



Northern
Ireland
Office

CONSULTATION PAPER

Consultation on measures to
improve the operation of the
Northern Ireland Assembly

August 2012

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Foreword by the Rt Hon Owen Paterson MP

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Foreword by the Rt Hon Owen Paterson MP, Secretary of State for Northern Ireland



Since I took up office as Secretary of State, I have identified a number of areas in which primary legislation will be required to implement important changes. These include bringing forward legislation to implement proposals for greater transparency arising from the consultation on political donations and to improve the administration of elections. I am also keen to implement commitments made earlier this year during discussions on the appointment of a Northern Ireland Justice Minister to bring forward legislation to provide for greater security of tenure for this Ministerial position.

Although these are important matters in themselves, I would like to take the opportunity if primary legislation can be secured to make other changes to the institutions where there is broad support to do so in Northern Ireland.

This consultation therefore highlights four key areas about which there has been debate in recent years in Northern Ireland. The current Parliamentary Boundary Review is taking place on the basis of the number of Parliamentary constituencies in Northern Ireland being reduced from 18 to 16. This would automatically result in the size of the Northern Ireland Assembly at the next election going down from 108 members to 96. In addition, I have always made clear that I would seek to bring forward legislation to provide for a reduction by a different number if there is broad agreement for this. There have been calls for the length of term of the Assembly to be extended to 5 years, including the current term; the consultation paper seeks views on this. I have always made clear my opposition to elected representatives holding office at both Westminster and Stormont. Although good progress has been made, the consultation paper seeks views on how best to phase out this practice in line with commitments I made at the general election. Finally, the paper seeks views on whether the Assembly would be more effective if it had both an inclusive government and effective opposition and if so how this can best be achieved.

Hearing the views of as many people as possible will greatly assist the policy formulation process for these important issues. I hope everyone with an interest plays their part and can respond by the 23 October 2012 deadline.

A handwritten signature in black ink, appearing to be 'Owen Paterson', written in a cursive style.

Rt Hon Owen Paterson MP

CHAPTER 1

NUMBER OF SEATS IN THE NORTHERN IRELAND ASSEMBLY

Background

1.1 In line with the Belfast Agreement, there are currently 108 seats in the Northern Ireland Assembly, with 6 members elected from each of the 18 Westminster constituencies in Northern Ireland. Following the last general election, the Government brought forward legislation to reduce the number of Westminster constituencies across the UK¹. The Boundary Commission for Northern Ireland must recommend 16 Westminster seats as part of its current boundary review. This would result in there being 96 Assembly seats available at the next Assembly election, unless some other legislative provision is made regarding the size of the Assembly.

1.2 The Government made commitments during the passage of that legislation to bring forward further legislation to give effect to any agreement within Northern Ireland on an alternative number of seats for the Assembly. The Secretary of State wrote to the Speaker in the Assembly to seek views on this; the Speaker referred the matter to the Assembly and Executive Review Committee (AERC). The AERC produced a comprehensive report which discusses in some detail the implications of the various options². This paper was then debated in the Northern Ireland Assembly.

Issues for consideration

The right size

1.3 There are no hard and fast rules about how many seats a Parliament or Assembly should have. The Scottish Parliament has 129 seats, serving a population of just over 5 million. The National Assembly for Wales currently has 60 seats, serving a population of just over 3 million.

¹ The Parliamentary Voting System and Constituencies Act 2011 provides for the number of seats in Parliament to reduce to 600 and for new boundary reviews to take place. The Boundary Commissions must report before October 2013, and it will then be for Parliament to consider their recommendations.

² <http://www.niassembly.gov.uk/Assembly-Business/Committees/Assembly-and-Executive-Review/Reports/Number-of-Members-of-the-Northern-Ireland-Legislative-Assembly/>

1.4 Serving a population of around 1.8 million, there appears to be a reasonable case for a reduction in the size of the Northern Ireland Assembly. In determining by how much, however, the following factors will need to be considered:

- Would constituencies still be fully and proportionately represented?
- Would the Assembly still be able to fulfil its key functions such as providing Ministers for the Executive, members of Committees and adequate scrutiny of legislative and other proposals?
- Would smaller parties lose out disproportionately if there was a much smaller chamber?

1.5 The AERC report sets out the views of a number of interested parties and experts on these and other questions. The report indicates that a number of people and organisations favour a smaller Assembly. In particular, there has been strong interest in reducing the number of members to five per constituency, making 80 in total. At a time when there is sustained pressure for reducing the cost of politics to the taxpayer, the Government sees the attraction in that arrangement. Yet given the origin of the provision for six members per constituency we would want to move only with broad support.

1.6 A related question is whether the link with Westminster constituencies should remain, particularly if the view is that there should be a reduction in seats to less than 96. The link has obvious practical benefits. It avoids potential confusion over having separate boundaries for different elections and also the administration costs of separate boundary reviews³. Given that the Boundary Commission for Northern Ireland is in the midst of a comprehensive review of the Westminster constituencies, which is due to report in 2013, initiating another lengthy review for the Assembly could be construed as unnecessary duplication.

