



Northern Ireland
Assembly

Assembly and Executive Review Committee

Stakeholder ‘Call for Evidence’ Paper on Review of D’Hondt;
Community Designation and Provisions for Opposition

| Section 1 | | | |
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| <u>Stakeholder Details</u> | | | |
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| Please provide some background information on your role as a stakeholder | | | |
| <p>In my capacity of Professor of Comparative Politics at QUB, I research on political institutions and practices, with specific interest in political representation of women. More recently I have extended my research agenda to encompass the consequences of devolution across the UK and legislative reform more generally. I was a member of the 5-person independent McKay Commission that sought to address ‘the consequences of devolution for the House of Commons’. Our report is available at http://tmc.independent.gov.uk/, and our core recommendation was that the Legislative Consent Motion principle and practice be applied to bills the UK Government wishes to introduce that have a separate and distinct effect in England.</p> <p>I am involved in public and political discussions on constitutional reform in the UK and Ireland, including the UK’s Changing Union project (http://ukchangingunion.org.uk) and the Constitutional Convention (www.constitution.ie/convention.aspx).</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 system used for the allocation of Executive office positions and Assembly Chairs and Deputy Chairs is in keeping with the principles of inclusivity and power-sharing enshrined in the 1998 Agreement, the St Andrews Agreement, and provided for in the NI Act 1998. It has operated effectively to secure proportional power-sharing and distribution of Committee lead positions. It is an accepted formula for distributing such positions, and so changing from it should only be considered if there is consensus to do so, and if there is a more fair and inclusive formulation available.

Re allocation of Ministerial positions: D'Hondt facilitates the formation of an Executive based on consociational principles, that is government representing significant parties, with cross-community inclusion and the main strands of political opinion. The advantage of d'Hondt is that it allows for a transparent, fair and accepted mechanism for the allocation of ministerial posts in a consociational Executive. It also keeps the link between voter support and party distribution of portfolios. This transparency builds public confidence in the Executive, enabling it to govern with authority and legitimacy.

The NI Act sets a test, as well as a principle, that NI Executives have to meet: that of inclusivity and power-sharing. d'Hondt is a **mechanism** for enabling that test to be met. In this regard, it has served well, as the significant parties are included in the Executive, representing a balance of views among the electorate. The alternative to the d'Hondt allocation of ministerial posts in the Executive is the St. Lague method, that is generally known to be kinder to smaller parties. However, I concur with previous evidence offered to the Committee by Professor O'Leary and others that in a 10-person executive, both D'Hondt and St Lague can deliver an inclusive and proportional outcome, whereas in a reduced executive,

there is a significant risk that 'others' will be excluded: thus in a smaller executive, there is no guarantee that either method will enable parties to meet the inclusivity and power-sharing test. D'Hondt is at its most effective in enabling government formation when the number of posts to be distributed among the parties is sufficient for all significant parties to be represented in the Executive. Should there be a move to reduce the size of the Executive – in terms of members as well as Departments - it would call for careful consideration of how to facilitate inclusion and power-sharing in a manner proportional to the electoral result.

One could reduce the number of Departments, but keep the same number of ministers, though some would be junior ministers and therefore not permanent members of the Executive. Thus, D'Hondt could operate in a similar manner as it does at present, in determining the selection of all ministerial roles.

In regard to Committee Chairs and Deputy Chairs, it makes sense to retain the D'Hondt mechanism for their selection also. Again, the transparency point comes into play, as does the test of inclusivity and powersharing. The fact that statutory committee Chairs and Deputy Chairs are drawn from MLAs that do not belong to the party holding a ministry is a strong reinforcement of the powersharing and inclusive nature of the political arrangements, and D'Hondt is an appropriate means for distributing those positions. In addition, the confidence built up in D'hondt mechanism is an important factor in the behind-scenes negotiations that take place between parties: D'Hondt 'decides' the numerical allocation, leaving parties free to negotiate the distribution of the substantive posts.

A reduction in the size of Departments at Executive level would entail a reduction in the number of statutory committees in the Assembly, with the risk of building a distortion into the system whereby 'others' were excluded from consociational arrangements. Again, the implications of change need careful thought. I am not convinced that another form of proportionality would have the same widespread acceptance among politicians and the public as D'hondt enjoys. Nor am I convinced that an alternative such as St Lague, while being potentially kinder to smaller parties, would be able to operate in this manner with a reduced Executive and Committees.

