



Northern Ireland
Assembly

Assembly and Executive Review Committee

OFFICIAL REPORT (Hansard)

Review of D'Hondt, Community Designation
and Provision for Opposition:
Briefing from Professor Derek Birrell

19 March 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Stephen Moutray (Chairperson)
Mr Pat Sheehan (Deputy Chairperson)
Mr Roy Beggs
Mr Simon Hamilton
Mr Raymond McCartney
Mr Conall McDevitt
Ms Caitriona Ruane

Witnesses:

Professor Derek Birrell University of Ulster

The Chairperson: We are about to hear a presentation from Professor Derek Birrell, professor of social administration and social policy at the University of Ulster. Professor Birrell, you are very welcome. We are low on numbers but we are delighted to have you. Please start your presentation, and afterwards there will be questions.

Mr Hamilton: We are low on numbers but high on quality.

The Chairperson: Absolutely.

Professor Derek Birrell (University of Ulster): I should start by explaining that I work mostly in the areas of social policy, public administration and governance, rather than pure politics, so I do not spend my time trying to work out mathematically the outcome of the d'Hondt formula, and so on. I am not a pure political scientist.

I will try to focus on issues that maybe have not been drawn to the Committee's attention or that tend not to be much discussed in relation to d'Hondt, an Opposition, and so on. I will skip some of the other issues on which the Committee has probably received quite substantial comment.

I will start with d'Hondt, Ministers, ministerial office and Committee Chairs. Two main issues draw attention in the role of d'Hondt in underpinning power-sharing arrangements and the 1998 agreement. The d'Hondt system has been operating in Northern Ireland in the context of government Departments, following very much a Whitehall model of the principle of ministerial Departments, coterminosity in functions between departmental functions and the Minister, a single Minister — for the most part — in charge of each Department, and quite a large number of Departments, which, at present, allows five parties to hold ministerial office.

Of course, there are alternatives to that. You do not have to have that coterminosity. The first point arising from that is this: if you went down to six or seven Departments, would that create problems for running d'Hondt and allocating Ministers? The answer is not necessarily, in that you do not have to be restricted to six or seven Ministers. That happens only if you are tied very closely to the ministerial Department model because you could have 12 Ministers, for example, with two in each Department. They could be from the same party or from different parties as part of the power-sharing Executive, or you could have discrete areas for a senior Minister and junior Minister, which is the type of system that operates in Wales. Scotland has really abolished Departments and instead has 30-odd directorates, so it can be fairly flexible in ministerial allocations. Therefore, you can decouple d'Hondt from the idea of a ministerial Department.

The second point is about d'Hondt and Committee Chairs. That, again, can be allowed to operate in different contexts. In Scotland, d'Hondt is used for Committees. The main idea is proportionality. Of course, if you link that to the idea of opposition, normally an official Opposition chairs some Committees in most parliamentary systems. I am looking mainly at Scotland and Wales because of devolution and also because I do some work there. In Scotland at present, the SNP Government have only nine Chairs of Committees, and the opposition parties have five. In Wales, of the 10 main Committee Chairs, five are held by the governing party and five by the opposition parties, although it is quite normal for the governing party to hold both the Chair and the Deputy Chair. I will come back to that.

The last point is that the possible exception to d'Hondt — it depends, but it may have to be an exception — is the Public Accounts Committee, the Public Audit Committee, or whatever it is called, because, normally, in all systems, it is opposition parties that hold the Chair and Deputy Chair positions on the Public Accounts Committee. That is a parliamentary convention that is quite strongly established.

I will move quickly through community designation and the criticisms of it, which are quite well rehearsed. Are there any alternatives? There are quite complex alternatives that might not be very popular, including official recognition of the "Other" category and MLAs being able to change designation fairly quickly, which could be complex or difficult. The requirement for a weighted majority in place of community designation might result in much the same outcomes. Cross-community support on the basis of party rather than individual MLAs could be looked at, but, of course, that would place a lot of restrictions on parties and individual Members. Community designation could be altered or amended, but it would probably be quite difficult to get agreement on that or to get a workable system without abolishing it in favour of some weighted majority.

