

Section 1

Stakeholder Details

Stakeholder Name	Telephone Number		
Professor Derek Birrell	028 70123044		
Stakeholder Address	Stakeholder Type (Include one or more X)		
	Registered Political Party	<input type="checkbox"/>	Local Government
	Academic	<input checked="" type="checkbox"/>	Government
	Legislature	<input type="checkbox"/>	Non-Government
	Other (Please Specify)/ Member of the Public		<input type="checkbox"/>

Please provide some background information on your role as a stakeholder

Professor of Social Policy and Administration in the School of Criminology, Politics and Social Policy at the University of Ulster.

I have recently published books on the topics of Comparing Devolved Governance, Direct Rule, Devolution and Social Policy and Social Work in Northern Ireland.

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 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.

1. D'Hondt allocates executive ministerial posts in proportion to party strength and has been efficient in realising all-party or consociational government. This meets objectives of the 1998 Agreement in ensuring a devolved government that represents all significant political parties, all communities and a wide range of political opinion.
2. In practice it has proved possible to make, with political party and UK government agreement, some adjustment to d'Hondt, as was the case with the post of Justice Minister.
3. It can be noted that d'Hondt operates in the context of specific characteristics of the Executive and Departments:
 - (i) With the principle of a ministerial department, that is, ministerial and department functions are co-terminus
 - (ii) A single minister in charge of each department, except OFMDFM
 - (iii) A sufficient number of departments (12) to allow five parties to hold ministerial office in charge of a department
4. Implications of d'Hondt for opposition – opting out
Parties interested in becoming non-Executive parties can operate while d'Hondt is retained by either declining post(s) from d'Hondt procedure or resigning from the Executive or deciding not to participate in d'Hondt process.

5. D'Hondt procedure is also acceptable as the method for allocating committee chairs and deputy chairs. UK, Scotland and Wales operate a system based on proportionality. Some discretion can be exercised by government parties to move outside a strict proportional allocation, for example, to cement a coalition government agreement or produce support for a minority government by a non-government party. It can be noted that in Scotland of fourteen main committees nine have government party chairs, the opposition parties five. In five committees both chair and deputy chair are from the governing party. In Wales of ten main committees only four have government chairs despite Labour holding 50% of seats. Three opposition parties share six committee chairs.
6. In the event of recognition of an opposition the one exception to the operation of d'Hondt should be the chair and deputy chair of the Public Accounts Committee. It is normal parliamentary convention in most systems that this position is allocated to a member of the opposition parties. This is the case in Scotland and Wales.

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.

1. The criticism has been well rehearsed that community designation institutionalised a ‘two communities’ model and encouraged parties to prioritise ‘community’ interests. This can result in policy impasses or ‘lowest common denominator’ agreements. However, community designation is part of the system of checks and balances and may be seen as still essential by most political parties to give them the security and confidence to participate in the devolved system of government.
2. Alternatives would possibly not receive widespread acceptance.
 - (i) These include official inclusion of the ‘other’ category
 - (ii) Right of MLAs to change individual designation in relation to subject of vote
 - (iii) Requirement of weighted majority (for example, 60%) in place of community designation, which in practice may have similar outcome but is not so focused on community division
3. A further alternative is that the principle of cross-community support on the basis of MLAs is replaced by cross community party support, that is, a simple majority but with the support of at least a party from each community designation. A political group (party) in the Assembly must have at least two or three MLAs to be designated.
4. Matters for cross community vote.

This list is restricted to certain ‘constitutional and procedural matters’ and to certain ‘financial matters’. This would suggest the intention was that its use would not be common and not related to major output of Assembly which is in areas of social policy.

5. This interpretation has become misleading due to provision for petitions of concern, signed by 30 members and leading to a vote requiring cross-community support. This in effect opens up every vote to a cross-community vote which can lead to further impasses and dominance of communal approaches. Suggestions for less availability of petitions of concern would relate to requirement for support by a higher proportion of MLAs (50%). Any restriction on content, for example, only primary legislation or only Executive supported petitions, would be difficult to implement.

