

## **NI Assembly and Executive Review Committee**

### **Designations of the appointment of the First Minister and deputy First Minister**

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#### **1. 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)**

The community designation for members of the NI Assembly ('nationalist', 'unionist' or 'other') was a key part of the institutional rules agreed in the 1998 Agreement. Essentially, the community designation was designed to help facilitate the provision of a veto mechanism, whereby the two main blocs could prevent the passage of legislation they might perceive as contravening their communal interests. Community designation was designed to facilitate mutual veto procedures over communally sensitive matters through mechanisms of parallel consent or weighted majority voting.

Much criticism of the designation requirement relates to the overuse (arguably abuse) of the Petition of Concern (subsequently addressed in *New Decade, New Approach* (2020), requiring the support of at least two parties). A key critique of community designation in the Assembly focuses on the exclusion of MLAs who choose to designate as 'other.' A central point of this critique is that given that MLAs who designate as 'other' are not taken into account in cross-community voting procedures. The rule sends a negative message to the wider electorate that voting for these parties would lead to representatives with disproportionate power in the legislature. In terms of the principle of political equality, this is difficult for voters of the so-called (and evidently growing) 'middle' who reject the binary distinction between unionists and nationalists. Indeed, it has long been recognised that the community designation requirement places parties and MLAs who choose to designate as 'other' in a disadvantaged, difficult position. They may well feel that their votes in the Assembly are less valuable, and their role is less valued, than peers designating as nationalist or unionist.

The question of designation and voting arrangements in the Assembly has been around for some time. There have been suggestions at various points, put forward by academics and parties, that the designations required should be replaced with a qualified majority requirement (such as a two-thirds weighted majority). For example, the late Professor Rick Wilford, in his evidence to the Committee in 2013, considered that the community designation rule 'may be a way of entrenching difference within the Assembly and that there may be a case for moving towards a weighted majority provision instead of the test of power of consent or weighted majority as they currently exist.' Certainly, there is a view that 'designation copper-fastens or underwrites difference, and some would argue that it entrenches sectarian thinking in the Assembly.' It is for these reasons, and perhaps others, that the Alliance Party are critical of community designation. Should the 'middle ground'

(reported as around 20 per cent of the electorate) continue to grow, community designation may become more of an issue. Other parties have, at times, mooted the possibility of moving to a weighted majority voting procedure (for example, the DUP at the time of the Review of the Agreement talks in 2004 and in its document *Devolution Now*).

What are the potential benefits to changing the voting procedure rule from community designation to weighted majority? Rick Wilford, in his evidence to the Review Committee back in 2013: 'if you move to a weighted majority, provided it is pitched at a sufficiently high level, you can secure the end that community designation currently provides...and that might, at least, loosen the perception that the Assembly is simply an assemblage of distinctively different communities.'

It is worth returning to the point that the veto rights in the 1998 Agreement were intended to provide protection/safeguards for the two main blocs. At the time, they were conceived to protect nationalists from unionist dominance and, should electoral shares change, protect a potential future unionist minority. Should these forms of communal protection be revised, i.e. scrapping community designations for weighted majorities, the main political parties would arguably need to feel secure that safeguards remain in place. Questions arise about how justifications for the change would play into political party electioneering. Additionally, weighted majorities offer an arguably riskier, or weaker, form of communal protection given that they will be subject to shifting political fortunes at elections. The arithmetic would become a hot political potato – discerning the potential myriad ways in which a two-thirds majority could be reached. As it stands, is there a danger that one bloc could carry a two-thirds majority? And even if not quite, is this a prospect that would concern parties and simply shift the focus of contention from community designation to the arithmetic of the configuration of two-thirds?

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

The St Andrews Agreement 2006 revised the joint election of the two joint premiers to a straightforward nomination rather than a cross-community vote. The proposed rule was to allow for the largest political party of the largest designation to nominate the First Minister; and the largest political party of the second largest designation to nominate the deputy First Minister. A subsequent change, however, meant that the largest party would take the First Minister position and the deputy First Minister position would go to the largest party in the next largest designation.