Matters for cross-community vote raises the issue of petitions of concern. Originally, I think that petitions of concern were intended to deal mainly with constitutional and procedural matters. They have been interpreted more widely, but, of course, it is quite difficult to place a strict limiting definition on when they should be used. There are options to require a higher a proportion of MLAs, but the petition of concern has become somewhat embedded as part of the system of checks and balances in the devolved system here.

I will move on to provisions for opposition. Of course, when we think of parliamentary opposition, everyone tends to think of the Westminster model, which is the one that dominates in Britain and Ireland. That has been very closely related to the two-party system, although, at present, that is an issue. It is tied to the notion that there is a Government in waiting, that there are two parties that alternate in office and do not really rely on other parties. There is not really much prospect of coalitions and negotiations about coalitions, except at present, of course, in the UK Government context.

What about opposition under devolution? That would give greater status to non-Government parties, might enhance scrutiny and furthers the idea of every MLA — or almost all MLAs — participating in the parliamentary process. It may lead to the opposition becoming an alternative Government. However, the devolved institutions in Scotland and Wales have operated with opposition parties, but not in opposition, because there is no official Opposition in Scotland or Wales. All parties — defined as having more than two or three Members — that are not in Government can be considered opposition parties. In Scotland and Wales, they organise themselves into shadow Cabinets, or shadow Executives. There are 12 in the Labour shadow Cabinet in Scotland, 13 in the Conservative shadow Cabinet, and 11 Welsh Conservatives form a shadow Executive. However, they are not a structured official Opposition. The two main opposition parties in Scotland do not necessarily co-operate with each other; they may do so, but not necessarily. Those Assemblies make arrangements for individual, usually single, opposition Members. Something else that is perhaps slightly different in Scotland and

Wales is that they have a strong participative ethos, which was in some of the original thinking about devolution. Very recently, the SNP Executive discussed the Scottish Budget with the opposition parties; that is normal.

Finally, there is a slight complication in that you can have a situation in which there is not a formal coalition, but, as is the case with the Governments in Scotland and Wales, there is a voting arrangement with opposition parties. That has happened with the Green Party in Wales. At significant times, it has said that it would support the Welsh Government, but it regards itself as an opposition party. So you can have somewhat flexible arrangements.

In Northern Ireland, you would probably have to have smaller parties opting out of an all-party Government. Would the two main parties — the two largest parties — be happy with that? Would they prefer an all-party Government? Can you give any incentives to the smaller opposition parties? It might be a financial incentive, or, in practice, it might be a more significant role; it depends.

One other significant factor that maybe does not receive so much attention is what difference having official Opposition parties would make to the governing parties, because, in a sense, it would have to make a difference to them as well. A kind of Government-and-Opposition model would have to operate, and, of course, that presents some difficulty for the Executive in Northern Ireland, where there is not the principle of collective responsibility. That is not written into how it works.

There is the issue of different levels of opposition. Do you have opposition among the governing parties, as you can have at the moment, and a second level of opposition between the governing parties and the opposition parties, which is a type of two-tier opposition?

Given the time, I will skip over the issue of financial arrangements. I think that the evidence on that will be produced before the Committee.

I move now to the issue of Committees and opposition, which I mentioned briefly at the beginning. Committees are elected on a proportional basis, and if you had official Opposition parties, it probably would not make a great deal of difference. I note the current distribution of Statutory Committee Chairs among the five parties. It is highly unlikely that an Opposition at Stormont would be entitled to more than three or four Committee Chairs, so it would not make a huge difference. However, it would raise one or two issues. Would it be acceptable for a Chair and a Deputy Chair to come from the same political party? That happens in Scotland and Wales, for example. On the other hand, it could be a positive move to end the original concept of Assembly Committees as, in a sense, an opposition to the Minister, because it is not really the tradition for Back-Bench Committees to be seen as a place of special opposition influence. They are normally a place of Back-Bench influence; or even agreed Back-Bench influence. That is a slight difference that might come about if you had an Opposition. Is there a problem with an opposition party leader being Chair of a Committee? Not really; that happens in Scotland and Wales. The governing party or parties have a majority on the Committee anyway. The exception may be the Public Accounts Committee because, in a sense, it would have to have an opposition Chair and Deputy Chair. That is a strongly established convention.

