

Assembly and Executive Reform (Assembly Opposition) Bill

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This briefing is a reflection on the Assembly and Executive Reform (Assembly Opposition) Bill (Northern Ireland) 2015 (the Bill). While there are aspects of the Bill which consider broader reforms (for example around the role and position of the Speaker of the House), we will restrict our briefing to issues relation to an Assembly Opposition only. In doing so we recognise that there is a difference between what would be described as 'normal' parliamentary democracy in a 'normal' society and a system of governance in a divided society that has come through a long period of conflict and contestation and we do not believe that there is a 'one size fits all approach' to the establishment of an Opposition. Indeed, the notion of a 'normal' parliamentary democracy may give rise to the question of what is normal, given the distinguishable differences between UK model, devolved model and consociational model.

Definitions of Opposition

1. Explaining opposition as a political concept is complex. Such complexity is apparent in the current governance arrangements. We have what has been termed 'opposition in government' as well as 'opposition to government' but we have no official nor recognised Opposition, hence the presentation of this Private Members Bill.
2. This is in contrast to the often-cited Westminster model of 'Government and Opposition' whereby the opposition is a formal, official Opposition which involves official status for the Leader of the Opposition, the shadow cabinet, giving rights and privileges to both, though it is mainly the Leader of Opposition who is given official status at Remembrance Day, Privy Council and PMs question time. Unofficially, it also gives a certain degree of status with the media and public events. IT should be noted that only a few aspects of official Opposition are in statute, others are by convention or are negotiable.
3. This model presupposes a strong two party system with one party in government and the other in opposition although the 2010 General Election results demonstrated that even Westminster struggled to fit with the characteristics underpinning the model.

4. The Opposition is the largest non government party. Norton suggests that 'the use of both the definite article and a capital O distinguish it from the combination of parties, and other bodies, which exist outside the governing party (Norton, 2008, p.237).

5. Moreover, even at Westminster, the organisation of opposition in parliament is not used in any singular sense – with reference to the Opposition, opposition parties, opposition, and extra-parliamentary opposition (see Norton, 2008 for a more in-depth explanation of these). In short, it means much more than simply the largest party not in government. It has different forms.

6. Opposition parties includes both the largest non government party as well as all of those other parties that do not form government. In some instances that can mean parties with seats in the legislature but also can mean parties with no seats though these only form electoral opposition.

7. The word opposition with a small 'o' encompasses the different types of opposition that the government might face – which included inter-party as well as intra-party opposition. Non-party mode opposition can be evidenced in the establishment of All-Party Groups within the legislature, though these are rarely influential. The cross-party mode of opposition suggests that 'parties may be in opposition, in the sense of being out of government, but not necessarily in disagreement on a continuing basis with government (Norton, 2008, p.241). Non-party opposition also strongly evidenced by role of select committees who can act in cross party lines to oppose government.

8. Though somewhat tangential, it is important to mention 'extra parliamentary opposition' which occurs often through the referral of laws and executive decisions to the constitutional court, in much the same way as Executive members have brought decision taken by other ministers for judicial review on occasion. In addition, it can include the mobilisation by political parties of the public and the media, as well as sectional interest groups.

9. Despite reference to the Westminster model by many scholars, Robert Dahl (1966) in his edited collection on 'Political oppositions in western democracies' concluded then that 'there exists a great variety of different patterns of opposition in democratic systems'. This remains the case today and confirms that even in democratic systems there exists no blue print for the optimum model of parliamentary opposition.

10. This also presents an opportunity for the committee to interrogate what forms and types of opposition already exists within the Northern Ireland Assembly and Executive arrangements; what forms of opposition could exist; and whether the specific opposition measures proposed in this Bill can be seen as negative or constructive in this context of possibilities. We recognize that opposition can mean different things in terms of the cleavages which exist in the Stormont system.

11. Typology of cleavages:

- a) Government and relationships with parties not in government/opposition parties. Government with internal divisions given the absence of collective responsibility.
- b) Government and relationship with backbenchers.
- c) Government and relationship with scrutiny committees.
- d) Government and cleavage in Assembly into community designation, and by extension the petition of concern mechanism.
- e) A possible government relationship to pressure from public petitions as statutory process, as operates in Scotland and Wales, and under consideration in Northern Ireland at present.

Opposition Arrangements in Other Devolved Regions of UK

12. There are different patterns of opposition even within the UK system. The Westminster model of an official opposition is still very much linked to a two party system but yet the devolved model related to a different style of government which was anticipated in Scotland and Wales in so far as they were expected to be more participative, less confrontational, and more likely to be operating with coalition governments.

