

## Section 1

### Stakeholder Details

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#### **Please provide some background information on your role as a stakeholder**

John Coakley, MRIA, is a Professor of Politics in Queen's University Belfast and Professor Emeritus at University College Dublin. He is a former President of the Political Studies Association of Ireland, former Secretary General of the International Political Science Association and former Vice President of the International Social Science Council. He has published extensively on Irish politics, comparative politics and nationalism, is contributing editor or co-editor of *Politics in the Republic of Ireland* (5th ed., Routledge, 2010), *Pathways from ethnic conflict: institutional redesign in divided societies* (Routledge, 2010), *The Irish presidency: power, ceremony and politics* (Irish Academic Press, 2014) and *Breaking patterns of conflict: Britain, Ireland and the Northern Ireland question* (Routledge, 2014). He is author of *Nationalism, ethnicity and the state: making and breaking nations* (Sage, 2012) and *Reforming political institution: Ireland in comparative perspective* (IPA, 2013)

## Section 4

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

#### **Note**

This submission makes a set of related general points that have implications for several clauses of the bill. Because of overlap between them and the various clauses, however, these points are made under the heading of clause 2. Remarks here have implications for other clauses of the bill (clauses 3-6 in particular) and are therefore relatively extensive. A minor point is made about clause 20 (office of First Minister/Deputy First Minister).

## Assembly Opposition

### Clause 2: Formation of the Opposition

#### 1. Introduction

Since the principles of the bill have been accepted, the present submission assumes that any suggested amendments will have to be compatible with these; in other words, it is taken for granted that the broad thrust of reforms of this kind will be accepted, especially since some of these have been endorsed in the Stormont House Agreement (clauses 56-68). Specifically, this includes agreement on the establishment of an official opposition (clause 59), confirmed in the implementation agreement of 17 November 2015 (pp. 35-36).

The bill prescribes in clause 2 that

“(2) The Opposition may be formed by—  
(a) one or more qualifying parties, or  
(b) one or more technical groups”

and in clause 4 that

“(2) If the Opposition is formed, the following are automatically part of it—  
(a) all members of political parties which do not have a member who is a Minister, and  
(b) in the case of members who are not in a political party, all members who are not Ministers.”

This draws a definitive boundary between members of the governing parties and the rest, who are collectively defined as “the opposition”. This stark government-opposition dualism, which would apply to all MLAs, is familiar in English-speaking countries, and is consistent with other provisions in the bill (such as removal of the concept of community designation, abolition of petitions of concern, and replacement of the notion of cross-community support by a weighted majority vote mechanism). To be completely consistent, however, it would need to extend also to the position of first minister/deputy first minister—a double role which the bill proposes to strengthen rather than to abolish—and the notion of a weighted majority sits uncomfortably with this model of government.

In its purest sense, then, the classical “Westminster” approach would provide Northern Ireland with a prime-ministerial style, adversarial system where government and opposition would rotate in office. This system possesses a certain logic; but it is a logic that clashes with the equally consistent logic underlying the Good Friday (Belfast) agreement. This point is developed here in three stages: the difference between consensus-based and competitive systems, the special application of these concepts in divided societies, and the specific provisions of the bill.

#### 2. Two models of government

It has for long been taken for granted in comparative politics (particularly under the influence of Dutch political scientist Arend Lijphart) that systems of government in parliamentary liberal democracies are driven by contrasting underlying objectives.

In their idealised versions, on one side is the majoritarian model: democracy requires rule by a majority. Elections are thus designed to help large parties secure an overall majority (so the British plurality electoral system is often used), parliaments serve to record this result by facilitating the emergence of a bare-majority government (parties not necessary to procure an arithmetical parliamentary majority are excluded), and the spoils of office (appointments and certain other resources) are monopolised by the winning side.

On the other side is the idealised version of the consensus model: while democracy requires rule by a majority, it needs also to be inclusive. Elections are thus designed to ensure fair representation of all groups (so some form of proportional representation is a requirement), parliaments have an important role in brokering differences between competing groups and parties (so inclusiveness is an important principle in government formation), and public appointments and resources are shared rather than being monopolised by one group.

These two notional types have important implications for the relationship between government and parliament, and for the standing of any parliamentary opposition. In the case of the majoritarian model, the logic is a competitive one: it makes sense for the government to function as a coherent entity that can use its parliamentary majority to ensure that its programme and policies are driven through the legislative process and duly implemented. It makes similar sense for those excluded from this process to oppose it in the name of their different vision of public policy, in the hope that in due course an election will return them to power. Thus, the outcome is a bare-majority government (comprising, normally, whichever party wins a parliamentary majority, though occasionally the support of others may be needed) and a set of excluded parties that see themselves as being “in opposition”.