I will skip over the rights that an Opposition may have in respect of questions and speaking time. Those are probably quite well recorded. That just leaves me with additional information and conclusions. Can you develop in Northern Ireland a sort of Government versus Opposition culture? You probably need parties of a significant size to form an Opposition. A few small parties would not really suffice.

There is then a choice for the opposition parties: would they willingly opt out of holding one ministerial office, or even two, and instead choose to be an official Opposition? That has been discussed quite a bit. How appealing would that be to the two largest parties? They may accept losing the Chair of the Public Accounts Committee. Would they be seen as moving into closer co-operation with each other as a corporate Government entity facing an Opposition?

Even with official Opposition parties, the Assembly may still be operating on the basis of double opposition because Ministers and parties in the Executive are free to publicly oppose each other. How would that be affected if you had an official Opposition? That is a quick run through some of the points that are in my paper.

The Chairperson: Thank you for that, Professor Birrell. On d'Hondt, your paper refers to:

"Greater commitment to achieving collective views within Executive and joined up government".

Have you any thoughts as to how we would ensure that greater commitment?

Professor Birrell: Greater commitment is probably widely encouraged by several factors. The alternative is that, on some occasions, there will obviously be impasses or slowness in decision-making in the Executive. Collective responsibility is not written into the Northern Ireland system at all, but it is written into the Scottish and Welsh legislation. If you do not have the principle of Executive responsibility, you have to have some kind of voluntary movement towards largely having Executive responsibility. An official Opposition might encourage that, but it is rather difficult in the Northern Ireland context to see that opposition at the moment. It might happen in the future as a kind of shadow Government in waiting along the lines of the Westminster model.

You are asking me how you might encourage greater commitment to Executive decision-making. Except on some very divisive political issues or where there are strong ideological views, you would hope that increased policymaking capacity and increased news, opinions, data and information from different sources, including research networks, communities, lobbying groups and research bodies, might make the best way forward clearer. There are some issues such as those.

It is going slightly off the point, but I mentioned to Conall bodies such as the Education and Skills Authority in the context of modern public administration. If you look at all the writings and even the calculations about efficiency and savings, I am not sure that you would see that coming up as a modernising idea. You might get consensus more often if the policy advice were stronger and better. I say that not to denigrate Northern Ireland in particular, but it has been a big problem in Scotland and Wales, where quite a lot of attention has been paid to the issue.

Mr McDevitt: I am sorry, Derek, I was caught up with business in the House. I want to ask about cross-community support and where you see the line being best drawn in proving and establishing it. I want to ask you about it on two levels, the first of which is whether you have any views beyond what you said in your paper about weighted majority voting. If so, what are those views?

Secondly, I noticed that you made an observation about changing the threshold for a petition of concern. Could you talk us through where you see that opportunity? Do you see any pitfalls in possibly going to 50%, as you said?

Professor Birrell: I was looking at various alternatives. That comes up as an alternative. However, not many parliamentary or government systems opt for weighted majorities, and, generally, coalition Governments are formed by negotiation and agreements that are sometimes fairly informal and highly formalised. The weighted majority comes into play almost if you cannot think of a better way of building checks and balances. Back in 1998-99, the Northern Ireland Act and the agreement were quite clever in producing a structure of checks and balances without going for weighted majority. There has been some experience of it in Belgium, I think, but you find very few examples of it. I think that it leads to maybe trying to count up the number of individual MLAs all the time, so it makes life more difficult for parties. The 60% weighted majority would be a broad brushstroke.

The designated community principle in Northern Ireland is also fairly unusual. I know that you could find one or two examples of it, but it is unusual. I go to quite a lot of conferences in Scotland, Wales and England about devolution, and so on. In recent years, I have noticed that people always ask, "As long as you have community designation, does that not show that the whole system is a kind of failure?" I think that, in the future, it will probably have to be addressed. I am not necessarily a major advocate of weighted majorities. It has to be weighed against other systems of checks and balances. You get involved in whether it should be 50%, 60% or 70%, whether it should be different for different issues or different kinds of legislation, and whether there should be votes of confidence.

