**Northern Ireland**

**Assembly**

**Assembly and Executive Review Committee**

**Stakeholder ‘Call for Evidence’ Paper on Review of D’Hondt;**

**Community Designation and Provisions for Opposition**

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| **Section 1**  **Stakeholder Details** | | | | |
| **Stakeholder Name** | **Telephone Number** | | | |
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| **Stakeholder Address** | **Stakeholder Type (Include one or more X)** | | | |
|  | **Registered Political Party** |  | **Local Government** |  |
| **Academic** |  | **Government** |  |
| **Legislature** |  | **Non-Government** |  |
| **Other (Please Specify)/ Member of the Public** | | |  |
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| **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. | | | | |
| **Section 2**  **Introduction** | | | | |
| **Powers**   * 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:  1. 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 2. consider such other matters relating to the functioning of the Assembly or the Executive as may be referred to it by the Assembly.   **Assembly and Executive Review Committee’s Next Priority for Review**   * 1. The Committee agreed the **Terms of Reference** of this next Review of Parts III and IV of the Northern Ireland Act as follows:   **The Assembly and Executive Review Committee will review d’Hondt, community designation, and the provisions for Opposition Parties/Non-Executive Parties in the Northern Ireland Assembly to assist them in holding the Executive to account, guaranteeing safeguards and protections to ensure that the institutions operate on an inclusive and power-sharing basis. The Review will not only address each area separately but examine the interrelationship between the three areas in the context of any proposed changes.**  **Phase 1** **– Review Evidence Gathering**  The Review will take evidence on **d’Hondt** in relation to:   1. Whether there should be changes in the legislative provision and use of d’Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons.   The Review will take evidence on **community designation** in relation to:   1. Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly.   The Review will take evidence on **provisions for Opposition** in relation to:  1) 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 will take evidence on whether:   1. Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties; 2. Arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition; and 3. 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.   **Phase 2 – Consideration and Report**  The Committee will consider all evidence received in relation to d’Hondt, community designation, and provisions for Opposition and report and make recommendations to the Assembly on these matters by early June 2013.  **Matters Outside the Scope of the Review**   * 1. The Committee has agreed that the following issue is outside of the scope of the Review: * Alternative electoral systems/models; for example, additional member system or alternative vote. | | | | |
| **Section 3**  **BACKGROUND**  **This section provides some background information on the issues being considered by the Committee as part of this Review.** | | | | |
| * 1. The following sections provide information relating to: * D’Hondt; * Community designation; and * Provisions for Opposition in the Northern Ireland Assembly and related factors.   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.   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. 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.   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>).   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.”   * 1. The Secretary of State has asked the Northern Ireland Affairs Committee to undertake scrutiny of the draft legislation, and that Committee will issue a call for evidence very shortly. The Secretary of State is seeking to introduce this Bill in the Third Session of Parliament.   2. **The following sections provide an overview of the issues that the Committee has identified as key to this Review. For further detail, please refer to the Assembly Research and Information Service paper *‘Opposition, Community Designation and d’Hondt’*.**   **D’HONDT**   * 1. Political Parties are entitled to seats in the Northern Ireland Executive based on their level of representation in the Northern Ireland Assembly. The process used to allocate Ministerial offices, and thereby fill seats in the Executive, is called the d’Hondt mechanism and is outlined in section 18 of the Northern Ireland Act 1998 (the 1998 Act). Through the use of d’Hondt, membership of the Executive is automatically determined based on electoral strength, rather than negotiations between Parties following an election. This particular application of d’Hondt appears unique to Northern Ireland.   