One development that could affect the above is the formation of an 'opposition' in the Assembly. Should an opposition emerge, either by design or default, then the allocation of committee chairs and deputy chairs would have to take this development into account. The d'Hondt system could still work in this scenario, provided parties were willing to adopt a flexible approach to its application to Chair/Deputy chair positions, for example recognising an 'alliance' of small party representatives and independents for these purposes. In particular, the Public Accounts Committee is one where convention followed elsewhere dictates that the chair and deputy chair positions are held by representatives from non-governing parties.

Consociational politics is predicated on inclusion and power-sharing, as noted above. The focus in this regard is generally placed on proportional **party** balance. What is generally overlooked is proportional **gender** balance in portfolio/Committee chair or deputy chair allocation. In this respect, D'Hondt acts purely as a mechanism, the outcome of which reflects the gendered nature of party politics.

At present, women comprise 4 of 15 Ministers (including junior ministers), holding 27% of ministerial portfolios. In terms of Committee positions, women hold 4 Chair positions of 19 (21%), but none of the 18 Deputy Chair positions. Yet there are 20 women elected to the

Assembly, comprising 19% of its MLAs. Taking all of these roles into account, 48 or 55% of all of the men elected to the Assembly hold authoritative positions, while 8 or 40% of women do so. To bring women's responsibility-holding up to the level of men's would require 3 additional women appointed to such roles.

I draw this to the Committee's attention in the context of discussions regarding a reduction of the size of the Executive and Assembly. It is known that when a political forum is reduced in size, women's representation within that forum suffers as the competition for post-holding becomes more intense. D'Hondt will not necessarily affect this, but politics will. In the spirit of inclusion and power-sharing as provided for in the Agreement, the gender share of positions of authority in the Assembly and Executive also needs to be taken into account in any reforms.

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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.

Community designation is a mechanism designed to support consociational decision-making. It operates in tandem with cross-community support for enumerated key decisions taken in the Assembly, specified in the NI Act 1998 and listed in the Briefing Paper (p. 17). The discussion on community designation is divided on whether it is a “good thing” (as it accommodates competing nationalist identities) or a “bad thing” (as it perpetuates ethnic divisions and reduces the influence of those designating as ‘other’). There is a risk in changing the designation rules of moving from a community veto to a party veto, which would undermine the intention behind this consociational device. I do not have the insight to come down on one or other side of this debate. I will observe, though, that as Northern Ireland evolves as a political entity in its own right, the rigidity - and inbuilt assurance - of community designation may require revisiting.

Petitions of Concern provide a mechanism for 30 MLAs to express their concern about a matter before the Assembly, and subject it to cross-community consent requirements. The intention behind Petitions of Concern was to alert the Assembly to upcoming decisions that had a bearing on significant community-specific interests. Given the role of community designation and cross-community voting in determining the outcome of **key decisions**, the question then arises as to the nature of Petitions of Concern – in other words, how key are the issues that invoke a Petition of Concern? There is some disagreement as to the extent to which the practice of employing Petitions of Concern has conformed to the underpinning intention of the provision. There is merit in designing a mechanism, either through Standing Orders or by means of a determination of the Speaker (on advice), whereby the use of Petitions of Concern is more regulated and the content conforms to an agreed understanding of what constitutes a ‘key decision’. This is one aspect of the functioning of the Assembly where reform could enhance public confidence in the legislature, as it would be seen to prevent use of the Petition of Concern mechanism for ethno-national advantage.

More generally, some of the changes above and in the previous section involve significant modifications to the Agreements on which the institutional arrangements are based. Thus, any proposed changes to the operation of the Assembly and Executive in respect of the matters above would require extensive political and public debate, in a transparent deliberative process.

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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.

Consociational arrangements inevitably involve a politics of opposition that is different to the opposition found in classical Westminster-style democracies. This is the case in Northern Ireland as in other countries where consociationalism is used to politically manage deep differences. As the politics of conflict management has been the focus in Northern Ireland, the politics of opposition has had less attention until now.

The crux of the matter is – what is opposition for, when the government is composed of representatives from the significant parties? Clearly the traditional form of opposition does not sit easily in this context, and so the model of opposition as the ‘government in waiting’ does not readily apply. However, this is not the only function of an opposition, and it is in the other aspects of opposition politics – holding the Executive to account, scrutinising proposed legislation, and bringing issues of the day into the Assembly for debate – that non-Executive MLAs can exercise their democratic powers.