1.7 Maintaining the link does mean that there could be further variation to the number of MLAs should Parliament decide once again to alter the number of Westminster constituencies and also somewhat restricts the options available on the number of Assembly seats.⁴

³ The current projected costs of the current ongoing review are £1.31m. The Northern Ireland Executive would be expected to pay the costs of any separate Assembly boundary review.

⁴ As the number of overall seats must therefore be divisible by the number of Westminster seats in Northern Ireland.

CHAPTER 1 SUMMARY – NUMBER OF SEATS IN THE NI ASSEMBLY

Question 1

What should the future size of the Northern Ireland Assembly be?

CHAPTER 2

LENGTH OF ASSEMBLY TERMS

Background

2.1 In addition to the Parliamentary Voting System and Constituencies Act 2011, the Government also introduced legislation to introduce fixed-term Parliaments. As a result the next Westminster election will be in May 2015, then every five years thereafter. It was recognised during the passage of the Fixed Term Parliaments Act 2011 that May 2015 had already been set out in legislation as the date of the next devolved elections.

2.2. The Government consulted the devolved administrations on whether it would be feasible and/or desirable to hold devolved elections at the same time as Parliamentary elections. In Northern Ireland, there was concern over the possibility of three elections being scheduled for the same day. Consideration was therefore given to whether provision might be required in the Fixed Term Parliament Bill to alter the date of the 2015 Assembly election by up to six months.

2.3 Following consultation with NI party leaders, the Government decided to await the results of the 2011 triple poll before deciding whether any provision to move the date of the poll would be needed.⁵ Stronger feelings were expressed in Scotland and Wales. In November 2010 all of the major parties in both the National Assembly for Wales and the Scottish Parliament wrote to the Minister for Political and Constitutional Reform expressing a desire to put the next Scottish Parliamentary and Welsh Assembly elections back to May 2016. The Government put forward amendments contained within the Fixed Term Parliament Bill to move these elections to May 2016.

Issues for consideration

Extending the current Assembly term

2.4 The primary concern relating to combination in Northern Ireland, as noted above, was the ability to hold and effectively deliver three polls in one day. Following the experience of the triple poll in 2011, we understand that both the Chief Electoral Officer and Electoral Commission are confident that three polls can

⁵ Lord Wallace confirmed this approach during the passage of the Bill, stating: 'Northern Ireland Office Ministers are conducting separate discussions with the parties in Northern Ireland on this issue and have concluded that it would be better to await the outcome of the combined polls scheduled for May this year before deciding on special provision for Northern Ireland.' 1 March 2011 Hansard 934

be delivered with the right preparation and resources in place. There has also been discussion of the possibility of local elections scheduled for May 2015 to be brought forward to May 2014 to provide for shadow councils as part of the move to an 11 council model. It is possible, therefore, that only Parliamentary and Assembly elections will be scheduled for May 2015.

2.5 With this in mind, we seek views on the combination of elections in 2015. There are many arguments for and against combination. They could lead to higher turnouts and cost savings. There is, though, a risk that national issues will dominate over more local issues or vice versa. Yet despite some reports of difficulties over being able to distinguish between local and Assembly ballot papers, voter confusion was not a major issue during the combined local and Assembly elections in 2011.

2.6 A power already exists in the Northern Ireland Act 1998 to alter the date of an Assembly election by two months. In the event that a combination of elections in 2015 is considered undesirable, this power could be used to provide for March Assembly elections and a May Parliamentary election.

2.7 This is, however, still a relatively short gap. Given the extensions already granted in Wales and Scotland, there have been calls for the current Assembly term to run to 2016. A number of parties have expressed a desire for this, although the Assembly as a body has not given a view. Yet the situation is clearly different to that in Scotland and Wales, where the extension was announced prior to the electorate going to the polls. The electorate in Scotland and Wales were fully aware that they were choosing their representatives for an extended term when they went to the polls.

2.8 There are serious constitutional implications in extending the term of any elected body after it has been elected. It could be clearly construed as anti-democratic. In the Government's view there would need to be a clearly demonstrable public benefit, with a very large measure of agreement in Northern Ireland, before we could propose such an extension to Parliament. We invite views on this.

Moving to 5-year terms permanently

2.9 During the passage of political reform legislation, there was some discussion of whether the devolved administrations should follow the example of

Westminster and move to 5-year terms on a permanent basis. It could be argued that 5-year terms allow incumbent administrations time to deliver more. Others may feel that 4-year terms are adequate. The Government does not believe that there needs to be uniformity across the Parliaments and Assemblies of the UK on this matter. We seek views on what would be the best approach for the Northern Ireland Assembly.

CHAPTER 2 SUMMARY – LENGTH OF ASSEMBLY TERMS

Question 2

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

Question 3

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

Question 4

Should the Northern Ireland Assembly move to a fixed 5-year term permanently?

CHAPTER 3

MULTIPLE MANDATES

Background

3.1 The issue of Northern Ireland elected representatives holding more than one elected office - so called “double jobbing” - has been the subject of much criticism in recent years. The Government has consistently made clear that it would like to see multiple mandates between the Northern Ireland Assembly and the House of Commons ended. There has been some progress on this issue since the general election and few cases of double-jobbing of this sort will soon remain.

