



**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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	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				
<p>Platform for Change was launched in 2010 to promote political realignment and civic renewal in Ireland.</p> <p>Platform for Change supports:</p> <ul style="list-style-type: none"> • a politics focused on the public interest and the common good; • a cohesive government in which power is genuinely shared; • an assembly which gives the citizen a real voice; and • a vision of a tolerant and inclusive society without dividing lines. <p>This submission should be read alongside the submission made by Platform for Change a year ago to the committee’s call for evidence. Taken together, the two submissions amount to a rounded critique of the adequacy of current arrangements allied to a coherent raft of proposed structural reforms.</p>				

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.

The d'Hondt mechanism for allocating ministerial positions should be replaced for several reasons—the most evident being its uniqueness in the world. That no other country should use this method (the nearest approximation being the Swiss 'magic formula' of pre-allocation of seats in the federal council), even after the many claims made on behalf of the Northern Ireland 'peace process' as the balm for ethnic troublespots across the world, should surely give pause.

The second compelling reason is that the application of d'Hondt to this end was the classic case of the horse designed by committee that became a camel. In the 1998 talks, in the single night of serious negotiations on devolved structures, the Ulster Unionist proposition for no power-sharing executive but an assembly with committee chairs distributed by d'Hondt, acting as department heads, met the SDLP demand for cabinet-style power-sharing with a 'nationalist veto'. The UUP proposal was based on the procedure of the European Parliament and the SDLP demand for power-sharing was also logical. But the camel, a power-sharing executive allocated by d'Hondt, fell foul of the obvious requirements of democratic governance: that there is collective responsibility in the executive, that it can be adequately scrutinised by the parliament/assembly and that the citizens can at elections 'turf the scoundrels out'.

It is thus perfectly correct to retain d'Hondt as a mechanism for distributing assembly committee chairs and vice-chairs. But a better means of executive formation needs to be found, which uses the foundation of collective responsibility to foster a sense of interdependence among ministers drawn from the two sides of the sectarian divide and which provides a model of reconciliation for society to follow—and of a 'joined-up' government in which the public can have confidence. There can be no doubting the public yearning for such exercise of shared political leadership. (Collective responsibility was agreed at the very first

meeting of the power-sharing executive in 1974.)

Such mutual commitment is best expressed practically around a programme for government. The belief that Westminster, with its first-past-the-post electoral system and executive domination, represents the model is very unhelpful in this regard. In more typical European countries, an election leads—as indeed was the case in 2010 at Westminster and has become the norm in the other devolved jurisdictions—to negotiations among potential coalition partners as to a programme on which they could be compatible.

Those reluctant to depart from the ‘Westminster model’ have espoused a ‘voluntary’ coalition as an alternative to the current arrangements for executive formation. This does not, however, enjoy broad cross-sectarian support and in reality what is needed is a *mandatory* requirement after an assembly election for an inter-party coalition to be agreed, in a manner which is able to meet the twin requirements of democracy, as identified by the standard-setter the [International Institute for Democracy and Electoral Assistance](#)—that it sustains equality of citizenship as well as providing for popular control.

It would be hoped that such arrangements would become so normal over time that they needed no legal buttressing. (In the 1974 power-sharing arrangements, it was simply assumed that the parties to government would vote together in the assembly, thus blocking any return to sectarian majoritarianism.) But they could be so supported through a variety of potential mechanisms:

- (i) a numerical super-majority requirement in the assembly for government formation;
- (ii) a requirement in the (too-long-delayed) Northern Ireland Bill of Rights providing for equality of political citizenship, which would then be the basis for judicial review, or
- (iii) a ‘50-50’ requirement (as in Belgium) that the executive had to include equal numbers of those of Protestant and Catholic backgrounds.

The last would be the least desirable of these—the evidence in Belgium being that government formation is very protracted and unstable—but at least it would not exclude ‘others’ and would not require *political* self-designation of MLAs as ‘unionist’ or ‘nationalist’, to which we come below.