In the case of the consensus model, the logic is a cooperative one: the government will seek widespread support for its programme, even if this makes policy formation a more tortuous process; and parties not included in the government are not necessarily motivated to oppose it, still less to form any kind of formal “opposition”. The outcome is a range of government types, from minority governments (often lasting for a long period, but sustained by consistent support from parties not included in the government) to grand coalitions or “oversized” governments (ones which include parties not necessary to achieve a parliamentary majority). In these circumstances, it is not appropriate to describe non-government parties as being “in opposition”. Some of them may well indeed be deeply and loudly critical of the government, but others may be long-term supporters of the government, whether for ideological reasons or on the basis of a formal deal with the governing parties. Any durable minority government, for instance, can continue in office only on the basis of consistent support from non-government parties; under the majoritarian system such an outcome would not be possible, since the “opposition” would vote the government out of office at the earliest available opportunity.

These are ideal types; in practice, the political systems of European states fall somewhere on a continuum between the two. The Westminster system obviously comes close to the majoritarian type; thus, when the Conservatives fell short of a parliamentary majority after the 2010 general election, they were prepared to form a coalition with the Liberal Democrats to secure office; but as soon as the latter became redundant following the narrow Conservative victory of 2015, they were dropped with little discussion—an outcome that would be unlikely in the consensus model. In the latter case, Switzerland is a good example. Since 1959, the “magic formula” for government formation has seen a seven-member government made up of the four long-standing political traditions in proportion to their parliamentary strength.

### **3. Governing divided societies**

The political impact of majoritarian and consensus-based approaches will depend on the structure of the society in which they are located. Where this is relatively culturally and ethnically homogeneous, as traditionally in the UK, the majoritarian model arguably works. Thus, British people seem on the whole happy to accept a system of government in which a party supported by only 37% of voters (the Conservative share of the vote in 2015) sees itself as entitled to proceed with implementing its policies simply because a premodern electoral system endowed it with a parliamentary majority. This system is presumably acceptable because there is a realistic chance that at a future election a similarly biased throw of the dice will return the main opposition party, Labour, to power—almost certainly without majority endorsement (no party in the UK has won a majority of the popular vote since 1931).

Transposed to a divided society, though, the majoritarian system has predictably unfortunate results: if one group is significantly larger than any of the others, it will probably be in a position to maintain a permanent parliamentary majority, to monopolise government and other public sector positions, and to divert resources in the direction of its supporters. This may result in very stable government with an unchanging leadership; but it also fails to incentivise excluded groups to accept the legitimacy of the system, possibly provoking other forms of conflict. It is not necessary to go beyond the history of Northern Ireland from 1921 to 1972 to illustrate this point.

For these reasons, a specific variant of the consensus-based approach has been widely advocated for culturally or ethnically divided societies: so-called consociational government. This is based on two primary principles. The first is the inclusion of all significant groups in the political process, implying a power-sharing government and proportionate access to public sector positions and resources (though sometimes a fixed quota system may be used). The second principle is the use of consensus building mechanisms in policy formation and collective decision making, typically implying use of a group veto, or a qualified majority requirement. Contemporary Belgium is a good illustration of this system in respect of relations between its Dutch- and French-speaking populations. Northern Ireland moved in the direction of this model in 1973, and it became a core part of Northern Ireland's institutional structure with the Good Friday agreement of 1998.

### **4. Implications for the bill**

As mentioned above, the “government v. opposition” tension is fundamentally incompatible with the consensus-based logic of the Good Friday agreement. However, the intention of the bill is not at all to facilitate a return to the pre-1972 Stormont “majority rule” system, but to provide for a government and opposition that might cut across the community division. Thus, one could imagine a scenario where the two largest parties remained in government, while the two smaller parties on each side moved into “opposition”. But this could be reversed in due course: the second largest unionist party and the second largest nationalist party might defeat their main rivals in a future election (indeed, this was their electoral status up to 2003) and then take over the reins of government, leaving the two other communally based parties with the option of going into opposition—though they might not choose this option, as was the case during the period 1999-2002. This might have the effect of introducing a healthy rivalry between (1) two dominant parties in a cross-community executive and (2) two smaller parties in a cross-community opposition. But party strategies and electoral arithmetic might also produce a range of less desirable outcomes.

It needs to be borne in mind, in particular, that the support base of the main parties might vary greatly in the coming years. Reduction of the number of seats per constituency from six to five increases the electoral quota from 14% to 17%, giving a marginal advantage to larger parties and making it more difficult for minority interests to secure representation. Reduction in the number of departments from 12 to nine (also provided for in the Stormont House agreement and endorsed in the implementation agreement) means that there are fewer executive positions to be distributed, again making it more difficult for smaller parties to cross the d'Hondt threshold. If these two factors are combined with, say, a movement in electoral support from the smaller to the larger party within each community bloc, it is conceivable that the smaller party within each bloc would fail to be eligible for any executive post, heightening the chance of polarisation. The fact that the parties of the centre (notably the Alliance Party) would face greater challenges under this system heightens the chances of polarisation.

