



Northern Ireland
Assembly

Assembly and Executive Review Committee

OFFICIAL REPORT (Hansard)

Opposition, Community Designation, d'Hondt:
Research Briefing

4 December 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Stephen Moutray (Chairperson)

Mr Roy Beggs

Mr Gregory Campbell

Mr Stewart Dickson

Mr Simon Hamilton

Mr John McCallister

Mr Raymond McCartney

Mr Conall McDevitt

Also in attendance:

Mr Ray McCaffrey

Northern Ireland Assembly Research and Library Service

The Chairperson: You are very welcome, Ray. If you want to brief the Committee on the paper, feel free to go ahead.

Mr Ray McCaffrey (Northern Ireland Assembly Research and Library Service): Thank you, Chair. We were asked to look at the issues that you have just received legal advice on, but we will not be touching on any of the legal aspects. We are just going to draw on some information on how oppositions operate elsewhere and, hopefully, give the Committee some options to consider as it takes the review forward.

I think, generally, when people talk about opposition, and the possibility of creating an opposition in the Assembly, the model that is often cited is the traditional Westminster model. It is probably the most well-known model of institutionalised opposition, and it is the model against which the Assembly is most frequently compared. However, I think — just to place it in a bit of a wider context — that these institutions were created and were designed to address a particular set of circumstances and to accommodate competing political views in what could be classed as a deeply divided society. The term most frequently associated with this is “consociationalism”, and that is the model that the Assembly operates within. Therefore, any consideration of the establishment of an opposition must recognise that framework, which underpins the workings of the Assembly and the Executive. Opposition has not really been widely studied within consociational models, but there are certain hypotheses that apply.

If members turn to page 3 of the research paper, there are a number of bullet points. Probably, to varying degrees, they apply in one way or another to the Assembly. The first one states:

“In order to facilitate cooperation and accommodation, governments will tend to include all or most of the pillar parties”

or the main parties. The second point states:

“parliamentary opposition tends to be small in size”.

The third point — again, this is probably where you get into debating the pros and cons of these — states:

“elections will tend to be only mildly competitive as, ...citizens will not vote for a party not representing their own”

community. You could debate whether that is changing. Towards the bottom of page 3, it states:

“in spite of such hypotheses, some commentators maintain that ‘Nothing about consociation...precludes parliamentary opposition”

and have argued:

“Mechanisms for rigorous accountability exist. Ministers face an Assembly Committee in their jurisdiction headed by a representative of another party.”

The same research has argued:

“the d’Hondt mechanism ensures that not every party is in the executive, so there are automatically some opposition backbenchers and it is up to parties to choose to be in government or in opposition...or to play both sides of the track...and be rewarded or punished by voters accordingly”.

I wanted to give a bit of an overview of the context within which the Assembly operates. I will turn to the three issues in question. In formal opposition — that is most usually understood in terms of Westminster, the official Opposition currently being the Labour Party — provision is made in Standing Orders for the leader of the Opposition:

“the current Official Opposition is the Labour Party (which forms the Shadow Cabinet)”.

It then lists the other opposition parties, which include the parties from Northern Ireland. In the devolved institutions, opposition is not a term that is widely used, it would appear, in official documents relating to the Scottish Parliament and the National Assembly for Wales. The preferred term seems to be non-government or non-Executive parties. It could be that this was a deliberate decision, when those institutions were set up, to avoid using, as it were, the language of Westminster.

On page 5, we get into how you accommodate non-Executive or opposition parties. Usually, certainly in the UK and Ireland legislatures, the role of opposition parties would largely be outlined in Standing Orders, rather than legislation, although, of course, separate legislation does exist regarding the funding of political parties to carry out their functions. Just to step outside the UK and Ireland, the South African Constitution provides an example where there is recognition of the leader of the largest opposition party, and this is subsequently given effect in Standing Orders. So it is really about where you see the role of opposition on the spectrum. Is it just parties not taking their seats in the Executive or do you want to go all the way to enshrining the role in legislation?

You have already heard legal advice on the provision of financial assistance to opposition. It is usually the case that financial assistance is provided to non-government or non-Executive parties. We can see this in the Scottish Parliament, the National Assembly for Wales, the House of Commons and Dáil Éireann. The paper from pages 5 to 8 sets out some of the details of the payments available to the parties. It is probably not necessary to go through each one at the moment.

I will skip ahead to “Composition of Committees” on page 8. It has been argued that the Committees in the Northern Ireland Assembly actually provide, or are there to provide, an effective means of opposition, given that the party to which the Minister belongs cannot be the same party to which the Chair of the Committee belongs. As far as we can tell, that appears to be fairly unique to the Northern Ireland Assembly, at least within the context of the UK and Ireland. Therefore, it could be argued that that is already a safeguard to enhance the role of an opposition. Again, membership of Committees in the House of Commons, the Scottish Parliament and the National Assembly for Wales is usually

decided on a roughly proportional basis. The Government probably tend to dominate when it comes to House of Commons Committees. Furthermore, the allocation of Conveners or Chairpersons in the Scottish Parliament is undertaken using the d'Hondt method, and in the National Assembly for Wales, there is recourse to the d'Hondt formula if membership cannot initially be agreed, although it usually is.

Page 10 refers to "Parliamentary/Assembly time". Again, the key point here is that Standing Orders usually allow time for opposition parties to bring forward business, which is what you would expect in any model of opposition. The only thing to highlight is in Dáil Éireann, which has taken forward a reasonably recent innovation, which is:

"On the first Friday of each month the Dáil sits to consider legislation introduced by any member of the Dáil except for a Minister or Minister of State."

Essentially, it is an opposition day, which gives non-Executive parties the chance to discuss legislation.