It would be desirable for such transformed arrangements to determine government formation after the next assembly election—and, in the process, to ensure that election was actually a debate around the ‘bread-and-butter’ issues of competing programmes. This would sweep away the invidious provision in the St Andrews Agreement Act for the first minister to be automatically appointed by the largest party in the assembly. This has reinforced sectarian politics by turning elections into an ‘arms race’ across the divide as to which party will secure the FM position, at the expense of party pluralism and of the partnership ethos which underpinned the original concept in the Belfast agreement of the Office of the First Minister and Deputy First Minister. That would of course depend on legislation being passed to these effects at Westminster in the interim.

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.

Communal designation should be abolished in the assembly because it perpetuates the sectarian divide as the axis of political argument in Northern Ireland. Its most obvious comparator is Bosnia-Herzegovina, where the associated mutual-veto arrangements have left government perennially deadlocked. Indeed, an insidious effect of communal designation is that it gives ‘ethnic’ political parties an incentive to maintain an ethnically divided society to sustain their vote banks and to campaign at election times on the basis of communal assertion rather than on how they will promote the public interest and the common good. It also has an insidious effect on the public, corroding any sense of the fellow citizenship on which democracy depends.

The idea was never entertained in the prolonged public and political debates leading up to the 1974 power-sharing executive and since 1998 it has often had perverse effects: rather than preventing sectarian majoritarianism, as supposed, it has provided a basis—via the exercise, or potential exercise, of the ‘cross-community support’ test—for individual *parties* to veto proposals to which they object. This was exacerbated by the provision in the St Andrews agreement for the test to be imported into government itself, arising from and consolidating the impasse over academic selection.

A more effective mechanism for minority protection would be, as already mentioned, the enactment of a Northern Ireland Bill of Rights, which would replace the ‘petition of concern’. This has been stymied by the failure to agree on the communalist notion of ‘parity of esteem’. In fact, all minority rights conventions, notably the Council of Europe Framework Convention for the Protection of National Minorities and the Charter for Regional or Minority Languages, which could readily be incorporated into a Bill of Rights justiciable through the Northern Ireland

courts, recognise the individual as the subject of all human rights, including when they deem themselves to be 'persons belonging to' minority communities—a recognition of the risk of unwittingly entrenching stereotyped communal conceptions of the Self and Other.

Alternative or additional protection could be provided by a requirement for a super-majority vote in the assembly. This, however, should be confined to issues of strategic significance, so that the procedure could not be abused in an opportunistic manner as indicated. It should therefore be restricted to the appointment of an executive after an election and the agreement of the Programme for Government, which—as in fact stipulated in the Belfast agreement—should once more be subject to annual iteration.

The timescale for these changes would be similar to that identified in the preceding section, requiring again Westminster legislation. To ensure the delay over a Bill of Rights is finally brought to an end, it should simply incorporate the two conventions referred to above—which are otherwise non-justiciable—thereby providing a suite of protections allied to the incorporation of the European Convention of Human Rights in 1998.

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.

Platform for Change has been to the forefront of discussion of the issue of an opposition in the assembly. This issue can only be properly understood, however, in the context of the proposed change in the arrangements for executive formation—otherwise it becomes (mis-)conceived through the prism of the ‘Westminster model’.

If the executive is to be formed by agreement between the parties comprising it, arising from the results of an assembly election, it follows that not all major parties may join that executive and one or more may elect instead to join minor parties as non-governing parties in the assembly. Their roles in that context should be to bring the executive to account and, at the next election, make the case for their unique programmatic contribution to a transformed governing coalition.

In that sense, the practice in Scotland and Wales is closer to that elsewhere in Europe—including, of course, the Republic of Ireland—where coalition government is the norm and there is not a winner-takes-all political culture. The key problem at the moment is that, with all main parties in government, there is no significant party to represent alternative perspectives in the assembly—an ‘opposition’ role often assumed by default by the *Belfast Telegraph*. Moreover, the committees do not play properly their day-to-day scrutiny role, because every committee has, in effect, an overwhelming government majority.

Were the changes advocated in the two preceding sections to be introduced, those parties not joining an executive after an election would, *de facto*, become the non-governing parties. Once government formation is transformed and communal designation replaced, in other words, the question of an opposition resolves itself.

It should also be stressed that OFMDFM is currently failing in its statutory duty to ensure there is a Civic Forum which can act as a critical friend to the assembly and executive while engaging civic society. This should be reconstructed on the simple formula envisaged in the Belfast agreement of social partnership, rather than the baroque construction with 11 sectors

and several sub-sectors of the largest sector (the voluntary sector) which the unworkable version of the forum constituted under the earlier period of devolution comprised.