13. Scotland and Wales do not have an official Opposition. Their devolved model of opposition status prefers the term 'parties not in government' although this does not apply uniformly to all parties since there is a bar of needing two or three members to qualify for funding though there is no bar to qualify in terms of status. Further, there is neither Leader of the Opposition nor deputy leader. There is only 'leaders of parties not in government'. Each party not in government has a party leader in Parliament/Assembly and

can designate shadow ministers. It can be the case that parties not in government may give some degree of support to the governments in Scotland and Wales, for example over budgets. This happens at present in Wales and in previous Scottish administration.

14. Because the parties do not form a structured official Opposition together, they only act together through ad hoc negotiation and this is quite common.

15. 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. Opposition parties in Scotland and Wales can have debates of their choice on selected days.

Oppositions Arrangements In Other Consociational Societies

16. Andewerg et al (2008) in their analysis of post consociational democracies deduced a number of hypotheses or theoretical expectations from the consociational literature: they thought that government would tend to include all or most of the main parties, as opposed to reaching minimum standards; that opposition would be small and suggested that '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' (2008, p.78); that elections would be 'mildly competitive'; that the parliamentary opposition will be powerless because of 'oligopolistic parliamentary rules that constrain the opposition role of small parties' (2008, p.78); and that the parliamentary opposition would also be weak in terms of its extra-parliamentary opposition activities.

17. A review of Austria (1945-2007), Belgium (1946-2007) and the Netherlands (1945-2007) as specific case studies.

18. It found that 'all party coalitions' in these countries was practically absent at a national level which meant that there was a form of opposition;

19. That coalitions tended to be formed on the basis of what was needed for a parliamentary majority;

20. That any lack of parliamentary opposition could not be attributed to restrictive parliamentary rules;

21. And that the opposition at times supported government bills as they had the chance to shape legislation during the parliamentary process.

22. One interesting observation was that the Belgian model introduced an Annual Accountability Day into the parliamentary agenda, where the governments performance over the last year is subject to scrutiny.

23. These findings are important because while they may not have been violently divided societies, they were still pillarised societies (divided into a series of political and religious groups from which no single denomination nor group could had enough political strength to dominate). They are not findings from examples of what could be termed a more 'normal' functioning parliamentary model.

Opposition (with a capital 'O') in the Bill

24. It is clear from the Bill that the intention is to make provision for the Opposition, as opposed to an opposition (refer to paragraphs 5 & 6 for distinction). However, traditionally the Opposition refers only to the largest non government party, at least in the UK system. Clause 4 suggests that if the Opposition is formed then all members of parties and/ or independent members of the House who do NOT hold a ministerial position will automatically become part of the Opposition.

25. There are two issues with this that the committee may wish to consider: firstly, do members consider that the term the Opposition, as opposed to 'Parties not in government' or 'opposition parties', is most appropriate for the Bill? Secondly, are members content with the automaticity of membership of the Opposition? May some members wish to decline and what would the be process for doing so?

26. Clause 6 refers to the process by which the leaders and Deputy leader of the Opposition will be chosen. If the Opposition is to be formed by one or more technical groups, as opposed to one or more parties, what will happen if members of that technical group fail to reach a consensus on who to nominate as Leader and Deputy Leader of the Opposition?

27. Clause 9 considers the Opposition's right to chair Public Accounts Committee. The chair and deputy chair of PAC, by UK convention, are by members of the Opposition or by parties not in government.

28. A review of Commonwealth Public Accounts Committees in 2011 showed that of the 24 countries reviewed for the research, only 3 had committees chaired by a member of the opposition – Mozambique, Cayman, and Singapore (Pelizzo, 2011)

Opposition with a small 'o' in the Bill

29. The committee system under the original devolution arrangements envisaged committees at Stormont performing a type of opposition role in challenging their respective ministers. This is reflected in the procedure that the chair is a member of a different party from that of the relevant minister. Although it can be noted that this has not really operated in practice because of the party whip system.

30. An important question is whether there is still space to develop further new institutional opportunity structures for opposition parties and what this might look like? It is clear that opposition parties are out of power and therefore influence will always be limited. Opposition parties lack access to civil service, SpAds and might benefit most from resources to improve policy capacity to enable them to use opportunities in committees and debates.

Opposition and the integrity of the 1998 Good Friday Agreement?

