



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			
Professor Derek Birrell				
Stakeholder Address	Stakeholder Type (Include one or more X)			
	Registered Political Party	<input type="checkbox"/>	Local Government	<input type="checkbox"/>
	Academic	<input type="checkbox"/>	Government	<input type="checkbox"/>
	Legislature	<input type="checkbox"/>	Non-Government	<input type="checkbox"/>
	Other (Please Specify)/ Member of the Public			<input type="checkbox"/>

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.

Closing date for submissions is: Tuesday 10 November 2015

Submissions should be submitted to:
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 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>).
- 3.5. 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 9th 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):

Functions in 1(a) read more like functions of the committees.
No reference to contribution to policy development.

Assembly Opposition

Clause 2: Formation of the Opposition

Response (This box will expand as you type):

Technical seems an awkward and confusing term. In Scotland and Wales parties and groups are used in an interchangeable way. The term 'combination of groups' is also used.

Clause 3: Timing of formation of the Opposition

Response (This box will expand as you type):

The language of 'The formation of the opposition' is not used in Scotland and Wales or in relation to the House of Commons.

Clause 4: Membership of the Opposition

Response (This box will expand as you type):

This definition of membership raises issue of groups or MLAs not wishing to be officially part of an opposition. The Scottish and Welsh definition of 'Parties not in Government' avoids the need for formation of opposition but still accords them special rights.

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):

Scottish Parliament and Welsh Assembly do not have such positions but more flexible designation of Leader of each party not in Executive, thus removing numerical criterion for qualifying party or chair. There is in the terminology a suggestion of a coherent or joined-up opposition.

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

Response (This box will expand as you type):

May be somewhat restrictive on power of backbenchers. It could be there is no qualifying Deputy Leader.

Clause 8: Enhanced speaking rights for the Opposition

Response (This box will expand as you type):

Specification of speaking rights or opposition days may be more suitable for Standing Orders. There may be issue of proportionality if opposition parties are small in number. In Scotland and Wales and Westminster opposition parties comprise nearly 50% of members.

Clause 9: Opposition rights to chair Public Accounts Committee

Response (This box will expand as you type):

Can note that PAC in House of Commons has only a chair, although Scotland and Wales have deputy chairs.

Clause 10: Membership of Business Committee for the Opposition

Response (This box will expand as you type):

Opposition parties have one member each of Business Committees in Scotland and Wales but different system at Westminster.

Clause 11: Financial assistance for Opposition parties

Response (This box will expand as you type):

Main categories of financial assistance could be specified.

Clause 12: Salary for office holders of the Opposition

Response (This box will expand as you type):

Financial assistance for party Leader may be separate from support for party. Only UK example is Westminster Leader of the Opposition but this is wide ranging official role.

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):
—

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

Budget Committee

Clause 19: Establishment of Budget Committee

Response (This box will expand as you type):

Does this not conflict with remit of DFP Committee, presumably also acting under Section 64?

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):

This would mean altering Section 16 of the Northern Ireland Act 1998. UK Government and Parliament unlikely to approve passage as Clause in this Bill.

Northern Ireland departments

Clause 21: Departments to be a single legal entity

Response (This box will expand as you type):

May be more suitable as part of a separate Bill related to Public Sector Reform, which possibly could be Assembly Bill.

General

Clause 22: Interpretation

Response (This box will expand as you type):

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Clause 23: Commencement
Response (This box will expand as you type): _____
Clause 24: Short Title
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.

Scope of Assembly and Executive Reform Motion
Response (This box will expand as you type): Scope should perhaps be restricted to rights of parties / groups not in the Executive.
Replacement of cross community support with weighted majority voting
Response (This box will expand as you type): This is a complex issue which may require more separate study and also relates to Petitions of Concern.
Speaker
Response (This box will expand as you type): _____

First Minister and deputy First Ministers renamed as First Ministers

Response (This box will expand as you type):

Raises wider issues than focus of this Bill.

Collective Ministerial responsibility

Response (This box will expand as you type):

This is a major subject and would require production of a Code of Conduct and acceptance of penalties for infringement which are enforceable.

Threshold for nomination of Minister

Response (This box will expand as you type):

—

Nomination of Ministers and Chairpersons of Statutory Committees

Response (This box will expand as you type):

—

Leaving the Opposition and re-joining the Executive

Response (This box will expand as you type):

Flexible system would allow this.

Programme for government

Response (This box will expand as you type):

Opposition parties would not normally be involved in this.

Function of statutory committees

Response (This box will expand as you type):

Element of flexibility in appointment of chairs can be recommended. Problems lie in insufficient use of powers, rather than powers.

Simple majority for budget approval

Response (This box will expand as you type):

Strong justification needed for a special rule.

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

Thank you for your submission