The change to the rule meant that unionists and nationalists would not have to vote for one another's nominees or veto them (perhaps a politically expedient decision given the drive to end a prolonged period of suspension 2002-2007). However, several issues have arisen in recent years as we see the outworkings of the revised rules for appointing the First Minister and deputy First Minister. As we see from recent Assembly elections, the discourse of election campaigning becomes something of a plebiscite on which party will become the largest

(trumping the FM role). The 2017 Assembly demonstrate the close nature of the election results (DUP on 28 seats, Sinn Fein on 27 seats). Some controversy has arisen as the deputy First Minister position must go to the largest designation next in line after the designation of the First Minister. As we have seen more recently (2019 European Parliament election, 2019 General Election, 2019 local elections), Alliance has demonstrated an increase in electoral support and its potential to become a contender as one of the largest parties in the Assembly. However, under the present rules, Alliance will be unable to attain the deputy First Minister post. There is a legitimate need, then, to address whether the rules disadvantage any one political party and stymie the principle of political equity.

Over the experience of the Northern Ireland institutions, there have been several calls for the rules to be changed from designation-based nominations to voluntary post-electoral bargaining and government formation (including the top two posts) confirmed via a weighted majority. Creating a coalition as the outcome of post-election negotiation and subject to a vote in the legislature would conform more closely to more 'normal' coalition governments across Europe. Much of this criticism comes from the view of the NI Executive as a 'mandatory' or 'enforced' power-sharing government. In Northern Ireland (as with other cross-community power-sharing systems), leaving government formation entirely up to post-electoral bargaining (without communal protection/guarantees) is likely to be exclusionary and potentially problematic. It is also likely to be difficult to achieve agreement among the political parties to change the rules in this way. It is worth noting, however, that the d'Hondt rules for executive formation provide for a largely inclusive and voluntary executive as parties can opt to exclude themselves from the cabinet. Government formation under the d'Hondt mechanism (as a sequential portfolio allocation method) enables proportionality, inclusivity and automaticity and incentivizes parties to take their posts. Under d'Hondt, there is no requirement for a vote of approval/confidence required by the Assembly as we would see in other legislatures. Arguably, the absence of a vote misses an opportunity for the demonstration of partnership and consensus.

In relation to the top two joint posts, a key part of the institutional framework of the 1998 Agreement is for a power-sharing executive to be headed by a dual ministerial arrangement, a 'diarchy.' In the negotiations leading up to the Agreement, it was important for the then largest nationalist party the SDLP to have full executive power-sharing and equal participation in government. The party had been keen to ensure that the executive would have two positions at the centre to cement the binational/accommodationist nature of the political system. The institution of joint premiers can thus be seen as a creative solution in reaching a power-sharing settlement. It was designed to tie together representatives/moderates of the two main blocs in a demonstration of 'jointness' at the heart of the Agreement.

Some issues have arisen over time concerning the titles of the two joint premiers. A major issue is that the deputy position is seen as second-in-command to the First Minister. Arguably, it is not clear to the public (and the media) that the offices are identical in powers and function. Moreover, the experience of the Assembly shows that the institution of the dual premiership has been subject to considerable instability, particularly around resignations given the interdependence of the two positions.

Arguably, the 'jointness' and partnership at the heart of the 1998 Agreement could be enhanced by addressing some of the issues regarding the titles of the top two posts. Some parties have been more vocal than others, e.g. the Alliance proposal to rename the First Minister and deputy First Minister positions as 'Joint First Ministers.' It does appear legitimate and potentially meaningful to do away with 'deputy' in the title of one position in the dual premiership. Changing 'First Minister' to another title (such as Chief Minister, Premier, Head of Cabinet/Executive/Government) is unlikely to garner support given the familiarity and now custom of using the former in the UK's devolution arrangements.