31. It appears that one of the more pressing concerns of the Committee is whether this proposed Bill will unpick elements of the Good Friday Agreement and/or the St. Andrews Agreement.

32. We note that the 1998 Good Friday Agreement has already been subject to a series of alternations and/or augmentations as a consequence of political negotiations. The St. Andrews Agreement left most of the original GFA architecture in place and dealt instead with a series of practical changes to its operationalization, as well as policing and the law; human rights, equality, victims and related issues; and a new financial package from Westminster for the newly appointed Executive.

33. Those supportive of the changes will argue that the changes gave an added element of checks and balances to the system and might inspire greater collective responsibility within government and so therefore, the changes enhance the Good Friday Agreement but do not undermine it.

34. Critics will argue that the constructive approach to power sharing had, to an extent been 'snared' by the additional provisions made in St. Andrews. 'Power snaring' as opposed to 'power sharing', in the form of a disposition to frustrate the plans of one's ministerial colleagues was now enshrined in an Agreement that was supposed to be about sharing (Gormley-Heenan, 2011).

35. In a later agreement, relating to the devolution of Policing and Justice, both the DUP and Sinn Fein agreed that neither would nominate any of their own MLAs for the position of Minister for Policing and Justice and that the Minister would be appointed using the 'parallel consent' procedure and not the d'hondt procedure by which all other ministerial posts were appointed. Under the d'hondt mechanism would have had to be offered to the SDLP.

36. We make these points, because for some people at least, these changes to the original power sharing agreement had undermined it in much the same way that some may feel that the proposals contained in this Bill also undermine it.

Other issues to be considered in the context of this proposed Bill

37. The introduction of a formal Opposition will create two tiers of opposition. Under the existing Stormont model the political parties in the Executive can oppose each other and disagree publicly with each other (opposition 'in' government) while creating an official opposition would create a second tier of opposition between the government and non-government parties (opposition of government'). Public awareness of the nuanced distinctions between the two tiers of opposition may be limited.

38. Should the main political parties choose to take their seats in an Executive, the Assembly will then be left with a small minority of parties and/or individuals to become the 'Opposition' or 'parties not in government' (as labelled in Scotland and Wales). This raises issues of proportionality. While it is not totally predictable, the kind of politics in Northern Ireland at present suggests that parties not in government might be quite small in terms of the number of representatives in the Assembly. Thus, conferring a series of special privileges may make the operation and procedures of the Assembly somewhat unbalanced and lopsided.

39. It also raises issues of cohesiveness. How cohesive might our non-government parties be if this Bill were to be passed? How/why might that matter? The Committee could consider a review of the policy positions of the parties/individuals as a proxy for likely cohesion, in much the same way that Kaiser (2008) did in his analysis of opposition in Britain, Canada, Australia and New Zealand.

40. Given NI politics, to what extent is it realistic, to see an opposition emerging that provides a real alternative government to that which been elected. The presentation of themselves as an 'alternative government' is one of the most basic defining characteristic of the Opposition, along with challenging and hold the government of the day to account through rigorous scrutiny. While there is always speculation of possible changes in political alignments which might alter this scenario, through a UUP/SDLP ticket versus a DUP/SF ticket, this remains little more than speculation.

41. In reflecting on the Bill we note that, in relation to our comments, to be critical is not to be unappreciative of the Bill, to raise questions about process is not to diminish achievement, and to point to limitations is not to be cynical about its objectives.

References

- Andewerg, Ruby B., De Winter, Lieven., and Muller, Wolfgang (2008) 'Parliamentary opposition in post –consociational democracies; Austria Belgium and the Netherlands', *Journal of Legislative Studies*, 14:1-2, 77-112.
- Gormley-Heenan, Cathy (2011) 'Power Sharing in Northern Ireland'. In: *Developments in British Politics 9*. Palgrave Macmillan, pp. 130-151.
- Hough, Dan (2010) Political opposition in the era of the Grand Coalition (2005-09). *German Politics*, 19: 3-4, 369-381.
- Kaiser, Andre (2008) 'Parliamentary Opposition in Westminster Democracies: Britain, Canada, Australia, and New Zealand', *Journal of Legislative Studies*, 14: 1-2, 20-45.
- Norton, Philip (2008) 'Making Sense of Opposition', *Journal of Legislative Studies*, 14: 1-2, 236-250.
- Pelizzo, Riccardo (2011) 'Public Accounts Committees in the Commonwealth: oversight, effectiveness, and governance', *Commonwealth and Comparative Politics*, 49:4, 528-546.