Mr Sheehan: I apologise for missing the first part of your presentation, Professor Birrell; I was in the Chamber. I am interested in the financial incentives for an official Opposition. It seems that an official Opposition could operate adequately without any financial incentive. Will you elaborate on why there should be some incentive?

Professor Birrell: The first thing that people might argue is that there are some extra costs, because the opposition parties do not normally have access to civil servants. They cannot be advised by civil servants, and they might not have access to information and data, and so on. They need some money to make foreign trips, whereas Ministers can just head off. So, there are some practical things

to consider. Those extra costs are there to make up for some of the benefits and advantages that they do not get. So, that is certainly one strong argument.

The more difficult area is whether they are being given a bit of a financial incentive. Those in London may say, "We know that you are not in power, and we know that you cannot decide anything, but you have a role to play. Ministers get high salaries and junior Ministers get salaries, so we are going to encourage the Opposition." Shadow Ministers are not given a salary, but they can be assisted in a certain way. So, you can argue about the amounts that are involved. In Northern Ireland, that issue crops up because potential opposition parties may be faced with a choice of losing a ministerial position. However, if only one Minister is involved, the financial calculation is not great.

It is just a backing up to the status. You could argue that, instead of more financial incentives, they just get the status incentives. That means that if a Minister appears on television, the opposition person must come on as well, which increases their profile. You see it at Westminster. When Parliament opens and the MPs all troop in for that, at present, the leader of the Opposition walks alongside the Prime Minister leading the procession; it is not the Prime Minister and the Deputy Prime Minister. So, that is the status issue.

It is a mixture of those things. It is normally not a bribe, as it were, but, in Northern Ireland, there is a slight notion that perhaps you would need a bribe.

Mr Beggs: Thanks for your presentation.

I would like to go back to petitions of concern. There has been a spate of them recently. Interestingly, even those designated "Other" have joined with particular designated groups to get the 30-Member threshold. However, as indicated, that leads to the potential for stalemate. There is now a sense that the petition of concern is being misused by both sections. How did you come across the figure of a 50% requirement for a petition of concern? Is that not almost doing away with the petition of concern? If you have 50% agreeing to an issue, you clearly have a majority. To change the current threshold, increase it and avoid the stalemate, you will need buy-in from all sides.

Professor Birrell: I take your point. I think that that might refer more to the discussion that took place when the system was originally mooted back in the 1990s, when it was seen as a constitutional issue. Therefore, if you were heading for a major quasi-constitutional change, you really needed more than 50% — my paper says just 50% — or a significant number. Of course, as you say, it has worked out that it can be used for all kinds of policies if the party presenting it feels strongly. Obviously, it will be an issue if it is widely used. There are a number of impasses already in the system, or at least there are checks that lead to impasses. Some people argue that that is the whole point of it and that it is about making it more difficult to operate without a consensus or to force people into some sort of consensus. However, it leads to impasses, delays and, maybe, the lowest-common-denominator approach where you can get a level of agreement.

As long as you have petitions of concern, one option would be to have some kind of figure. However, that would be quite a radical change. The other option is to go back to the original idea and to define more closely what is meant by a petition of concern. I am sorry; that does not fully answer your question, but I take your point that 50% might not be appropriate.

Mr Beggs: In the other places that you referred to where protection is built in, are there any other examples of the idea of a blocking section? I think that the figure of 27% or 28% at present could block legislation. Are there such blockages anywhere? There are advantages for having it, as it protects the community, but the stalemate means that there are also disadvantages.

Professor Birrell: I am not really certain. There are the obvious consociational countries, as they are called — I think that Switzerland, Holland and Belgium are the major ones. If they have it, I think that it would certainly be restricted to constitutional-type issues. In the Swiss system of government, I think that 75% of the cantons have to vote in favour of any constitutional change, as they define it.

