

## Correspondence to the Assembly and Executive Review Committee

Dr Sean Haughey  
Institute of Irish Studies  
University of Liverpool  
[Sean.haughey@liverpool.ac.uk](mailto:Sean.haughey@liverpool.ac.uk)

*Scoping the removal of the designations requirement (to be replaced with a requirement for weighted majorities on defined key votes or in situations where a reformed Petition of Concern has been invoked).*

- 1) The case for removing the Assembly's designation requirement rests on two grounds. Firstly, there is the argument that designation entrenches the ethnonational divide in the Assembly. Entrenching the divide in this way, so the argument goes, does not promote political reconciliation. This is a seemingly logical and compelling argument. That being said, it is an argument which finds only partial support in the most recent research on this subject. In their multinational study of divided societies, King and Samii find that formally recognising ethnic identities in political institutions can have complex and even paradoxical effects. Whereas in some polities communal designation has indeed had a polarising effect, in others it has had an 'assuring effect' and 'promotes peace'.<sup>1</sup> This latter scenario materialises when political actors take comfort in the protection that formal recognition of communal identities provides. It is therefore open to debate whether the removal of designation from the Assembly would have a noticeable effect on political divisions.
- 2) The second argument against communal designation is the stronger of the two. This being that communal designation exists to facilitate cross-community voting procedures which are unfair to MLAs who are neither nationalist nor unionist (the 'Others'). As the committee will be aware, the votes of 'Other' MLAs are not as important as the votes of nationalist and unionist MLAs when it comes to 'key decisions'. These key decisions often relate to matters which are of high importance (e.g. the passing of the budget or the election of Speaker) and are certainly just as important to Others in wider society as they are to citizens of a nationalist or unionist persuasion. Given the unfairness of this arrangement to Other MLAs – and to their voters – it is difficult to justify this arrangement on democratic grounds.
- 3) In terms of resolving key decisions, a difference-blind weighted majority model offers an alternative to the status quo. Under a weighted majority model, for a key decision to pass it would need to achieve a level of support that is realistically beyond the gift of one political community (for example 60-65%). Since neither nationalism nor unionism come close to winning 60% of the seats in Assembly elections, any measure securing this level of support will in effect have demonstrated some form of cross-community support. Such a system would not require the designation of MLAs as unionist, nationalist or other since all votes would be equal and the count would be difference-blind.

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<sup>1</sup> E. King and C. Samii (2020) *Diversity, Violence, and Recognition: How Recognizing Ethnic Identity Promotes Peace*. Oxford: Oxford University Press.

- 4) It is worth pointing out that a weighted majority model offers a different type of safeguard to that provided by the status quo. Under the status quo, a key decision can only pass with the support of *both* communities. Under a weighted majority model, it is conceivable that a key decision could pass without the support of one community. In the current Assembly, for example, the voting power of unionist and 'other' MLAs amounts to 59%: under a 60% weighted majority model, a change in one Assembly seat could result in a scenario where key decisions pass without the consent of nationalist MLAs. As such, the safeguard offered by a weighted majority model is that it protects against *one*-community rule in key decisions, it does not ensure that *both* communities rule in key decisions. If the rationale for revisiting the designation requirement is that society in Northern Ireland has outgrown the 'two communities' model, as demographic trends suggest, then this may not necessarily equate to a problem.
- 5) Setting a difference-blind weighted majority threshold at 65% would – at least using the current parliamentary arithmetic – ensure that key decisions could only pass with the support of (at least some) unionist and (at least some) nationalist MLAs. This would arguably enhance the legitimacy, in cross-community terms, of key decisions. However, this could change depending on parliamentary arithmetic after fresh elections, so there are no guarantees in this regard. No single party at present would have the voting power to deny a measure 65% support (this would require the votes of 32 MLAs), so there would not be a realistic prospect of party solo runs in terms of vetoing proposals.

*Consideration of the method of appointing the First Ministers and deputy First Ministers as well as the titles, to reflect the joint and equal nature of the office and the principle of partnership.*

- 6) The current method for appointing the First Minister (FM) is straightforward: the largest party is entitled to nominate for this position. The method for appointing the deputy First Minister (dFM) can be complicated and controversial since it does not necessarily fall to the second largest party to nominate for this position. If the FM is drawn from the largest party but not the largest party of the largest designation, the position of dFM falls to the largest party of the largest designation (which may not be the second largest party overall). The rationale for this is, presumably, to ensure that the Executive Office is jointly administered by representatives of the two largest communal blocs. However, the prospect of a party emerging as the second largest in the Assembly and not being offered a place in the Executive Office does raise questions about the fairness of the procedure.
- 7) One alternative to the status quo would be to allow the largest party to nominate for the position of FM and for the second largest party that is not of the same designation as the FM to nominate for the position of dFM. This would ensure the continuation of power-sharing of a sort since the Executive Office would still be administered by representatives of different communal blocs (even if these are not the largest and second largest blocs in the Assembly respectively). The question begged is whether this arrangement would be in keeping with the spirit of the Good Friday Agreement, which designed the Executive Office to be jointly administered by representatives of the two largest communal blocs (although this was later amended via the St Andrews Agreement).

- 8) Renaming the titles of FM and dFM to Joint First Minister respectively would more accurately reflect political and legal realities. The occupants of the Executive Office must govern together as equals or not at all, so the case for differentiating the roles into FM and dFM is not a strong one. The titles of FM and dFM imply a hierarchy in the Executive Office which does not exist.
  
- 9) The committee might also wish to consider if contingency measures should be put in place to better facilitate government formation in circumstances where the largest or second largest party either resigns from, or declines to nominate for, the Executive Office. Subject to the Northern Ireland (Ministers, Elections and Petitions of Concern) Bill receiving Royal Assent, the current arrangements provide for a period of up to 24 weeks for an Executive to (re)form in these circumstances. One question begged is whether the opportunity to nominate for the Executive Office should simply pass to the next qualifying party, of the appropriate size and designation, if the largest or second largest party declines to nominate.<sup>2</sup> This question is perhaps beyond the scope of the committee's current considerations, however it may gain some prominence if there is a delay in Executive formation following the May 2022 elections.

1<sup>st</sup> February 2022.

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<sup>2</sup> S. Haughey (2019) 'Worth Restoring? Taking Stock of the Northern Ireland Assembly', *The Political Quarterly*, 90 (4): 705–712.