

Submission of written evidence to the Northern Ireland Assembly and Executive Review Committee Professor Jon Tonge, Department of Politics, University of Liverpool, j.tonge@liverpool.ac.uk

This is a submission to the Assembly and Executive Review Committee (AERC) regarding *Designations and the appointment of the First Minister and deputy First Minister* on the following subjects, as outlined in the invitation to submit letter sent by the Committee on 1 December 2021, which required views on the following:

- a) *Scoping the removal of the designation 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).*
- b) *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.*

My response is as follows:

On a) Designation requirements

Background

- i) Communal designations have been operationalised in the Northern Ireland Assembly since its creation. At the last election 87% of seats were won by unionist or nationalist candidates. Non-unionist and non-nationalist candidates won 13% of first-preference votes and assembly seats.
- ii) The 2019 Economic and Social Research Council University of Liverpool Northern Ireland general election study showed majorities in each community (with sizeable numbers of 'don't knows') believed that that legislation should require support from majorities in each (55% overall, with only 7% dissenting).
- iii) On the basis of paragraph ii) it does not appear from this evidence at least that the public is demanding the dissolution of communal designations.
- iv) However, current designation requirements may reify existing binary divisions and need not be routine. 81% of Assembly votes have been taken by simple majority since 1999. 18% of decisions which have required cross-community consent. A further 1% have required parallel consent.

Proposals

1. Consider the removal of communal designations upon entry to the Assembly. Replace with a qualified majority of 60% of all MLAs present and voting to pass legislation currently subject to cross-community requirements.
2. Alternatively, retain communal designations only for specified items of legislation. Confine retention to legislative passages where prior adoption of communal designations for voting purposes is requested by at least 35% of MLAs.
3. In instances of item 2, MLAs would be required to designate as unionist, nationalist or other but those designations would pertain only to specific votes within the passage of a Bill.
4. Prior to the removal of communal designations as recommended in paragraph 1, the current 40% threshold for communal support where cross-community voting is required could be lowered to 35%.
5. Assuming communal designations are retained, extend the requirements for petitions of concern beyond two parties which can be from the same designation to two parties which must be from different designations.
6. Should an official opposition be formed, as outlined in New Decade New Approach, its development should be encouraged by i) affording opportunities to introduce Bills and b) allowing only simple majority voting on such Bills.

On b) appointing the FM and DFM

Background

- a) I note the recent passage of the Northern Ireland (Elections, Ministers and Petitions of Concern) Bill. Previously, the UK government circumvented the previous supposed 14-day deadline for nominations for First and Deputy First Minister. There were no such nominations between the last Assembly election, on March 2nd 2017 and the restoration of devolution on January 11th 2020. That was 58 sets of 14 days with no election. Successive Secretaries of State passed legislation to facilitate postponement. As such, the recent Bill codifies an informal arrangement.
- b) The recent legislation extends the period for the nomination of FM and DFM to up to 24 weeks. During those weeks, Executive ministers may remain in post. This extends to up to 48 weeks if the First or Deputy First Minister step down between elections.
- c) The risk of such 'solutions' is of unintended consequences: they keep in place a 'zombie government' of 'caretaker ministers' (the term 'caretaker ministers' is used in New Decade New Approach). It is unclear what powers caretaker ministers will possess. New Decade New Approach says decisions must be taken as set out in the

ministerial code, with an Executive Committee to consider any decisions that are 'significant and controversial or cross-cutting'. We need to know whether these ministers are individual post-holders or remain part of an Executive Committee.

Proposals

1. Formally re-title the First and Deputy First Ministers as Joint First Ministers, to be nominated in turn by the two largest parties in the Assembly. This will reflect accurately their actual status.
2. Make bloc designation immaterial in the filling of the Deputy First Minister post.
3. Consider longer-term, if communal bloc designations are abolished, the removal of the Deputy First Minister post altogether.

OR

4. If the non-unionist, non-nationalist bloc ('others') increases its number of seats and communal designations are retained, consider appointing a third Co-First Minister, drawn from that bloc, to create power-sharing between unionists, nationalists and others at the head of government.
5. Assuming communal designations are retained and the titles of FM and DFM likewise, then, if the largest Assembly party (in terms of seats) declines to nominate a First Minister, the next largest party should be entitled to nominate for the post, irrespective of designation. Following such a nomination, the next largest party should nominate for the DFM post. If unwilling, the right should transfer to the next largest party until a nomination is received.
6. To ensure that the posts are not filled with nominations from the same bloc to the dissatisfaction of other communal designations, both the FM and DFM nominations should require 50%+1 ratification via an Assembly vote.