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.

1. Most discussion of the concept of an opposition in a parliamentary system is related to the Westminster model as a classical example. However, the Westminster model of opposition is closely related to a two-party system. This in UK terms has meant that two parties dominate parliament, the two parties alternate in power and one of the two parties can normally found a government without relying on a third party. This scenario has been upset by current UK coalition government. The Westminster model is based on the status of an official opposition, an official shadow cabinet and a range of rights in Parliament. These have been established by convention, standing orders or negotiation.
2. What purposes would be served by recognition of an opposition under devolution?
 - would give a status and importance to opposition or non-government parties
 - would give more structure and entitlements to opposition parties to enhance role of criticism and scrutiny
 - would continue to provide a mechanism for democratic participation but in a different way from all-party government
 - opposition could offer a replacement or shadow alternative to government in office for the electorate

3. Lessons from devolved institutions in Scotland and Wales

- Scotland and Wales do not have an official opposition. All parties not in government can be considered opposition parties. The term used is parties or party groups not in government
- a party group normally has to have at least 2/3 members of Parliament / Assembly
- opposition parties in Scotland organise members in parliament into a shadow government covering senior ministers' portfolios, 12 in a Labour shadow cabinet and 13 in Conservative shadow cabinet. Eleven Welsh Conservative Assembly Members form a shadow cabinet
- parties do not form a structured official opposition together, and only act together, through ad hoc negotiation
- there may be special arrangements for individual opposition members
- there is a strong participation ethos in the operation of devolution in Scotland and Wales, for example, even as a majority government the SNP has discussed the Scottish budget with opposition leaders
- at times a situation of opposition parties not being formally in a coalition government but entering an agreement to support a government, Lib Dems with Labour in Scotland, Green Party with Labour in Wales while still retaining status of an opposition party

Model of opposition for Northern Ireland

1. Smaller parties opting out of d'Hondt and all-party government is most viable option. Still a possible problem of a small party (parties) forming the opposition, size may limit role they can play.
2. Problem of reaction of two large parties, for example, DUP and Sinn Fein, to forming government together. They may prefer to be in all party government.
3. Possible incentives for small parties to form opposition
 - financial incentives
 - opportunity for significant role in Assembly processes
4. Related changes

If there is a recognition of opposition status it carries with it some implications for the nature of government, that is, in setting up a government versus opposition scenario.

5. A major implication is for the current absence of the principle of collective responsibility in the Northern Ireland Executive. Opposition would work best opposing what is clear government policy and what is in the programme for government. System could simply be incongruous if there are different levels of opposition, the majority party in Executive able to disagree with minority party (parties) plus a second level of opposition between government and non-government parties.
6. Other means of strengthening effectiveness and accountability
 - Greater commitment to achieving collective views within Executive and joined up government
 - Assembly committees could be strengthened through
 - conducting more major scrutiny inquiries
 - regularly scrutinising annual reports of quangos
 - Expanding committee work to EU, petitions, equality areas
 - Strengthening responsibilities of Assembly and Executive through absorbing more of the functions of quangos into central administration, particularly at all strategic and core policy areas.

PROVISIONS FOR OPPOSITION

- a) 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.

The funding for opposition parties in Westminster has three components

- funding to assist an opposition party in carrying out its parliamentary business. This is based on seats won and votes received. Argument that opposition parties have not access to use civil servants
- funding for opposition parties' travel and associated expenses, based on seats and votes
- funding for the running costs of the leader of the opposition's office, only payable to main opposition party
- regarding the N. I. Assembly this could be applied but should all opposition party leaders receive running costs?