2. However, there is nothing that requires Parties to take a seat in the Executive — they can refuse and the seat will be offered to the next eligible Party. In effect, there is no legislative barrier to Parties not taking their allocated seat following an election or withdrawing from the Executive if they wish. The question then arises as to what extent will those Parties be afforded the traditional role and resources allocated to Opposition Parties.   3. The position of Chairpersons and Deputy Chairpersons of Committees in the Northern Ireland Assembly are also allocated using the d’Hondt formula. This is provided for under Assembly Standing Orders, as required under section 29 of the 1998 Act. Again, should an eligible Party choose not to take the position to which it is entitled, the position will be offered to the next eligible party.   4. Amendments to section 18 and/or section 29 of the 1998 Act could only be made by legislation passed by the UK Parliament. The Assembly, does, however, have the power to amend the Standing Orders dealing with d’Hondt provided that they remain consistent with the requirements of the 1998 Act.   5. The Assembly Research paper *‘Opposition, Community Designation and D’Hondt’* refers briefly to the Sainte-Laguë allocation mechanism. This is another divisor method that has been found to produce more advantageous results for small parties, both in terms of allocations (the number of seats) and in terms of sequencing, so that smaller parties can get a higher “pick” in the allocation of Ministerial portfolios or Committee Chairs.   **COMMUNITY DESIGNATION**   * 1. The 1998 Act and Assembly Standing Orders make provision for Members of the Assembly to designate themselves as “Nationalist”, “Unionist” or “Other” at the first meeting of the Assembly after an election.   2. The 1998 Act details a number of key decisions in the Assembly for which cross community support is required. To obtain this cross community support under the 1998 Act, there must either be the support of a majority of the members voting, including a majority of the designated Nationalists and designated Unionists voting or the support of 60 per cent of the members voting including 40 per cent of the designated Nationalists voting and 40 per cent of the designated Unionists voting. Votes for which cross-community support is required are detailed in the Assembly Research and Information Service paper *‘Opposition, Community Designation and D’Hondt’*, (p. 17).   3. One of the instances in which cross-community support is required is in the event of a Petition of Concern. If 30 or more Members petition the Assembly expressing their concern about a matter that is to be voted on by the Assembly, the vote on that matter requires cross-community support.   4. A system of community designation is also used in Belgium, where there is an “alarm bell” procedure, used when one of the language groups believes that the provisions of a Bill are likely to be seriously detrimental to relations between the two language communities. Although the procedure is similar to that operating in the Northern Ireland Assembly, the threshold appears to be set higher and applies only to legislation, rather than ordinary motions (see the Assembly Research and Information Service paper ‘*Opposition, Community Designation and D’Hondt*’, p. 19).   5. A range of provisions governing the operation of the Assembly would be affected by changes to the political designation mechanism. One key area that could be affected by any changes to political designation is the appointment of the First Minister and deputy First Minister. Under current legislative provisions the largest Party of both the largest and second largest political designations are given the opportunity to appoint the First Minister and deputy First Minister respectively.   **PROVISIONS FOR OPPOSITION**   * 1. In the traditional Westminster model, the Party with the most non-government members in Parliament becomes the Official Opposition and its leader becomes the Leader of the Opposition. In broad terms, the role of the Opposition, as its name suggests, is to oppose the Government and form an “alternative government” if the existing government loses the confidence of the House. This is the model most often cited when highlighting the perceived lack of an Opposition within the Assembly. However, the Scottish Parliament and National Assembly for Wales more commonly refer to non-Executive or non-Government Parties, and there is no recognition of an Official Opposition in those legislatures, although there is proportionate provision for non-Government Parties in relation to parliamentary time and funding to carry out their functions.   2. The Assembly and Executive Review Committee has agreed that any consideration of the recognition of an Opposition in the Northern Ireland Assembly must recognise the consociational framework and the principles of inclusivity and power-sharing that underpin the workings of the Assembly and the Executive.   3. The Northern Ireland Act 1998, which sets out how the Assembly and Executive would operate, makes no reference to an Opposition.   