



**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																				
Stakeholder Address	Stakeholder Type (Include one or more X)																				
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#### Please provide some background information on your role as a stakeholder

(This box will expand as you type)

**Professor Feargal Cochrane**, Director, Conflict Analysis Research Centre (CARC) and Professor of International Conflict Analysis, University of Kent, UK. Born and educated in Belfast, worked at QUB and UU and now working in GB. An academic specialist on Northern Ireland politics and in its comparative dimensions. He has taught and published widely on Northern Ireland politics for over 20 years, including *Northern Ireland: The Reluctant Peace*, (2013) Yale University Press, shortlisted for the Ewart-Biggs Memorial Prize, 2015.

**Dr Neophytos Loizides**, Reader, Conflict Analysis Research Centre (CARC). Cyprus-born expert on power-sharing educated in Canada and USA. Taught at Queen’s University and published extensively on the politics of divided societies most recently *The Politics of Majority Nationalism* (Stanford 2015) and *Designing Peace* (UPENN 2016). Leverhulme Trust Research Fellow

#### 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:**

## 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<sup>1</sup>

#### Purpose

##### Clause 1- Purpose

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

The proposed Bill seems clear and appropriate for its intended purpose, namely to legislate for the provision of a formal opposition and to provide a more structured form of scrutiny to the Executive, Ministers and the Departments of government. The purpose also appears to be to structurally facilitate the formation of an opposition in terms of providing certain rights and resources that would be necessary for such a system to develop in a robust and sustainable manner. In other words incentives are needed to encourage this reform in a manner that is balanced and does not over-incentivise qualifying parties to go into opposition rather than into government. We have some more targeted comments on how the Bill could achieve this balance in response to the specific clauses below.

While unstated in this section of the Bill (which for obvious reasons focuses on direct technical aspects) an implicit purpose of the Bill is to enhance the internal working of the political structures, while providing greater external public confidence in the political system. We would suggest this purpose is flagged more clearly in the language of the Bill, as this provides the overarching purpose for the proposed legislation that most of the political parties will find uncontentious.

In general, the critical challenge for divided societies (which, we would suggest, still defines Northern Ireland) is institutionalising a broadly inclusive, functional and legitimate coalition representing all groups, which is not significantly different from the composition of their respective populations. Despite the recent well documented setbacks, the political institutions in Northern Ireland have done well in their short-term conflict management goals, though they have been less impressive in transforming wider conflict relationships or in generating public support and confidence in the system of government.

The institutions need to do more to convert short-term gains into longer-term sustainable relationships. Institutions should also offer more alternative options and tools for citizens and political parties to face political and socioeconomic challenges and the purpose of this new Bill directly addresses that desire. If the political institutions in Northern Ireland are not able to offer robust scrutiny of government and if the current dysfunction within those institutions is not addressed, the advances that have so far been made since 1998 (and since the restoration of devolution in 2007) risk being lost. At the same time of course, ambitious institutional proposals for change such as represented by this Bill, might risk the progress already made and the benefits of the existing system. This is a critical dilemma facing Northern Ireland and other post-conflict societies, such as post-Dayton Bosnia or post-

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<sup>1</sup> We have limited our comments to what we believe to be the substantive issues and have left blank those sections where we have no specific additions to make.



apartheid South Africa, where conflict-mitigating institutions have performed in some areas but not in others. In all cases, major constitutional revisions (such as those contained within this Bill) seem simultaneously appealing but difficult to achieve, without risking further instability and mistrust that the tectonic foundations of the peace process are being manipulated by one ethnonational group to the disadvantage of another. The purpose of this Bill is, in our view an opportunity to move politics in Northern Ireland into a new phase and with careful engineering/redrafting (especially over ensuring the retention of cross-community power-sharing and dual guarantees for unionist and nationalist communities) we believe it has the capacity to work for the benefit of all the main political parties in Northern Ireland and the broader electorate.