In Scotland and Wales financial assistance is given. The amounts for 2012 may be of interest:

	<u>Seats</u>	<u>Opposition funding</u>
[SNP Government]	65	N/A
Labour	37	£270,350
Conservatives	15	£108,593
Lib Dems	5	£46,798
Greens	2	£7,052

Wales has a slightly different system which in 2011 paid

Non-government party 3 – 10 members	£199,000
Non-government party over 10 members 5 additional AMs	£199,000 plus £30,000 for each
Government party	£127,000

PROVISIONS FOR OPPOSITION

- b) 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.

- The membership and role of statutory committees reflects in part the lack of a formal opposition. The Chairs and Deputy Chairs are from different parties from the Minister. The membership reflects proportionately the composition of the parties and the membership is drawn from all five parties. In the context of a lack of opposition the committees were expected to provide a strong policy challenge to the minister they were shadowing.
- The proportionate basis of committee membership and the Chair from a different party arrangement does in practice produce a spread of Chairs and Chairs among the parties and it is unlikely the designation of opposition parties would require or justify any different allocation. The distribution of statutory Chairs is DUP 5; SF 3; UU2; ALL 1; SDLP 1. An Opposition is unlikely to be able to claim more than 3 or 4 chairs. It can be noted that of seven subject chairs in Scotland the SNP hold five, opposition parties two and in Wales three are Labour and two are held by opposition parties.
- Moving to a Government and Opposition model would mean deciding if it was acceptable to have Chairs and ministers from the same Executive party as Committee chair and minister in relation to the same department. This would be accepted practice in UK, but may be seen as moving away from checks and balances in the Assembly. On the other hand to maintain different party affiliation of chairs and ministers for parties in the Executive creates a double form of opposition.
- It may be positive move to end the idea of a confrontation between the chair and the minister. It is not really the tradition in Great Britain for committees to be seen as a place of special opposition influence but rather they are a place of backbench influence. Committees in other jurisdictions often adopt an independent approach and a consensual approach.

- It would not necessarily be the case that an opposition party leader would become a committee Chair but it can be noted that the Government parties have a majority in the committees.
- Some adjustments may be necessary in the context of establishing opposition parties. The chair and deputy chair of the Public Accounts Committee by convention where there is a government and opposition model should always be from opposition parties. Special arrangements may have to be made for parties with one or two members or individual independents.

PROVISIONS FOR OPPOSITION

- c) 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.

Standing Orders in Scotland and Wales give some special recognition of the rights of parties which are not represented in the Scottish or Welsh Governments.

- Opposition party leaders can be given a special role at the Question Time for First Minister. This can cover; priority in asking questions, asking questions following ministerial statements or the number of supplementary questions asked. The number differs in Scotland between the size of the parties. In Northern Ireland such procedures might apply as well to the Deputy First Minister at Question Time. It can be noted that exchanges between the First Ministers in Scotland and Wales at these Question Times now receive much media coverage and are a focus for public attention. They can be interpreted as a major way for the Opposition to demonstrate it is holding the Government to account.
- Time would be allocated to give a balance between government and Opposition in Standing Orders, In the Scottish Parliament on 16 half days Parliament considers business chosen by opposition parties and in the Welsh Assembly motions proposed by opposition parties are allocated time in proportion to their representation.

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.

- Political realities in Northern Ireland make a transition to a partisan “Government versus Opposition” culture unlikely.
- It would be necessary for a party of a significant size to become an opposition party not represented in the Executive.
- Smaller parties are the main candidates for taking opposition status and would face a difficult decision in choosing between the current status with entitlement to one, if not two, seats in the Executive, and taking up a position, not as ‘the opposition’ but as an opposition party.
- It is also not clear how appealing a government and opposition scenario would be to the two largest parties in that there may be implications that they would not necessarily approve of; for example, losing the chair of the Public Accounts Committee; perceptions that they have moved into closer cooperation as a government entity or under more pressure to produce agreement and consensual politics or faced with filling the Minister for Justice post.
- With opposition parties the Assembly would be operating on the basis of a double opposition and confrontational scenario, between the parties in government and between government and opposition parties.