



Response to ‘Consultation on measures to improve the operation of the NI Assembly’.

Question 1: What should the future size of the Northern Ireland Assembly be?

- 1.1 The Northern Ireland Assembly was given an anomalously large number of members when it came into being in 1998. Using the December 2010 electoral statistics that provide the basis for the boundary review under the 2011 Act, there are 38,372 electors per member of the Welsh Assembly, 30,893 electors per member of the Scottish Parliament, but only 11,131 electors per member of the Northern Ireland Assembly.
- 1.2 Were the Northern Ireland assembly to reflect the number of electors per representative seen in the other two devolved institutions, it would have only 31 (based on Wales) or 39 (based on Scotland) members. However, there are two reasons to believe that the assembly should not be reduced in size to these low numbers:
 - 1) The extent of devolved competencies. Presently, Northern Ireland has a greater number of devolved powers than either Scotland or Wales. Additional devolution over and above that of Scotland covers the areas of:
 - a. Social security;
 - b. Aspects of employment, transport and energy policy;
 - c. A small but important number of aspects of criminal law – most notably laws on abortion and gambling; and
 - d. Reserved matters in Schedule 3 of the Northern Ireland Act 1998, on which the Assembly may legislate if approved by the Secretary of State.
 - 2) The need for an assembly to provide ministers and sufficient numbers of backbenchers to both represent all segments of society and provide sufficient scrutiny of executive activities and new legislation.
- 1.3 If we can determine, the numerical impact of these two points, we can determine the approximate optimal Assembly size.

Recommendation

Therefore, we favour moving toward a four-member per constituency model, which, if there were 16 parliamentary constituencies, would mean an assembly of 64 MLAs. This option has the advantage that, if the current boundary review does not meet with the approval of Parliament and 18 constituencies remain in Northern Ireland at the next Westminster election,

there will still be a considerable reduction in Assembly size to 72 MLAs, which falls comfortably within the 57 to 80 range suggested by the analogues . Our suggestion is that the Assembly moves towards a 64 seat model over 3 elections, in order to enable MLAs to grow accustomed to the arrangement and to test the effects of a smaller number of representatives. I.e. 2015 96 MLAs. 2019 80 MLAs. 2023 64 MLAs.

Question 2: Do you believe that there should be a combination of Parliamentary and Assembly elections in 2015 or should these be decoupled?

- 2.0 There are real concerns, logistical and democratic, about conducting 3 polls on one day. There were considerable problems around the counting of ballots following the 2011 election, when council elections were conducted at the same time as a referendum on changing the voting system for the House of Commons. The suggestion that council elections may be held in 2014 is welcome and would alleviate the scope for logistical difficulties or voter confusion.
- 2.1 The Parliamentary and Assembly polls will be conducted under two separate electoral systems. Although this has the capacity to increase the number of spoiled ballots on the day, the experience in 2011 suggests that voter education and clear marking of papers can prevent undue confusion.
- 2.3 The conduct of two polls and two campaigns contemporaneously offers clear opportunities for greater voter participation, greater voter engagement and reduced costs for the taxpayer.

Recommendation:

The NI Conservatives recommend that, should there be a decision to move the local council elections forward to 2014, there is no overwhelming argument to decouple the Parliamentary and Assembly elections in 2015. Indeed the shared date offers an opportunity to save money and increase voter participation.

Question 3: Do you think the term of the current Northern Ireland Assembly should be extended from 2015 to 2016?

- 3.0 The demands of electoral politics are often cited as a reason for poor, delayed or non collegiate decision making in the latter stages of coalition governments. Therefore it is argued that if the legislature's lifespan is extended there will be a benefit in terms of stability, consistency and delivery of policy. However the unique system in Northern Ireland does not allow for swift or effective action, even in the early stages of each executive. Extending the term of the executive is likely to result in less dynamic government, rather than more.
- 3.1 There are pressing questions around accountability and democracy which would be exacerbated should the current term be extended. Any extension needs to be understood by the electorate before it goes to the polls, given the existing democratic deficit in Northern Ireland's government (see later).

Recommendation:

We consider that the benefits in extending the Assembly term until 2016 would be minimal, while the possible effects in terms of undermining confidence in democracy and accountability could be substantial. We consider that the likely result of an extension, at this point, would be stagnant and less dynamic government, rather than a more effective Assembly.

Question 4: Should the Northern Ireland Assembly move to a fixed term permanently?