It is true that the current political institutions do facilitate some scrutiny and opposition to Ministers in the Executive and government departments. However, this is ad hoc and piecemeal, sometimes becoming a platform for personality politics or single issue campaigns. Fundamentally, the political system does not make adequate provision for the development and presentation of alternative programmes for government. While many of the statutory committees play a vital oppositional role in terms of scrutiny, this lacks cohesion across government. It is not ideal to use the committee system as a surrogate for a co-ordinated system of opposition, and the suggestion that Northern Ireland does not need one or cannot have one due to its ethno-national cleavage is unconvincing.

While we have concerns in some areas as outlined below, the purpose of this Bill seems to us consistent with the need to provide mechanisms within the political system that enhance its internal workings, its external reputation and public confidence in its performance.

### **Assembly Opposition**

#### **Clause 2: Formation of the Opposition**

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

This section provides a necessary mechanism for the formation of an opposition and we do not perceive any obstacles in principle as set out in the Bill. There may be issues in practice over the recognition of 'technical group' with a 5% threshold in the event that the number of MLAs in the Assembly is reduced over time. However, at present this seems to us to be unproblematic to the effective formation of an Opposition.

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

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

The Bill's proposed mechanisms for the timing of the formation of an Opposition seem largely appropriate, however we would question the efficacy of 3. -(1) (b) 'all Ministers ceasing to hold office in accordance with section 18(1) of the Northern Ireland Act 1998' as this would seem to be redundant in the absence of an Executive?

#### **Clause 4: Membership of the Opposition**

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

We believe that this section would benefit from more careful drafting and in principle it may be preferable to connect membership of the Opposition to membership of those qualifying political parties and technical groups who opt for it, rather than defining it as a default setting for everyone.

Qualifying political parties as well as independent MLAs should all be required to opt in to the Opposition via their political parties or individually in the case of independents –and no one should be excluded from opting in if they choose to do so.

This opens the possibility for some to opt out of a formal Opposition and there may be valid reasons for them having the choice to do so. This would impact of course on other aspects and they would not have access to any resources or speaking rights extended to the Opposition group.

#### **Clause 5: Dissolution of the Opposition**

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

This is unproblematic.

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

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

We see this section as relatively clear but we would suggest two important changes to the proposed wording, which we believe go to the heart of the post GFA political institutions and the peace process itself. We believe that these would retain the benefits of the proposed Bill and the functionality of an official opposition, while reducing the concerns of some political parties and wider public about its implementation and longer term implications.

As presently defined (para 6 -3) there is no cross community/mutual veto aspect enshrined in the Bill, and there are other nuances that could help connect this section to the other changes proposed within the Bill. We are not convinced that removing the structured cross-community power-sharing is necessary for the development of a formal Opposition or even optimal in terms of gaining support for the proposal across the political spectrum, and we would argue especially for a retention of the existing community designation principles which underpin the post GFA political dispensation.

Within the Northern Ireland context, the fear remains within nationalist parties (and their supporters) that any movement beyond cross-community power-sharing on the basis of proportionality, towards voluntary coalitions, will lead to political exclusion –especially in the case of Sinn Fein.

While community designation may not be the most bespoke mechanism ever devised –it is particularly appropriate for the current political context in Northern Ireland. Similarly, the issue

of weighted majorities which is offered as an alternative, is not necessarily mutually exclusive to the community designation principle, which can be seen by looking at other political contexts. A proposal submitted by the UN in Cyprus in 2004 (the 'Annan Plan') also proposed a 'weighted majority' ratification system but without eliminating community designations. Had the Plan been approved in 2004, united Cyprus would have had a Senate with a 50-50 composition (24 Turkish Cypriot and 24 Greek Cypriot Senators) reflecting the principle of the 'political equality' of the two communities. The Chamber of Deputies was also to have 48 members, based on population, but with no less than a quarter of the seats allocated to each of the two constituent states. According to the UN understanding of weighted majority, *ordinary decisions* in the Senate would have required a majority of the Senators to agree, including at least a quarter of the representatives from each community. However, on issues of *vital interest*, there was a provision for a special majority of at least two fifths of the Senators from each side, plus approval by the Chamber of Deputies.<sup>i</sup>