The Committee system supports these roles, especially that of legislative scrutiny and Executive accountability. In particular, the arrangements by which statutory Committee chairs and deputy chairs are from different parties to that of the Executive ministers enable a robust scrutiny of the policy decisions of each Executive Department. In this regard, the UUP and SDLP in particular have provided a robust ‘opposition’. Indeed, such is the extent of these parties engagement in these legislative roles that there is some support in both parties for a move to a more formal opposition role in the Assembly.

A shift of this kind would involve the Executive minister/s from either, or both, parties resigning. Or, if it were to follow on from the 2015 elections, then the party seeking to form an opposition would not take up its share of Executive portfolios. This is permitted under d’Hondt and the rules of government formation.

The question is, though, would parties be politically better off in following this course as distinct from retaining the strong informal oppositional function in the Assembly they enjoy under present arrangements? The main gain in a move of this kind would be to set up a potential

'alternative government'. Realistically, though, the chances are slim of one or more opposition parties being able to form a viable alternative government under consociational power-sharing rules. This is assuming that it is the (at present) smaller parties would form an 'official' opposition as distinct from the 'loyal' opposition they provide at present.

This formal opposition would have implications for the Executive, pushing it towards collective cabinet responsibility. It would take time for Executive parties to adopt this convention, though that could happen over time.

Under formal opposition arrangements, the non-Executive parties could not expect to hold any more chair and deputy chair positions than the current distribution. This is because the d'Hondt mechanism for the allocation of chair/deputy chairs of committees is likely to continue, and should a party choose not to take up its share of Executive positions, it would not lose out (nor would it gain) in Committee role allocations. It could be argued, then, that the sacrifice of one or more ministerial portfolios by going into opposition would be greater than the gain of formal oppositional politics. Indeed as matters stand, Executive parties have a dual advantage of being in government and also being in a position to scrutinise the government.

Perhaps a way forward is to incentivise oppositional behaviour through allocating Assembly speaking time to non-Executive parties or party groups (in the case of smaller parties and independents). Rules would need to be devised under which a group of non-Executive MLAs would be recognised for the purposes of speaking time, questions to ministers and other holding to account functions. These rules could be based on those that determine party speaking order, and applied to a party or grouping of parties and independents. In the case of a group other than one of the five substantive parties, the group would manage its own distribution of the time and any other parliamentary resources allocated to it (such as additional research assistance). This modest move could be considered for the 2015-19 parliamentary term, if it obtained cross-party consensus.

Another pragmatic way forward would be to enhance the research capacities of all MLAs so that they can build on their policy expertise in specific areas, and contribute to legislation as well as carrying out their constituency representative functions. There are a range of major policy challenges with an impact on the daily lives of citizens in Northern Ireland – economic, fiscal, ecological (to name but a few) – that MLAs are expected to address. Enhancing their research support capacities would aid them in this task. This initiative alone would do much to strengthen the accountability and effectiveness of the Executive in governing Northern Ireland.

A third consideration is enabling Committees to undertake inquiries of a wider or far-reaching nature than they currently do. Enhancing the powers of Committees in this way would provide a powerful scrutiny of major political issues of concern, contributing significantly to policy development. This would have resource implications, though these would not be on a recurring basis. An initiative of this kind would also complement any moves to enhance research capacities of individual MLAs.

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.

If there was consensus on introducing a formal opposition, then this move would require appropriate funding, which the ISRP could draw up. There are standard models on which to draw, including allowances for the Leader of the Opposition. The Research paper by McCaffrey and Moore provides an overview of these models.

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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.

Formal oppositions in Westminster-type legislatures do not control the Chair/Deputy Chair positions of committees. Indeed, the practice is for governments to retain control of Committees for the purposes of passing government legislation. Thus, in a hypothetical full-blown government-opposition scenario in the case of Northern Ireland, this could mean that the smaller parties lose out on their existing Committee allocation of chair/deputy chair positions. This would run counter to the principles of inclusivity and power-sharing in the Belfast agreement and would be a radical change from the current arrangements. To facilitate the emergence of a formal opposition, should that be the route followed, then in order to maintain inclusivity the use of d'Hondt in the allocation of Committee roles should be considered.

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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.

It is reasonable to expect an opposition comprising non-executive parties and party groups to be given additional time to raise and debate non-Executive business. Opposition spokespersons should have priority at Ministerial Question Time and in responding to Ministerial Statements. The order of priority would be determined by the size of the party, or party grouping, represented by these MLAs. Furthermore, the current arrangements providing time and speaking rights for non-Executive parties on non-Executive matters would need to be reconsidered in the light of any new arrangements.

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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.

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