4. Under the 1998 Act, Parties that have not reached a certain threshold in terms of elected Members do not have the opportunity to select a Ministerial office under the d’Hondt system. It is arguable that the Parties not currently in the Executive are an “Opposition”. Furthermore, as highlighted earlier, there is nothing that requires Parties to take a Ministerial office and, thereby, a seat in the Executive — they can refuse and the seat will be offered to the next eligible Party. In effect, there is no legislative barrier to Parties withdrawing from the Executive if they wish.   **Factors related to Provisions for Opposition:**   * 1. It is usual practice that non-Executive or non-Government Parties are granted certain rights within a legislature to assist them in holding the Government/Executive to account. If there were agreement to formally recognise an Opposition within the Assembly, some or all of the following would need to be taken into account:   **Financial Assistance**   * 1. In most jurisdictions, Political Parties with non-Executive or non-Government roles are usually allocated additional financial resources to assist in their Parliamentary/Assembly duties. All Political Parties represented in the Northern Ireland Assembly already receive funding under the Financial Assistance to Political Parties (FAPP) scheme, irrespective of whether they have a seat in the Executive. In the context of a move to formally recognise Opposition, consideration may need to be given by the Assembly Commission to reviewing the scheme to ensure that non-Executive Parties are appropriately funded.   2. Should the Assembly wish to provide allowances or additional salaries to individual Members of the Assembly in key positions in an Opposition, this may not require legislation, as the Independent Financial Review Panel (IFRP), which was set up following the passing of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011, could issue a Determination providing for this. This would be entirely a matter for IFRP.   3. The specific financial arrangements in place for the Opposition or non-Executive Parties in the House of Commons, the Scottish Parliament, the National Assembly for Wales and Dáil Éireann are outlined in the Assembly Research and Information Service paper *‘Opposition, Community Designation and D’Hondt’*, p. 6-9.   **Committee Chairpersons**   * 1. It has been suggested that the Committee structure in the Northern Ireland Assembly performs an important scrutiny role that is perhaps lacking in more traditional Government-Opposition models. The Chairpersons and Deputy Chairpersons of Committees in the Northern Ireland Assembly are currently selected by Parties via the d’Hondt method, as is the case in the Scottish Parliament for convenors (Chairs). In the House of Commons, the Government is allocated the majority of Chairs. Nevertheless, in the context of a move to formally recognise Opposition in the Northern Ireland Assembly, there is an argument that the Opposition Parties/Non-Executive Parties should be offered the Chair or Deputy Chair of more Committees, rather than the allocation of these Chairs continuing to be made on a proportional basis.   2. The 1998 Act prevents Statutory or Departmental Committees being Chaired or Deputy Chaired by Ministers or junior Ministers. Furthermore, arrangements for the allocation of Chairpersons and Deputy Chairpersons for these Committees provide that Parties shall “prefer” to select other Committees than those for which the Party holds Ministerial Office.   3. The arrangements in place in relation to the composition of Committees in the House of Commons, the Scottish Parliament, the National Assembly for Wales and Dáil Éireann are outlined in the Research paper *‘Opposition, Community Designation and D’Hondt’*, p. 9-10.   **Parliamentary/Assembly Time**   * 1. A key consideration with respect to the formal recognition of Opposition would be the guarantee of time to raise and debate non-Executive business — including priority speaking rights in response to Ministerial Statements and in Question Time. The House of Commons, Scottish Parliament and National Assembly for Wales guarantee time for non-Government business (see Research paper *‘Opposition, Community Designation and D’Hondt’*, p. 10-13).   2. In the Northern Ireland Assembly, Standing Order 17(5) states:   “The Speaker shall determine the order of speaking and the number of speakers in any debate having due regard to the balance of opinion on the matter, the party strengths in the Assembly and the number of members who have indicated a desire to speak.”    Standing Order 17(4) places a responsibility on the Business Committee to consult with the Speaker on these arrangements. These are the requirements that apply to the Assembly as it is currently constituted.   * 1. The speaking list agreed by the Business Committee in 2006 provides for the five largest parties to be called, in order, for the first ‘round’ of speakers. Subsequent rounds are based on party strength – identified by applying the d’Hondt formula to current party strengths. It should be noted that the threshold for inclusion in the first round of speakers was agreed as “parties with two or more members”.   