We are not persuaded that there is sufficient consensus in the current political environment to move away from the community designation and proportionality principles towards a weighted majority or voluntary coalition system. We do not therefore support the suggestion in the Bill of moving to the proposed weighted majority system, as even if these weightings are set at levels that would create little practical difference, they remove an important symbolic component upon which the political system is based and which goes to the heart of the need to develop cross-community co-operation. At a pragmatic level, we also note Sinn Fein's current opposition to any move towards voluntary coalition, which would clearly reduce the potential for this Bill to secure the necessary support to proceed. However, we believe that decoupling this issue from that of legislating for a formal Opposition has the capacity to meet this concern and work in the interests of all of the main qualifying parties.

Specifically -at present the suggestion (para 6 -3) is for Standing Orders to make provision for Leader and Deputy Leader of an Opposition where there are two or more qualifying parties based on party strength in the Assembly. Thus, (Para 6 -3 (a))

'the nominating officer of the largest party must nominate a person to be the Leader of the Opposition, (b) the nominating officer of the second largest party must nominate a person to be the Deputy Leader of the Opposition.'

This potentially departs from the d'Hondt and cross-community principles of the GFA and its further iterations in subsequent negotiations and we believe would raise unnecessary concerns from nationalist parties, as in theory this could lead to a formal Opposition without a nationalist component, even if they were a qualifying party in a scenario where the SDLP (or less likely Sinn Fein) were the third ranked qualifying party. More obviously and more bluntly put -it could facilitate a coalition of parties UUP/& Alliance that captures control of a formal Opposition through the two main positions of Leader and Deputy Leader and excludes the SDLP).

This could be obviated by the adoption of the following wording which reflects the cross-community power-sharing principles of the consociational settlement in 1998 and the coherence of the existing political institutions.

'the nominating officer of the *largest political party of the largest political designation*, must nominate *a member of the Assembly* to be the Leader of the Opposition, (b) the nominating officer of the *largest political party of the second largest political designation*, must nominate *a member of the Assembly* to be the Deputy Leader of the Opposition. If another qualifying party exists which is larger than the second largest political

designation, then the nominating officer of that political party must nominate a member of the Assembly to be the *Co-Deputy Leader of the Opposition*.’

There would also be scope here to reflect the proposals in the Bill for Joint First Minister positions from the two largest political designations in the leadership of the Opposition and form **Joint** or **Co-Leaders of the Opposition** positions, selected on the same cross community basis as the First/Deputy First Minister positions where there are two or more qualifying parties from different designations.

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

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

This seems an appropriate convention to adopt –however we are conscious of the danger of over incentivising opposition within the political structures and we believe that in a case where the opposition is comprised of only one qualifying political party or technical group, the current draft of Clause 7 risks doing this –thus effectively allowing one political party to double-dip in respect to topical questions. This needs to be nuanced in the wording of this section, though this detail should be relatively unproblematic to achieve.

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

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

We consider that this is an appropriate and necessary incentive for a formal Opposition. However, in line with our comment on the previous clause, we think that some distinction over the degree of enhanced speaking rights could be made in circumstances where the Opposition is comprised of one qualifying party or technical group, or more than one. Thus where the Opposition is comprised of a single qualifying party, the enhanced speaking rights for Leader and Deputy Leader of the Opposition should be given a lower percentile than in cases where the Opposition is comprised of two or more qualifying parties or technical groups.