As far as I know, I do not think that there is an example of a petition of concern. It would certainly be worth checking, although that kind of comparative government is not something that I operate with. Nevertheless, it would be interesting to find out. However, from my knowledge at the minute, I do not think that there is such an example.

Mr Beggs: It would be a useful for the Committee to look over the range of motions to which petitions of concern have been tabled so that we can get a reflection on what has happened in the past.

Professor Birrell: I think that there have been about 12 or 14 so far, although you might move to the situation of having half a dozen a year.

The Chairperson: The Committee Clerk has indicated that that information is in the research paper.

Mr Hamilton: I did not want to talk about petitions of concern, and I know that you were not nailed down on the specifics of the Swiss example. However, in that system, if in every instance, 75% of cantons have to vote for it, a petition of concern would be a much more attractive proposition. It happens only on a handful of votes. One that recently grabbed attention was legislation. However, in most cases, it has been deployed for motions that are debated in the Chamber, which are of no particular weight other than as an indicator of a general view.

You said in your presentation that you see that moving to a traditional Government versus Opposition system is unlikely in Northern Ireland. You said that it would be necessary for a party of a significant size to become an opposition party and to not be represented at the Executive. The size of an official Opposition and whether strictures should be placed on its size has come up in a couple of evidence sessions. Are you making that comment on the basis that, unless a party in opposition is of a certain size, its ability to be effective in opposition is difficult? I would agree with that point. For example, you would not have the numbers to shadow, in the traditional sense, and to enable you to say that there are 10 Ministers, so we must supply 10 opposition spokespeople. Are you coming at it purely on that basis?

A point that has come out in other discussions that we have had is that there is almost a slightly ludicrous position. If we facilitate an official Opposition, and a party of a couple of Members, as is the case with some parties in the Assembly, is the next biggest party outside the Executive, it would become the official Opposition. It would not be entitled to be in the Executive anyway. You could then have two people as the official Opposition. Have you considered that, as well as the obvious, straightforward point that the bigger you are, the more effective you are going to be?

Professor Birrell: That is true. The grouping would need to be a certain size to be effective at all. In Scotland and Wales, it is two or three; you can go down to quite low numbers and be recognised as an official Opposition party. They cannot operate terribly effectively, but they are given a certain status. For example, a place might be found for them as Deputy Chair of one of the 20-odd Committees. So, some slight recognition is given to them. The Conservatives in Scotland cannot really function as an Opposition, because they are too small in number. So, at the end of the day, it is a matter of size.

The importance of a couple of Members is a slightly different issue. One or two single Members representing a small party or some cause can still become very significant, depending on which way they vote on certain issues, and so on. They might have a degree of opposition power, as it were. However, where the formal structures of participation are concerned, it would be very difficult to operate. Obviously, the question is: where do you draw the line? Suppose you have a couple of parties, each with four or five Members. Does that just about make it viable?

Mr Hamilton: Rick Wilford discussed that. It was a point that provoked my interest because it is something that I have thought about. We have a few one-person parties in the Assembly, and they are recognised as a party. I think that that is on the basis of how they run.

Mr McDevitt: They stood on a party ticket.

Mr Hamilton: You run as a party. Even though only one person gets in, you are still recognised in the confines of the Assembly as being a party. For a variety of reasons, we have then had a proliferation of single-Member parties. Rick made the point that, really, there is almost a perverse incentive. You get additional speaking time and additional resources. There is, therefore, an incentive for some people to become an opposition party, even though they are a single Member. Rick favoured a level of about three Members, although I may be quoting him incorrectly.

Professor Birrell: I think that, rather strangely, it is three Members in Wales and two in Scotland. It is built into legislation in Scotland and Wales, in that they do not talk about a party; they talk about a

political group. So, if you have two or three individuals, they can then go and form themselves into a group, even though they might be from different small parties.

Mr Hamilton: It is one of those technical issues. If we proceed down this line, it is one of those little things that we would have to think about, rather than saying that, yes, we will have an official Opposition, and then finding out that that is one person.

The Chairperson: There are no other questions. Thank you, Professor Birrell, for attending today.