



**Northern Ireland Assembly**

**Assembly and Executive Review Committee**

**Stakeholder Call for Evidence on Assembly and Executive Reform (Assembly Opposition) Bill**

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## Section 1

### Stakeholder Details

Stakeholder Name	Telephone Number		
Basil McCrea MLA, NI21	02890 521803		
Stakeholder Address	Stakeholder Type (Include one or more X)		
	Registered Political Party	<input checked="" type="checkbox"/>	Local Government
	Academic	<input type="checkbox"/>	Government
	Legislature	<input checked="" type="checkbox"/>	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)

As an MLA and a party leader of a small party within the Assembly, I have a particular interest in multiple aspects of this bill.

### 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.

**Closing date for submissions is: Tuesday 10 November 2015**

**Submissions should be submitted to:**

[committee.assembly&executivereview@niassembly.gov.uk](mailto:committee.assembly&executivereview@niassembly.gov.uk)

## 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.

#### Committee Stage of the Assembly and Executive Reform (Assembly Opposition) Bill

- 2.2. Following approval at the Second Stage on Monday 12 October 2015, the Bill was referred to the Assembly and Executive Review Committee which has responsibility for Committee Stage of the Bill. To assist its scrutiny of the Bill, the Assembly and Executive Review Committee will consider and take evidence on the provisions of the Bill and report its opinion thereon to the Assembly.

## Section 3

### BACKGROUND

**This section provides some background information on the Assembly and Executive Reform (Assembly Opposition) Bill**

- 3.1. 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.

#### **Consideration of Assembly and Executive Reform by UK Government**

- 3.2. 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.
- 3.3. 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.
- 3.4. The consultation closed on 23 October 2012. On 11<sup>th</sup> 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>).
- 3.5. 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."

- 3.6.** The Northern Ireland Affairs Committee were asked to scrutinise the draft legislation and on 20 March 2013 published a Report on the draft Northern Ireland (Miscellaneous Provisions) Bill. 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." (Para 158, Recommendation 24).

- 3.7.** The Northern Ireland (Miscellaneous Provisions) Bill had its First Reading in the House of Commons on 9<sup>th</sup> May 2013 and was published on 10 May 2013. The Bill does not include any provisions relating to opposition. The UK Government's 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 states:

"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."

### **Consideration of Assembly and Executive Reform by NI Assembly**

- 3.8.** In November 2012, the Committee agreed that its next priorities for Review were the issues of D'Hondt, Community Designation and Provisions for Opposition. At its meeting in February 2013, 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 Northern Ireland. The Committee received and considered 22

stakeholder responses to the Review. It also held a number of evidence sessions with representatives from academia and non-governmental organisations.

**3.9.** The Committee 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.

**3.10** In respect of the provisions for opposition, the Committee concluded the following:

- i. 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.
- ii. 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.
- iii. 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.

- iv. 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.
- v. 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.
- vi. 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.

### **Stormont House Agreement**

- 3.11 The Stormont House Agreement, which was agreed by all five Executive parties in December 2014, contained a number of provisions relating to institutional reform and the formation of an official opposition. These are detailed below:
- 3.12 “Arrangements will be put in place by the Assembly by March 2015 to enable those parties which would be entitled to ministerial positions in the Executive, but choose not to take them up, to be recognised as an official opposition and to facilitate their work. These measures will include:
- Designated speaking rights including the opportunity to ask questions and table business sufficient to permit the parties to discharge their opposition duties
  - Provision for financial and research assistance (from within existing Assembly budgets keeping these changes cost neutral)
- 3.13 The threshold for Petitions of Concern should remain at 30 members. Changes will be made to the operation of the Petition of Concern mechanism through a protocol agreed between the parties.
- 3.14 After the Assembly meets following an election and before the FM/DFM are elected and the d’Hondt process runs, representatives of the parties who are entitled to take up places in the Executive and who confirm their intention to do so will meet to resolve the draft Programme for Government. Changes to Westminster legislation (as soon as time permits) could extend the time available from seven days to fourteen days. The draft Programme would, once the Executive was formed be passed to the Assembly for approval.”

#### **4. Further Information**

Stakeholders may wish to refer to the Committee’s previous reports on the Review of D’Hondt, Community Designation and Provisions for Opposition and Review of Petitions of Concern. These can be found on the Committee web page:

<http://www.niassembly.gov.uk/assembly-business/committees/assembly-and-executive-review/reports/>

**Section 4**

**Stakeholder Response to the Bill – Clause-by-Clause**

**Purpose**

**Clause 1- Purpose**

**Response (This box will expand as you type):**

**I agree with the general principles of the Bill.**

**Assembly Opposition**

**Clause 2: Formation of the Opposition**

**Response (This box will expand as you type):**

**I am not convinced of the need for technical groupings. I believe any Member in a party outside of the Executive or an Independent Member outside of the Executive should form an opposition.**