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

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

No issues on this Clause

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

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

No issues on this clause

<b>Clause 11: Financial assistance for Opposition parties</b>
<b>Response (This box will expand as you type):</b> The formula/mechanism for this seems appropriate
<b>Clause 12: Salary for office holders of the Opposition</b>
<b>Response (This box will expand as you type):</b> Again -the formula/mechanism for this seems appropriate

<b>Assembly and Executive Reform Motion</b>
<b>Clause 13: Assembly and Executive Reform Motion</b>
<b>Response (This box will expand as you type):</b> This seems procedurally correct and appropriate
<b>Clause 14: Tabling of Assembly and Executive Reform Motion</b>
<b>Response (This box will expand as you type):</b> No comment on this clause
<b>Clause 15: Reports by the AERC</b>
<b>Response (This box will expand as you type):</b>

<b>Technical groups within the Opposition</b>
<b>Clause 16: Formation of technical groups within the Opposition</b>
<b>Response (This box will expand as you type):</b> This seems a relatively straightforward aspect of the Bill
<b>Clause 17: Membership of Business Committee for technical groups</b>
<b>Response (This box will expand as you type):</b>

This seems an unproblematic clause

### Topical Questions

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

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

This seems straightforward and unproblematic

### 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):**

We support the suggested re-naming of the OFMDFM either to a Co-First Minister position, or as suggested in the proposed Bill as Office of the First Ministers, as this has both symbolic and practical benefits. Converting the current designation of OFMDFM to ensure cross-community parity across Northern Ireland's most important and highly symbolic post, is in line with the spirit of the post GFA institutions and subsequent negotiations and formalises an equality that is informally evident in any case. In the short term, unionist parties/voters might not see an advantage in taking this step, but in the longer term, they may appreciate the benefits of doing so. This is particularly salient given the demographic trends in Northern Ireland and possible growth of the nationalist vote, along with any future political realignments away from the SDLP towards Sinn Fein. This would not materially affect the distribution of power or responsibility connected to these posts as both are co-equal and co-dependent in practice. It would however, reduce the need for the leading parties (especially the DUP) to worry about being the largest party and capturing the First Minister position. The largely symbolic change suggested here is likely to reduce unionist concern over this issue in future Assembly elections, as well as communicating co-operation and equality at the top of government between the political representatives of the two main communities.

Unfortunately, the OFMDFM designation implies a ranking and thus a prestige issue for the two largest political parties, when in reality they are joint and equally powerful positions, which (in theory) work in

partnership together. The belief that one is more important than the other, (implied by First and Deputy designations) is a political reality but a practical fallacy and has led to unnecessary inter-party rivalry between the DUP and Sinn Fein over the issue.

Closing the gap between parties and citizens is important for future stability and cooperation in Northern Ireland and sectarian competition for the First Minister position is producing an unnecessary symbolic rivalry, which would be obviated by the rebadging of OFMDFM as suggested in the Bill. Conversion of OFMDFM to a Co-First Minister or Office of the First Ministers designation seems the simplest, least complicated and most obvious course of action –however it is not the only option and those scrutinising this Bill may wish to consider other alternatives.

For example, there is also potential for rotating the First and Deputy First Minister positions across the unionist and nationalist parties within a parliamentary term, if the parties prefer that to a simple Co-First Minister demarcation. Rotating the highest post is not unprecedented, even among communities with different demographic strengths and has been operated in Bosnia, Switzerland, and South Tyrol. A number of innovative proposals for a rotating presidency have also been debated between the two communities in Cyprus, irrespective of the historical population ratio of 8:2, while the Belgian Constitution calls for an equal number of Cabinet positions for each of the country’s main linguistic communities.

**Northern Ireland departments**

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

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

This clause seems unproblematic.

**General**

**Clause 22: Interpretation**

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

No comment on this clause

**Clause 23: Commencement**

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

No comment on this clause

**Clause 24: Short Title**

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



No comment on this clause

## **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.

### **Scope of Assembly and Executive Reform Motion**

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

### **Replacement of cross community support with weighted majority voting**

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

For the reasons outlined above, we are not convinced of the efficacy of replacing the current cross community support with weighted majority voting and we would suggest decoupling this issue from the Bill's desire to establish a formal Opposition. While the two issues may be considered complementary, they are not necessarily conjoined or co-dependent.