- 4.0 At Westminster the introduction of fixed five year terms gives government the benefits of stability and the space to implement policy without so much focus on the electoral cycle. The merits of this measure were thrown in starker relief by the formation of a coalition government. Pegging the fixed term at the outer limits of the previous lifetime of a Parliament has offered an incentive to the coalition to thrash out its differences and offer consistency of policy without the imminent threat of dissolution.
- 4.1 While fixed terms are right for the House of Commons, it does not necessarily follow that the same is true at the Northern Ireland Assembly. There needs to be evidence that longer, more stable Assemblies, which will result in longer, more stable executives, can produce more consistent and coherent legislative programmes.
- 4.2 At the current time the lack of a structure to accommodate an official opposition and the lack of time afforded to properly examine legislation at both executive level and at committee stages, raises concern about democratic accountability at the Northern Ireland Assembly. If the deficit in accountability is not addressed, the argument for a five year term for the Assembly becomes considerably less compelling.

Recommendation:

NI Conservatives conclude that the fixing of House of Commons terms at five years does not, of itself, comprise a compelling argument that the Northern Ireland Assembly should follow suit. While the measure has considerable merit in the Westminster context, the political landscape at Stormont is very different.

We recommend that any decision to fix Assembly terms at five years is deferred until after significant progress has been made delivering more accountable government through the devolved institutions. With the current lack of opposition structures, longer terms would decrease incentives to provide consistent, coherent legislative programmes and decrease the electorate's democratic powers of scrutiny over the legislature.

Question 5: Do you believe that representatives should be prohibited from holding the offices of MP and MLA at the same time?

- 5.0 The aim of eliminating multiple mandates, post devolution, has been substantially more difficult to achieve in Northern Ireland, than in Scotland or Wales. This is partly due to the size of the jurisdiction and partly due to a culture of double-jobbing within the parties at Stormont, perpetuated by the personal dominance of a number of leading political figures.
- 5.1 While there has been some resistance to the idea of eliminating double jobbing between Westminster and the Assembly, by several politicians who hold mandates in both legislatures, there is now a broad consensus, both within political parties and within the electorate, that the practice should be eliminated, although there has not necessarily been similar consensus about the timescale. There has been substantial progress toward this aim, although the process has not been completed and the law has not yet been changed to reflect public opinion.
- 5.2 While there may be a certain cross-over in terms of constituency work, the work-load involved in representing constituents in two full-time, geographically remote legislatures is so intense as to be incompatible with effective representation.

Recommendation:

A commitment to eliminate double jobbing between the House of Commons and the Northern Ireland Assembly was included in the Conservative Party manifesto for Northern Ireland, before the 2010 Westminster elections. We remain convinced that representatives should be prohibited from holding the offices of MP and MLA simultaneously.

There is evidence of a popular agreement that the practice is not acceptable and every party which currently holds a Northern Ireland seat in the House of Commons has made some concession to the arguments on dual mandates.

The next step should be to legislate in order to enforce this emerging consensus.

Question 6: Should MLAs also be prohibited from being members of the House of Lords?

Recommendation:

While the demands on time may not necessarily be as intense on members of the House of Lords as on members of the House of Commons, the Assembly is a full-time legislature and the difficulties in terms of travel are similar. We consider that the prohibition on dual mandates between the House of Commons and the Assembly (outlined above) should also extend to the upper House of Parliament.

Question 7: Is it better to use primary legislation to ban such practices outright at the earliest opportunity or to take a power to do so at a later date to allow space for an agreement to be reached?

- 7.0 Although each of the affected parties has expressed a willingness to phase out double-jobbing, the will to do so has been very variable, the timescales over which the practice is to be eliminated have been unspecified and the determination to do so has been highly dependent on party political considerations.
- 7.1 The Committee on Standards in Public Life recommended that the practice be eliminated by 2011, a target which has been missed. It set a further back-stop of 2015.
- 7.2 If dual mandates are not prohibited before 2015, we are likely to see replication of candidates, standing for two legislatures on Assembly and Parliamentary ballots. There is therefore also the likelihood of Westminster by-elections following after the 2015 election, and before the 2020 General Election.
- 7.3 The Conservative Party included a commitment to end the practice of double-jobbing in its manifesto for Northern Ireland, prior to the 2010 General Election. A Conservative majority government was not subsequently elected and therefore there is no binding responsibility to enact this measure on the coalition at Westminster. However the aspiration, as laid out in the manifesto, is still a desirable aim.

