

Response to the NIO Consultation on measures to improve the operation of the Northern Ireland Assembly.

Introduction

I am responding to this consultation as a private citizen with no particular political allegiances but with a desire to see the operation of the Northern Ireland Assembly strengthened. I am responding to question 8 of the consultation on the issue of government and an effective opposition.

Improving Government

While the majority of people continue to support devolution and recognise the political progress that has been made over recent years, many also believe that current system of government could be much more effective. While the present system of d'Hondt was necessary in order to secure widespread support for the return of devolution, the public now want more than devolution per se. They want a system of government that provides for:

- (a) collective and coherent Executive decision-making;
- (b) genuine and effective accountability of the Executive through the Assembly; and
- (c) the realistic prospect of being able to elect an alternative government.

The current system of d'Hondt does not allow for any of these features for the reasons set out below.

Collective and coherent Executive decision-making

There is not collective and coherent Executive decision making because, despite the Programme for Government, individual Ministers are still largely able to pursue their own particular agendas within their respective departments. With five different parties in the Executive this leads to confused, conflicting and incoherent policy positions across government. Whereas other coalition governments can be organised and coordinated by the Prime Minister, the First and deputy First Minister are effectively powerless when it comes to setting the policy direction or intervening in the major decisions of those departments which are headed by Ministers from parties other than their own. The First and deputy First Minister cannot then account for actions taken by other Executive Ministers. This means the Executive can at times appear divided and directionless.

This issue is compounded by the fact that when voting for parties at election time it is impossible to know which parties will get which portfolio. The majority of any party's specific departmental policies are irrelevant as they will only have responsibility for a minority of departments. This inhibits joined up thinking between departments.

Genuine and effective accountability of the Executive through the Assembly

There is not genuine and effective accountability of the Executive through the Assembly. Despite the Assembly being directly elected, and therefore being the institution with the greatest democratic legitimacy, it is seen (and treated) by many as subservient to the Executive. Currently, as a result of the D'Hondt power-sharing arrangements, 104 of the 108 MLAs are from parties represented within the Executive. In these circumstances it is difficult for the public to have confidence that the Assembly is truly holding the Executive to account. It is the senior members of the parties that sit in the Executive and the parties at the Assembly are heavily whipped. When Executive business comes before the Assembly it is likely there will only be 4 of the 108 Members that do not belong to a party that has already supported the proposal in question. This undermines the separation of powers between the Executive and the Assembly. How in such circumstances can the Assembly have a distinct and separate voice from the Executive and be able to challenge and scrutinise what the Executive has agreed?

The realistic prospect of being able to elect an alternative government

There is not the realistic prospect of being able to elect an alternative government. Chapter 4 of the NIO consultation paper recognises this. Any party that achieves a relatively small share of the vote at the election to the Assembly is entitled to be part of the Executive. Currently there are five parties within the Executive. This makes the prospect of voting in an alternative government almost impossible.

In the absence of these characteristics, which are fundamental features of democracies elsewhere, popular dissatisfaction which is already considerable will increase further.

Safeguarding Inclusivity

It also remains the case, however, that Northern Ireland remains a divided society. The reasons underpinning the need for an inclusive power-sharing Executive still exist. There would not be popular or political support for an Executive that did not have cross-community support. Such an Executive would not have legitimacy and would lead to political instability. Any Executive here must therefore be appointed in a manner which is based on the principle of cross-community support.

It is possible for there to be established an inclusive government with cross community support without the use of d'Hondt. D'Hondt is not used, for example, for the appointment of the Speaker of the Assembly or for the appointment of the Minister of Justice. In these instances the office holders are elected by the Assembly with cross-community support.

However, there is a flaw in the mechanism for ensuring that cross-community support at the Assembly is achieved. The flaw is that the votes of those who designate themselves as 'Nationalist' or 'Unionist' have a greater value in a cross community vote than those who designate themselves as 'Other'. This is despite the fact that an 'Other' vote

arguably represents a vote of cross community support. This is inherently unfair: all votes within the Assembly should have the same value. This issue could be resolved if a vote of an 'Other' at the Assembly was recognised as a 'Cross-Community' vote and was counted as one half of a "Nationalist" vote and one half of a "Unionist" vote. Weighting "Cross-community" votes in this way would not be particularly radical and would ensure there was real fairness when a vote of the Assembly required cross-community support.

Proposals

I believe that the Assembly should appoint by resolution a First Minister and deputy First Minister. A motion to appoint the First Minister and deputy First Minister should require cross-community support (on the basis of the amendment to cross-community votes indicated above). The First and deputy First Minister would then have a genuine and inclusive mandate to carry out their functions. I also believe that the functions of the First and deputy First Minister should be extended to give them the authority to lead a collective and coherent Executive. The First and deputy First Minister should have to account for the performance of the Executive in the way that a Prime Minister accounts for the performance of their Cabinet.

I therefore believe that the d'Hondt procedure should be abolished for the appointment of Ministers. In the absence of d'Hondt, the First and deputy First Minister, acting jointly, should appoint Ministers to departments. Who they chose (both in terms of individuals and their parties) and what departments they appointed them to would be a matter for the First and deputy First Minister acting jointly (with their cross-community mandate). The First and deputy First Minister would also, acting jointly, be able to dismiss Ministers.

While these arrangements would not preclude a multi-party Executive, it is much more likely that the Ministers would be drawn from two or three parties. The remaining parties would then form an "opposition". The Executive, led by the First and deputy First Minister, would be then be in a strong position to govern and the Assembly would be in a strong position to genuinely hold the Executive to account.

What's more, the people of Northern Ireland would be able to judge the performance of the Executive at an election time and choose to continue to support it by voting for those parties which had made it up. Alternatively they could vote in greater numbers for those parties who had formed the opposition. It is entirely plausible that a First and deputy First Minister supported by the DUP and Sinn Fein in one term could be replaced after an election by a First and deputy First Minister supported by the UUP, SDLP and Alliance Party (and others). The important point is that the people of Northern Ireland would have a democratic choice.

Thank you for taking the time to consider this response.