While we believe that community designation is necessary to guarantee proportionality and cross-community consent within the devolved structures in Northern Ireland we do accept that this is a product of community division and that there may be some changes that could be made that may provide a more dynamic reflection of political identities beyond those of unionist and nationalist. We would suggest therefore that the political parties (and this Bill) consider agreeing to changing the catch-all third designation from 'other' to something more positive. Possibilities here might include 'non-aligned' 'non-partisan' or perhaps 'dissenter', all of which could provide a clearer and more dynamic alternative to the 'other' designation. This relatively modest change would not overly complicate existing arrangements and may over time produce the sort of partisan dealignment that the Bill is seeking to achieve.

### **Speaker**

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

No comment on this clause

### **First Minister and deputy First Ministers renamed as First Ministers**

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

To repeat the commentary on this above, while we see this issue as being distinct from that of

creating a formal Opposition, we believe that it should nonetheless be proposed, with an Assembly and Executive Reform Motion to convert the current designation of OFMDFM to either that of 'Co-First Minister' or 'Office of the First Ministers'.

Our reasons for supporting this reform are outlined above.

**Collective Ministerial responsibility**

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

We support the requirement for collective ministerial responsibility in government –and this has been a point of tension in the existing multi-party coalition that we believe would be mitigated by the current Bill’s proposals for a formal Opposition and potentially a smaller and more cohesive groups of parties in the Executive (but retaining the principle of multi-party cross community representation and political inclusivity).

When devolution was restored to Northern Ireland in 2007, a new form of ad hoc opposition crept into the political system. The UUP and SDLP were part of the Executive (up until the UUP’s exit in August 2015) but have grown increasingly alienated from it and have adopted an oppositional position to it. This was linked to a general belief that the two largest parties were subverting the spirit of the GFA as a ‘grand coalition’, by presiding over a ‘carve up’ of power and decision-making processes. SF and the DUP in turn viewed the SDLP and UUP as ‘fairweather’ members of the Executive and lacking in collective responsibility. Thus in the current system, collective ministerial responsibility has only been periodically observed and the SDLP and UUP have found themselves occupying ministerial positions under D’Hondt, but frequently opposing the Executive to which they have belonged, including refusal to support the Programme for Government (PfG) and budget. Overall therefore, both government and opposition have lacked cohesion or a common set of objectives. The post-GFA political structures have brought stability and a relative absence of violence (measured in terms of fatalities). However, dealing with the past, addressing identity issues, tackling social exclusion and growing Protestant working class alienation remain elusive goals (see Cochrane, *Northern Ireland: The Reluctant Peace*, Yale University Press, 2013).

We believe that the proposal within this Bill to legislate for a formal Opposition will enhance collective Ministerial responsibility and in turn, a more effective internal working of the political institutions and greater public confidence in government.

**Threshold for nomination of Minister**

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

We are relatively content that any revised threshold can be determined once the broad principles and benefits of this Bill have been agreed.