Recommendation:

The NI Conservatives consider that the issue of dual mandates should be resolved, through primary legislation, at the earliest possible opportunity and certainly before the next set of Parliamentary or Assembly elections. We consider the prospect of candidates appearing on two ballot papers, if Westminster and Stormont elections are not decoupled in 2015, as unacceptable. If legislation is not enacted by that time, the results are likely to be confusion for voters, a lack of genuine choice on ballot papers and by-elections early in the lifespan of the new House of Commons.

Question 8: Do you think the government would operate more effectively with a system which provides for a government and an opposition? If so, how can this system best be achieved?

- 8.0 It is widely proposed that the current system of government in the Assembly does not achieve a sufficient degree of accountability or legislative scrutiny, as regards the executive's programme. The legislative record of the Assembly, over two successive terms, is poor, with few pieces of primary legislation passing into law. Legislation, when it does reach the chamber, is often presented as a 'done deal', with insufficient time provided for close analysis or scrutiny. The same problem is observable at committee stages, where the job of closely examining prospective bills should be completed with particular rigour. Even at executive level, ministers have frequently complained of being presented with documents so late that they do not have time to digest them, before being asked to agree the content.
- 8.1 The Assembly is in essence a power-sharing institution, which safeguards the political involvement of minorities in a divided polity. The basis of power-sharing is widely accepted and enshrined in the Good Friday Agreement. It is not proposed seriously that any alternative system which allows for a government and an opposition should proceed without considerable, inbuilt, cross-community safeguards.
- 8.2 Each of the political parties currently in the executive, other than Sinn Féin, has expressed, at some point, a desire to move beyond the current structures, toward a more effective mode of government. The UUP, DUP and Alliance have openly called for an official opposition, while the former SDLP leader spoke about 'ugly scaffolding' which should eventually be removed from the devolved institutions at Stormont.
- 8.3 The Assembly is now deep into its second term and has attained a degree of stability which was not evident in previous power-sharing administrations. Although serious questions can be asked of the current executive, there is evidence of a growing political maturity in Northern Ireland which allows decision making to take place despite traditional divisions and, as that maturity deepens, the need for structural changes is likely to deepen too.
- 8.4 The original structures, set up by the Good Friday Agreement, have been modified by the St Andrews Agreement. In particular the mechanism for appointing the First Minister has been changed, enshrining the right of the largest party to nominate the First Minister. Although the two OFMDFM First Ministers are 'co-equal' there is still an implied and symbolic inequality in the titles 'First Minister' and 'Deputy First Minister' which acts to constrain the emergence of smaller parties, or a re-alignment of politics along lines other than 'unionist' and 'nationalist'.

Recommendations:

NI Conservatives agree with the Prime Minister, David Cameron, when he said that Northern Ireland politics must "move beyond the peace process". To achieve that progress we believe that more decisive government, more effective scrutiny and greater democratic accountability are needed.

We consider that moving toward a system encompassing government and opposition is fundamental to this process. Although we also recognise that there are measures around

improving Assembly and committee scrutiny, which could improve the system in the short term, without wholesale constitutional changes.

We recognise that there is no appetite for, or prospect of, a system without power-sharing safe-guards, for the foreseeable future. Any government and opposition system must ensure that an executive is formed which reflects, largely, the society which it will represent. There are strong arguments for eventually removing the current system of designation at the Assembly, but that is a long-term aspiration, rather than a realistic short-term objective.

We recommend, though, that serious consideration be given to changing the system for nominating the First Minister and possibly removing the distinction between the First Minister and the Deputy First Minister or reverting back to the original arrangements in the 1998 Belfast Agreement.

We further recommend that the current system of forming an executive is largely retained, but that the provision to fund an opposition if parties decline to take their ministries is provided for and d'Hondt is altered so that, below OFMDFM, no party may retain a department for longer than 2 consecutive terms.

The First Ministers' office must still reflect the cross-community fundamentals of power-sharing in Northern Ireland. We envisage any government would be required to command a minimum of 51% of MLAs, and no less than 30% of members designating in each of the unionist and nationalist designations.

Providing for an Opposition

Speaking Rights:

When a Minister has spoken in the Chamber he shall be followed by the Chairman of the relevant Committee.

The third speaker will be from any Coalition partner, the fourth from any Opposition party other than the committee chairman's party.

Opposition Debates: The Opposition parties will receive allocated time to initiate debates on the floor of the House

Office Cost Allowances: The Office Cost Allowance of MLAs shall be reduced, in order to provide 'Short Money' which will be allocated to the parties in opposition, on the basis of the number of MLAs in those parties, thereby not increasing costs for taxpayers.