2. The Business Committee reconsidered this arrangement in September 2011 in the context of a request to allow the single member parties and the, then, single independent Member more opportunity to speak. It was agreed that the current arrangements did not need to be reviewed.   3. The Speaker uses the speaking list only for calling Members to speak in debates and for questions following Ministerial Statements. While not all Members may be called to speak in debates on private Members’ motions in the time available, there is no similar constraint on debates on legislation. All who wish to do so may speak. It is rare for Members on the list not to be reached for questions to Ministerial Statements.   4. The following items of business operate outside the speaking list arrangements – Matters of the Day; Question Time; and Urgent Oral Questions. For these items, Members are required to rise in their places to indicate to the Speaker that they wish to be called. In using his discretion to call Members from among those standing, the Speaker will consider issues of cross-party balance, any relevant constituency interests, and giving priority to Committee Chairpersons. It should be noted that the selection of questions for oral answer during Question Time is done by random computer selection.   5. A Committee Chair may be given priority in the order of speaking if the relevant Minister is making a Statement or if legislation relating to that Committee is being debated. Regarding Ministerial Statements, while the speaking list order applies in broad terms, priority is given to those who have been present for the entire Statement. Members who have only been present for part of the Statement will be called last, which may result in a departure from the order in which parties are normally called.   6. Business in the Northern Ireland Assembly is currently already allocated on a proportional basis. A debate cycle rota is in place, calculated by applying the d’Hondt formula to current party voting strengths on the Business Committee. The Business Committee agrees the number of slots available for private Members’ business after Executive and Committee business has been scheduled each week. Parties next due to have motions scheduled, as per the debate cycle rota, put forward their chosen motion(s) to fill the slots agreed as available. The Business Committee agrees scheduling (e.g. running order) and timing issues in relation to the motions put forward.   7. The Business Committee reviews and agrees the order of all the business scheduled. Up to 10 additional slots are reserved in each Assembly session for cross-party motions, or for motions tabled by Parties/Members not represented on the Business Committee. In the latter case, the co-operation of a member of the Business Committee would have to be sought to put forward the motion. Use of these ‘other’ slots could be proposed at any time, but would be subject to the specific agreement of the Business Committee. The same arrangement, with a separate rota, is in place for the selection of topics for Adjournment debates.   **Other Measures to Strengthen Accountability**   * 1. In addition to the provision of resources for Opposition Parties/Non-Executive Parties, which may, in itself, strengthen accountability within the institutions of Government, the Assembly and Executive Review Committee has raised the issue of what other specific measures could strengthen accountability within the institutions.   2. For example, the Assembly Research paper *Opposition, Community Designation and D’Hondt’*  highlights the fact that Westminster, Dáil Éireann, the Scottish Parliament and the Welsh Assembly all provide for a vote of no confidence in the current Government. In Scotland, if such a motion is passed, all Members of the Executive must resign. This does not automatically result in a general election, but will do so if a new First Minister is not nominated within 28 days. There is no provision in the Northern Ireland Assembly for a vote of no confidence in the Executive.   3. As well as provision for a vote of no confidence in the Government, the Belgian Parliament has an instrument called an interpellation, which is a question for explanation from an MP and aimed at a Government Minister. The Minister’s response is followed by a vote, which can either be on a motion of no confidence in the Government or, more probably, on a “simple motion” agreeing that normal activities be continued. The latter is an implicit vote of confidence. This mechanism can be used in plenary sessions of the Parliament or, more commonly, in the parliamentary commissions. It is used for serious and important matters, mainly by the Opposition.   ***Further Information***   * 1. Stakeholders will wish to refer to a detailed Research and Information Service (RaISe) paper, produced for the Committee in respect of this Review. The Research Briefing paper, titled *‘Opposition, Community Designation and D’Hondt’,* can be accessed on the Assembly and Executive Review Committee’s webpage: <http://www.niassembly.gov.uk/Assembly-Business/Committees/Assembly-and-Executive-Review/Research-Papers-2012/> | | | | |