<b>Nomination of Ministers and Chairpersons of Statutory Committees</b>
<b>Response (This box will expand as you type):</b>
<b>Leaving the Opposition and re-joining the Executive</b>
<b>Response (This box will expand as you type):</b>
<b>Programme for government</b>
<p><b>Response (This box will expand as you type):</b></p> <p>Northern Ireland now has a relatively durable but crisis-ridden political system. On the one hand, the automaticity of the D'Hondt Executive has enabled broad political inclusivity and cross-community participation. On the other hand, by virtue of being automatically included into decision-making and devoid of a formal Opposition, the political parties have failed to develop a consensus-based political culture. They have instead prioritized zero-sum intra-ethnic populism over winning long-term coalition partners. As a result, the region lacks adequate levels of collective endeavour (either at elite or grassroots levels) to prevent short-term problems from building into more intractable difficulties for the long term viability of the political institutions.</p> <p>We understand the desire to provide for prior commitment to an agreed PfG before designated Ministers take up office in the Executive –but we believe this needs redrafting from current wording as it may lead to unnecessary stalemate and an absence of a functioning government for lengthy periods following an Election.</p> <p>We would suggest that lessons exist from other political contexts that are relevant to Northern Ireland and the proposals presented here. A critical aspect in introducing opposition voices is to avoid targeting any party for exclusion from political participation. If such an arrangement was introduced, the largest political parties of each designation (unionist and nationalist) could form a coalition government (for the purposes of illustration only, UUP and SDLP). Such an arrangement has been informally agreed and implemented after the Ohrid Agreement was reached in Republic of Macedonia/FYROM, enabling at the same time smaller inter-ethnic competitors to form an effective and jointly operated opposition.</p> <p>Alternatively, parties could form a coalition on the basis of a joint program provided that there is a minimum level of support across both communities; if parties fail to agree on a joint framework then the current D'hondt executive could remain as the default mechanism (an arrangement already established in the Brussels Capital Region). This would be to provide a safety net within the system such as that outlined below from the Brussels Capital Region, which provides a political incentive to agree the PfG in advance of taking up office –but provides a D'Hondt default that avoids an absence of government.</p> <p>In our view, this issue as raised in the current Bill highlights a set of broader questions. The attempt to strengthen political institutions in Northern Ireland could be assisted, if</p>

policymakers and public opinion becomes better aware of comparative examples of power-sharing in other European contexts. For instance, membership of the Northern Ireland Executive is automatically determined by party strength as has been the case for decades in Switzerland. Yet there are significant differences in the way the two systems make provisions for appointing and holding their cabinets' accountable. A key feature of many power-sharing arrangements is their informal provisions which operate parallel to the statutory legislation, which are also important in providing the default mechanisms if more flexible informal arrangements fail. While this Bill places the emphasis upon formal legislative reform, a key recommendation of our comparative analysis of power-sharing systems is adding more informal features to the existing structures of Northern Ireland comparable to the less-known constitutional arrangements in the Brussels Capital Region.

New informal features might better address some of the weaknesses we have identified in Northern Ireland's political structures more nimbly and organically, than the formal reforms outlined in this Bill. These may also have greater capacity for moving in tandem with the political context in Northern Ireland –and at a pace acceptable to the political parties and their supporters –rather than requiring further legislative change at a later date.

In our view, a critical gap is that due to the automatic all-party inclusion mechanism in Northern Ireland, parties do not form long-term coalition strategies. This has been a critical weakness of the Good Friday/Belfast Agreement and the political institutions that evolved from it. To overcome these challenges, the Brussels Capital Region uses a two-tier system, allowing an Executive to be appointed by political parties as in Northern Ireland, only after failing to form a cross-community coalition (i.e. one that has majority support across communities). Such options aim to integrate all political parties into power-sharing. Thus, not only they are more likely to be accepted in the first place but they are also more likely to enhance collective decision-making and to deliver on a cross-community program once they take up office.

**Function of statutory committees**

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

**Simple majority for budget approval**

**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  
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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**

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<sup>i</sup> UN. 2003. Document S/2003/398. Report of the Secretary-General on His Mission of Good Offices in Cyprus, April 1. Accessed 19 January 2005. <http://www.un.dk/doc/S.2003.398.pdf> p.19; UN. 2004a. *The Comprehensive Settlement of the Cyprus Problem, 31 March*. March 31. Accessed 19 January 2005. [http://www.cyprus-un-plan.org/Annan\\_Plan\\_Text1.html](http://www.cyprus-un-plan.org/Annan_Plan_Text1.html)