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 same principle should apply to each of these subsidiary questions. Parties should be publicly resourced according to their assembly strength. Abolition of the role of special adviser, which has blurred the boundary between the partisan (the party) and the impartial (public authority) and had damaging effects on the civil service at senior level would make this a fair arrangement.

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 current arrangement for the proportionate distribution of committee positions should be retained.

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.

Time in the assembly should also be allocated in proportion to party strength.

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.

The platform launched in 2010 by Platform for Change, with the support of hundreds of signatories, began:

It is time for a step change in the politics of Northern Ireland, to realise the overwhelming ambition of its citizens to live in a normal society. This is a modest, and entirely realistic, ambition.

There is a deep yearning to put behind us not just the large-scale violence of the past but also the deep sectarian divisions, intolerance and introversion which still bedevil this society. These prevent us moving forward to a future marked by reconciliation, greater social comfort and the dynamism which our young people expect.

While the Good Friday agreement raised deeply felt hopes that a new future lay ahead, disillusionment has grown in subsequent years, with the post-agreement institutions as often in abeyance as in operation. Commitment to the common good has repeatedly been trumped by a partisan political agenda, frustrating widely shared aspirations for the focus to shift to day-to-day economic and social concerns. Most pressing among these, the political impasse over academic selection has displayed a cavalier attitude to the concerns of parents, teachers and children.

Objectively, the devolved government has been under-performing. The 2008 Programme for Government initiated no significant new policies. Indeed, strategic policies inherited from direct rule were abandoned amid ideological resistance (sustainable development), shelved without any capacity to generate a replacement (*A Shared Future*) or quietly adopted for lack of an alternative (the anti-poverty strategy). Nor has the programme been annually revised as envisaged in the Belfast agreement, despite the dramatic change in external conditions manifested in the global economic crisis.

Most assembly business has been coming from members themselves, rather than bills proposed by the executive, giving Stormont the air of a debating society. In the absence of significant outcomes on the ground, public engagement and electoral participation, critical to a democratic society, have been falling. And it is fundamentally demeaning to suggest that an absence of politically-motivated violence—indeed, amid political polarisation, violence has been showing a worrying re-emergence—should be the summit of our aspirations for a good life.

Political power must be genuinely shared, not shared out. This requires collective responsibility in government and a commitment to working in a collaborative way to resolving problems which for ordinary citizens cut across the departmental silos. It was intolerable, for example, that there was no single emergency line for distressed householders to ring during the floods of August 2008.

There must be a serious debate about how to make the institutions of governance more flexible, so that they are less fragile. Deadlocking vetoes must be replaced by incentives to conciliation: it was simply unacceptable that the executive should fail to meet for five months

in 2008 as rising unemployment and spiralling fuel prices cried out for an effective, collective response. And electors deserve the right to choice between alternative, cross-communal coalition options.

In such a context, the debate on a bill of rights, which lacks any current definition, can focus as it should on providing safeguards against majoritarian abuse of power, without requiring MLAs to 'designate' in Orange or Green terms. Otherwise the long-term future will be the entrenchment of sectarian division, against the backdrop of a Europe which for two decades has been removing its dividing lines.

It will be clear from this that Platform for Change, like the committee, sees these three questions as interrelated. More, however, we would see them as symptoms of a more profound governance deficit, as it is evident that the arrangements inherited from 1998, exacerbated by the St Andrews agreement of 2006, have significant flaws. They are failing to incentivise democratic behaviours, notably vis-à-vis electoral participation (plummeting worryingly), deliberative dialogue and executive effectiveness.

It is time for a change towards more flexible and fit-for-purpose arrangements, without throwing out the baby of power-sharing and equality of citizenship with the bathwater of departmental autonomy and mutual vetoes. Rethinking the future of politics in Northern Ireland as about European-style, shifting, cross-sectarian coalitions, resulting from electoral choices—as against the outdated, winner-takes-all, 'Westminster model' or its almost extinct, 'consociationalist' alter ego—is essential if the citizens of the region are ever to enjoy normal political life in a reconciled society.