The manner in which the opposition is defined in the bill might give rise to certain problems. It rests on an implicit distinction between (1) “qualifying parties”, or those sufficiently large to be eligible to hold an executive post, but who choose not to take this up, (2) other parties, or those too small to be eligible for an executive post, and (3) others, including independent MLAs. Only the first of these groups would be eligible to take the initiative in setting up a formal opposition. However, provision is also made for the formation of “technical groups”, alliances of convenience comprising at least 5% of all MLAs (this means six MLAs at present, or five when the overall number of MLAs falls to 90). Such a technical group, consisting of smaller parties and/or independents, might also take the initiative in forming the opposition.

It is worth noting that groups of this kind are commonly recognised in parliaments elsewhere, particularly as a device to allow small parties a more substantial say in legislative business. Thus, the European Parliament recognises party groups which are sometimes made up of several separate parties, usually with a similar ideological orientation. The *Fraktionen* (parliamentary parties) in the German *Bundestag* have arisen for similar reasons. In the Republic of Ireland, the single transferable vote system of proportional representation (in stark contrast to the continental European list system) allows for the proliferation of independent deputies, giving rise to the need for a “technical group”. There is a good case for making similar provision in the Assembly with a view to enhancing the role of non-aligned members.

Whether these arrangements should extend as far as having a formally recognised opposition is another matter. As indicated above, the result risks being some kind of Frankenstein’s monster, with key principles in the majoritarian model grafted onto a body that is essentially consensus-based or consociational in conception.

If such an opposition is to be created, though, it is questionable whether (as currently envisaged) it should automatically extend to all MLAs other than those in parties represented in the Executive. The present proposal comes close to being a violation rather than a modification of the existing consociational arrangements. While the fact that a party entitled to executive representation turns this down probably signals opposition to the executive, some parties and individuals are excluded from the executive because they simply fail to qualify. It should not be taken for granted, then, that they are “in opposition”; they may, as in the case of parties of the centre, in effect be supporters of the executive—more supportive of it, perhaps, than certain of the executive parties themselves. As indicated above, especially in consensus-based systems, non-participation in the government should not be equated with opposition to the government.

## 5. Conclusion

Finally, three points may be made about the creation of a formal opposition as proposed here.

First, too much should not be expected of an opposition created along the lines suggested in the bill. Parliamentary oppositions in majoritarian or Westminster-type systems are of uneven effectiveness. The government does not need the opposition, nor does it need to hear its voice; usually, the opposition can simply be brushed aside, in a manner compatible with the competitive logic of this system. It could be argued that the opposition in the Republic of Ireland, like that in Stormont from 1921 to 1972, has had relatively little impact on legislation or on government behaviour. The Westminster system incentivises parliamentary grandstanding and, some would argue, criticism for its own sake (“It’s the opposition’s duty to oppose”, as the singularly unreflective maxim puts it); rather than helping to improve the quality of legislation or administration, it is all too often an appeal to the public gallery. On the other hand, it is not true to say that there is no opposition in consensus-based systems; such opposition arises within the ranks of the governing parties (where it may be articulated forcefully in parliamentary party meetings), and often carries a good deal of political weight.

Second, though, even in the absence of a formal opposition, reform of parliamentary procedures can do much to enhance the quality of the Assembly’s work. Much of what lies behind the text of the bill can be achieved without the creation of a formal opposition, though it would be worth exploring the possibility of recognising political groupings made up of MLAs from a range of smaller parties and independents (this would not need to be labelled “technical”). Giving MLAs from non-executive parties access to greater resources and to a more significant voice on committees and elsewhere would be likely to enhance the quality of the Assembly’s work. But these kinds of activity do not need to be described as outputs of “the opposition”, given that word’s confrontational implications.

Third, the very fact that this bill is now being brought forward with significant political support suggests that the Northern Ireland political system is maturing, and is sufficiently confident to consider alternatives to current structures. For those of a pessimistic frame of mind, however, there are risks in this initiative. Any change would need to be finely balanced to ensure that it will not have serious, negative unexpected consequences. For this reason, there may be a case for a longer delay before any fundamental revision of the Good Friday agreement is undertaken. This might mean proceeding carefully with amendments of the kind proposed in this bill, and ensuring that any new arrangements are compatible with the consensus-based logic of the agreement.

### Office of the First Ministers

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

There is a minor difficulty here. While this proposal (and the related proposal in the schedule) highlights the equality of the two posts that is already there (despite one First Minister being designated “Deputy”), and is thus welcome, it is likely that some device will have to be found to distinguish between the two. The exigencies of news reporting and other pressures are likely to drive an informal relabelling of the two posts; it might be desirable to forestall this by finding a way of designating them in advance.