutinise the government.
11. Northern Irish ministers and departments operate almost as dictators within their own portfolio, not subject to the requirement to have cross-community support in areas that don't require primary legislation. This seems at odds to the purpose of the institutional structures set up in the Belfast Agreement.
12. Parties do have an incentive to scrutinise the actions of ministers who are not of their party. However without the right resources it might be difficult for this to be effective.

#### *Rights and Resources*

13. I do not propose to give a long discussion of each of the rights and resources that the Assembly/ Opposition might find useful to carry out its functions. However one point is worth mentioning, that is executives are usually more powerful viz. the opposition when the executive controls key resources, such as time, jobs and money.
14. Opposition will normally be more effective if the Speaker is independent of government. Election by secret ballot might be a way to ensure that in most places. But it is possible that parties could game this election.
15. Opposition should have the time to ensure that it can ask questions of government. A powerful and independent Speaker who controls the agenda of the assembly will help in ensuring this.
16. Opposition might wish to have some way to guarantee that ministers answer questions. A powerful and independent Speaker will be key to ensuring that.
17. Where party leaders/ the executive control committee posts and other key jobs in parliament, parliament/ the opposition will be less independent.
18. When committees get legislative proposals also matters. Early access in debates often makes for more constructive and meaningful debate and scrutiny.
19. Ministers often have a small army of civil servants. It is common for Oppositions to be given extra resources to balance this mismatch. This will often come in the form of extra money, more staff resources, and superior rights to access research services to opposition parties.
20. In some countries opposition parties have the right and resources to start inquiries into government action.