**Clause 3: Timing of formation of the Opposition**

**Response (This box will expand as you type):**

**Again I don't believe it is necessary to differentiate between 'qualifying parties' and 'technical groups'.**

**Clause 4: Membership of the Opposition**

**Response (This box will expand as you type):**

**Clause 5: Dissolution of the Opposition**

**Response (This box will expand as you type):**



**Clause 6: Leader and Deputy Leader of the Opposition**

**Response (This box will expand as you type):**

**I believe there should be a free vote to select the Leader and Deputy Leader of the Opposition.**

**I am also concerned that 6 (5)(a) does not take into account Members who have been elected to a party or elected as an Independent and have then changed before the end of a mandate. I believe that the current system is undemocratic. I would cite the example of the UUP who now have significantly less members than on the day which the Assembly first met after the last election. I would suggest there is a need to develop a more equitable approach to changes in the make up of the Assembly in between elections.**

**Clause 7: Topical questions from Leader and Deputy Leader of the Opposition**

**Response (This box will expand as you type):**

**Clause 8: Enhanced speaking rights for the Opposition**

**Response (This box will expand as you type):**

**Speaking rights within the Assembly need a complete overhaul. While current standing orders provide that the Speaker may have “due regard to balance of opinion” the current D’hondt system and insistence of the Business Committee that most debates will last for 90 minutes means that there is often a lack of balanced opinion from all representatives in the Assembly.**

**I believe it would be a better representation of opinion in the Assembly if each party leader was permitted to speak in the first round of a debate. I see little value in allowing multiple members of the same party to speak on a debate at the expense of a smaller party not having any say on important matters.**

**Clause 9: Opposition rights to chair Public Accounts Committee**

**Response (This box will expand as you type):**

**Clause 10: Membership of Business Committee for the Opposition**

**Response (This box will expand as you type):**

**Clause 11: Financial assistance for Opposition parties**

**Response (This box will expand as you type):**

**Clause 12: Salary for office holders of the Opposition**

**Response (This box will expand as you type):**

**Assembly and Executive Reform Motion**

**Clause 13: Assembly and Executive Reform Motion**

**Response (This box will expand as you type):**

**Clause 14: Tabling of Assembly and Executive Reform Motion**

**Response (This box will expand as you type):**

**Clause 15: Reports by the AERC**

**Response (This box will expand as you type):**

## Technical groups within the Opposition

### Clause 16: Formation of technical groups within the Opposition

#### Response (This box will expand as you type):

I do not believe the purpose of this clause is particularly clear. The committee should look at this in much more detail. I would like to see more discussion on why there is value in having qualifying parties and technical groupings. I fear that a larger qualifying party would trump the rights of smaller parties, and so we need clarity as to what the purpose of the differentiation would be.

### Clause 17: Membership of Business Committee for technical groups

#### Response (This box will expand as you type):

## Topical Questions

### Clause 18: First topical question to Minister from chairperson of statutory committee

#### Response (This box will expand as you type):

While this is a reasonable arrangement, I believe that the format of topical questions should be revised as a whole. They are the best chance to ask real questions of Ministers in order to hold them to account and I believe that more time should be allocated, as well as perhaps a different format.

There may be merit in having a discussion about removing the ballot system for topical questions and instead just allocating some of the slot to Members who are present in the Chamber.

## Budget Committee

**Clause 19: Establishment of Budget Committee**

**Response (This box will expand as you type):**

**Office of the First Ministers**

**Clause 20: Renaming of the Office of the First Minister and deputy First Minister**

**Response (This box will expand as you type):**

I agree with this clause and believe it to be of particular importance in creating a more progressive Assembly.

**Northern Ireland departments**

**Clause 21: Departments to be a single legal entity**

**Response (This box will expand as you type):**

**General**

**Clause 22: Interpretation**

**Response (This box will expand as you type):**

<b>Clause 23: Commencement</b>
Response (This box will expand as you type):
<b>Clause 24: Short Title</b>
Response (This box will expand as you type):

### **Schedule: Content of Assembly and Executive Reform Motion**

The Schedule sets out the kind of requests that could be included in an Assembly and Executive Reform Motion. These are matters which the Assembly could or might request the Westminster Parliament to legislate on in the event of Assembly agreement.

<b>Scope of Assembly and Executive Reform Motion</b>
Response (This box will expand as you type):
<b>Replacement of cross community support with weighted majority voting</b>
Response (This box will expand as you type):
<b>Speaker</b>
Response (This box will expand as you type):
<b>First Minister and deputy First Ministers renamed as First Ministers</b>
Response (This box will expand as you type):

<b>Collective Ministerial responsibility</b>
Response (This box will expand as you type):
<b>Threshold for nomination of Minister</b>
Response (This box will expand as you type):
<b>Nomination of Ministers and Chairpersons of Statutory Committees</b>
Response (This box will expand as you type):
<b>Leaving the Opposition and re-joining the Executive</b>
Response (This box will expand as you type):
<b>Programme for government</b>
Response (This box will expand as you type):
<b>Function of statutory committees</b>
Response (This box will expand as you type):
<b>Simple majority for budget approval</b>
Response (This box will expand as you type):

**Section 6**

**Contact Details**

**All responses should be sent by email please to:**

Assembly and Executive Review Committee  
Room 276  
Parliament Buildings  
Ballymiscaw  
Belfast  
BT4 3XX

Tel: 02890521375

**To arrive no later than **Tuesday 10 November 2015****

**Email:** [committee.assembly&executivereview@niassembly.gov.uk](mailto:committee.assembly&executivereview@niassembly.gov.uk)

**Thank you for your submission**