Pages 13 and 14 describe the process of "Community designation". Again, you have heard legal advice on that. Really, the issue that we would highlight is that there is, of course, disagreement on the use of community designation in principle. It has been said that it serves to entrench communalist politics. On the other hand, advocates of consociationalism would say that the divisions already existed, and they are just legislating to try to accommodate them. If you turn to page 15, towards the bottom, the paragraph beginning:

"addressing these consequences in the operation of the Assembly some commentators have argued that:

In effect, there are two orders of Assembly members: in relation to key decisions there are those whose votes always "count" and those whose votes never do so".

On page 16, however, there is a counterpoint to this argument:

"In fact, the votes of others always count — they count towards the majority...threshold".

The second indented paragraph states:

"Perhaps what critics...really mean to say is that the votes of designated unionists and nationalists are more decisive than the votes of designated others".

The final indented paragraph states:

"However, on a cross-community vote, the votes of designated unionists and nationalists are more likely than the votes of others to have a determinative effect on the outcome".

So, again, there is disagreement on the application of community designation.

Turning to page 17, it is useful to highlight the issue of Petitions of Concern because we can really see that this is where cross-community voting comes into play. In the 2011-15 mandate to date, nine Petitions of Concern have been tabled — six unionist and three nationalist. In the previous mandate, there were 33 Petitions of Concern — 20 unionist and 13 Nationalist. There is more information available on that in Appendix 2. Petitions of Concern require 30 members as signatories, and since 2007, the DUP has had the required numbers to present Petitions of Concern without the support of other parties or Independents. I think that the DUP has actually had the numbers since 2003, but the Assembly did not — *[Inaudible.]* Page 18 refers to the arguments for replacing community designation with the weighted-majority voting system, where rather than have nationalist and unionist quotas, the support of 60% or, perhaps, 66% of all members would be required. We thought it would be useful to look for other examples of community designation. Belgium would appear to provide such an example:

"At the national level in Belgium, in response to Francophones' fear that they might be outvoted and dominated politically by the Flemish majority, Belgium has put in place a variety of institutional mechanisms that prevent Flemish domination through majority rule."

Therefore:

“As part of the consociational arrangement, the Belgian Parliament is divided into a French-speaking group and Dutch-speaking group.”

So, they are designated, but it is restricted to legislation rather than motions and it is known as the “alarm bell” procedure. I will just dwell on it very briefly. Page 19 refers:

“When the parliamentary language groups had a role to play, the constitution required a concurrent majority of votes in each language group of each house”.

That is further qualified:

“The total of the affirmative votes cast in the two language groups was required to amount to at least two-thirds of the votes cast. In addition, there was an ‘alarm bell’ procedure, which to be triggered, required a motion signed by at least three-quarters of the members of one of the language groups..., stating that the provisions of a specified bill were likely to be seriously detrimental to relations between the two language communities.”

When the “alarm bell” procedure was invoked, as it were:

“proceedings were suspended and the motion was referred to the Cabinet”.

Therefore, the point to make in relation to community designation is that there appear to be a number of options available: you could get rid of it; you could keep it; or you could keep it but restrict its use to certain parliamentary proceedings as appears to be the case in Belgium.

Finally, I will touch on the issue of d’Hondt. As members are well aware, what is unusual about Northern Ireland, the Northern Ireland Assembly and the Executive is that this is the only place where d’Hondt is applied at such a high level — at Executive level. Therefore, coalition government is not based on traditional inter-party negotiations following an election. Instead, membership of the Executive is an automatic entitlement of electoral strength determined by the application of the d’Hondt divisor, which allocates seats on the basis of the highest average. Therefore, if a party wins a significant number of seats, it stands a good chance of being in the Executive. Previous research shows:

“The D’Hondt formula should be used for the nomination of the FM and DFM”,

which means:

“that the first and second largest parties would nominate the FM and DFM — so they could come from any party, not just a unionist or nationalist party”.

The research goes on to state:

“Alternatively, the Executive could be constituted by the Sainte-Lague mechanism, which is more advantageous for small parties than D’Hondt.”

I suppose one of the issues that critics of the Executive might raise is that it has been cited that there is no alternative to the sitting government. Indeed, if you look at the Scottish Parliament, there is provision for a vote of no confidence in the Government that is not available in Northern Ireland because it is constrained by the application of d’Hondt.

That was a brief run through the key issues that we were asked to address. I suppose one of the things that we could sum up with is that before consideration is given to details such as application of funding or parliamentary time, it would be important to decide on the overarching model of opposition. Would there be one opposition party officially recognised in the Assembly or would all parties be opposition parties? I think that those are probably the key issues that would need to be considered before the details are touched upon. Thank you, Chair.

The Chairperson: OK, thank you for that, Ray. Do any members have questions?

Mr McDevitt: Just briefly, on the Scottish and Welsh situation, you said that the parties not in the Executive are called parties not in Government rather than an opposition. That said, Standing Orders in the Scottish Parliament and the Welsh Assembly make provision for the existence of such a group, and I suppose the consequential question is how do they make provision? Is it just like your last point

that all the parties not in the Government or the Executive are given certain rights in accordance with their size or does one — the biggest party — have some sort of primacy or a principal role?

Mr McCaffrey: It appears that all parties are treated as opposition parties, which is a departure from the Westminster model, which recognises Labour as the official Opposition.

Mr McDevitt: Chair, I would like to explore that a little bit. Therefore, Standing Orders go down through the parties by size, I guess, in the order in which they would be called?

Mr McCaffrey: On a proportional basis.

Mr McDevitt: OK.

The Chairperson: OK. Thank you. No other questions? OK, Ray. Thank you very much for that.