| **Section 4**  **Issues (as set out in Phase 1 of the Committee’s Review) and**  **Questions to consider** | | | | |
| **D’HONDT**   1. Whether there should be changes in the legislative provision and use of d’Hondt in the Northern Ireland Assembly in the allocation of Ministerial offices and/or Committee Chairpersons and Deputy Chairpersons. | | | | |
| In your view, should the d’Hondt mechanism be retained to allocate Ministerial positions? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?  In your view, should the d’Hondt mechanism be retained to allocate Committee Chairpersonships and Deputy Chairpersonships? If you think it should be retained, please outline why. If you think it should be replaced, what do you think should replace it?  Please include a suggested time frame for any of your suggested changes and offer supporting evidence for your views. | | | | |
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| **COMMUNITY DESIGNATION**   1. Whether there should be changes in the legislative provision and use of community designation in the Northern Ireland Assembly. |
| Do you believe that community designation as it currently operates should be retained? If yes, why?  If you believe that changes should be made, what changes do you propose? In particular:   * Do you believe that there should be changes to the “rules” governing Petitions of Concern? If so, what changes do you propose? * Do you believe that there should be changes to the list of matters set out in the 1998 Act that are designated as requiring a cross-community vote? If so, what changes do you propose?   Please specify how you think your suggested changes should be applied, including a time frame where relevant, and offer supporting evidence for your views. |
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| **PROVISIONS FOR OPPOSITION**   1. 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. |
| Do you agree or disagree that 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? If you agree, what model of Opposition do you feel would be most appropriate for the Northern Ireland Assembly?  What other changes do you consider would strengthen the accountability and effectiveness of the institutions of Government in Northern Ireland?  Please include a suggested time frame and outline the process for any changes and offer supporting evidence for your views. |
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| **PROVISIONS FOR OPPOSITION**   1. In particular, please comment on whether Opposition Parties/Non-Executive Parties should be allocated appropriate financial resources to assist in their Assembly duties. |
| What is your view on appropriate financial assistance being provided to Opposition Parties/Non-Executive Parties?  How might this financial assistance be structured to support Opposition Parties/Non-Executive Parties with varying numbers of Members?  Please offer supporting evidence for your views. |
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| **PROVISIONS FOR OPPOSITION**   1. In particular, please comment on whether arrangements for allocating Chairs and Deputy Chairs of Assembly Committees should be changed to take account of a formal Opposition. |
| What is your view on changing arrangements for allocating Chairs and Deputy Chairs of Assembly Committees to take account of a formal Opposition?  If additional Chairs and Deputy Chairs were allocated to Opposition Parties/Non-Executive Parties, should this be done on a proportional basis on the number of Members of Opposition Parties/Non-Executive Parties; i.e. larger Opposition Parties/Non-Executive Parties receiving more Chairs/Deputy Chairs?  Please offer supporting evidence for your views. |
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| **PROVISIONS FOR OPPOSITION**   1. In particular, please comment on whether 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. |
| Do the current arrangements provide adequate time and speaking rights for Opposition Parties/Non-Executive Parties to raise and debate non-Executive business and questions Ministers? If so, please outline why. If not, please outline how you think arrangements could be restructured.  Please offer supporting evidence for your views. |
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| **Section 5**  **Additional Information** |
| Please provide any additional information which you believe will be of assistance to the Committee during the course of the Review. |
| (This box will expand as you type) |
| **Section 6**  **Contact Details** |
| **All responses should be sent by email please to:**    The Committee Clerk **Tel:** 028 90521787 or  Assembly and Executive Review Committee 028 90521928  Room 375  Parliament Buildings  Ballymiscaw  Belfast  BT4 3XX  **To arrive no later than 27th March 2013**  **Email:** committee.assembly&executive[review@niassembly.gov.uk](mailto:review@niassembly.gov.uk) |
| **Thank you for your submission** |