3.2 This principle has gained ground in other contexts. In 2011, the Department of the Environment (NI) conducted a consultation on prohibiting members of the Assembly from also being district councillors⁶. The Executive has since agreed to bring forward provision in local government reorganisation legislation to prevent this occurring⁷.

3.3 This does not, however, preclude MLAs also acting as MPs or Peers and the Government is responsible for taking forward disqualification legislation to provide for this. Legislation in 2010 removed an MLA’s Assembly salary in circumstances where he or she sits in the House of Commons⁸.

Issues for consideration

MPs and MLAs

3.4 The practice of holding multiple mandates is not unique to Northern Ireland. It has, though, been frequent for the majority of Northern Ireland MPs also to act as MLAs since devolution. This contrasts with the situation in Scotland and Wales. The Committee on Standards in Public Life examined why dual mandates appear to be unusually ingrained within the political culture of Northern Ireland and concluded that this was because:

⁶ http://www.doeni.gov.uk/district_councillors__allowances_and_multiple_mandates_-_synopsis_and_departmental_response.pdf

⁷ http://archive.niassembly.gov.uk/legislation/primary/2009/niabill7_09.pdf

⁸ http://archive.niassembly.gov.uk/legislation/primary/2010/niabill3_10.pdf

- Many people had been discouraged from becoming involved in politics during the Troubles, which left only a small minority to participate.
- The recent history of political instability had left members fearful of losing elected office completely if the institutions collapsed.

The Committee recommended that this practice should end in 2011, or, failing that, in 2015⁹.

3.5 Another reason may be that political parties are keen to put forward high profile figures at Westminster elections due to the comparatively small number of seats to be contested. It is also the case that some politicians, as a matter of principle, believe that it is for the electorate to decide who should represent them. They argue that if the electorate is content for them to hold more than one office, then their democratic wishes should be respected.

3.6 There are several arguments against members holding multiple mandates. There are concerns that members holding two offices simply cannot do justice to both and that this could leave constituents without proper representation. It is also impossible for members to attend two debates scheduled for the same time. This might lead to them failing to attend proceedings of importance. The holding of multiple mandates is also said to restrict the opportunity for representation which reflects the community at large. It is also a potential barrier to attracting new people from coming into elected politics.

3.7 The Government is encouraged by recent statements by party leaders in Northern Ireland favouring an end to multiple mandates. This could result in ending the practice by agreement. Despite this progress, some parties continue to have members who are both MPs and MLAs. Furthermore, even if an all-party agreement could be reached on multiple mandates in future, it might still be desirable for the Government to underpin such an agreement with legislative provision. We propose therefore to use any forthcoming legislation to bring an end to double jobbing. This could be done at the time of the initial legislation, or by providing a power to achieve it at a later date through secondary legislation.

⁹ Committee on Standards in Public Life, *MPs expenses and allowances – supporting Parliament, safeguarding the taxpayer*, November 2009

MLAs and Peers

3.8 We also seek views on whether any legislation to ban 'double-jobbing' between MPs and MLAs should also extend to MLAs and members of the House of Lords. Many, if not all, of the above considerations relating to holding both MP and MLA offices will also apply.

CHAPTER 3 SUMMARY – MULTIPLE MANDATES

Question 5

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

Question 6

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

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 agreement to be reached?

CHAPTER 4

GOVERNMENT AND OPPOSITION

4.1 The Northern Ireland Executive currently operates as a five-party coalition. Ministers are appointed under the d'Hondt procedure in proportion to party strengths in the Assembly. This has been important in ensuring that all parts of the community are adequately represented in government. The present structure derives from the Belfast Agreement, with some changes made following subsequent talks. The Agreement recognised that inclusive power sharing government is essential in Northern Ireland. The Government is in no doubt that this remains true.

4.2 It does not necessarily follow, however, that all the present arrangements are essential and incapable of evolving. There are obvious flaws in a system where there is no effective alternative government and it is hard to remove the government by voting. The Government has regularly expressed a wish at some stage to see a move to a more normal system that allows for inclusive government but also opposition in the Assembly. The existence of an effective opposition is likely to enhance, challenge and provide a spur to innovation. These are aspects which the present system, notwithstanding much scrutiny work by the Assembly, arguably lacks.

4.3 The Government would be interested to hear of ways in which the emergence of effective opposition might come about. We remain clear, though, that any changes could only come about with the agreement of the parties in the Assembly. In addition, such moves must be consistent with the principles of inclusivity and of power-sharing that are central to the Belfast Agreement. Change could be effected by legislation in the forthcoming Bill, or other steps such as developments in procedures within the Assembly, which are sometimes mentioned in this context. Such procedural developments are ultimately for decision by the Assembly itself.

CHAPTER 4 SUMMARY – GOVERNMENT AND OPPOSITION

Question 8

Do you think the Assembly would operate more effectively with a system which provides for a government and an effective opposition? If

so, how can this system best be achieved?

CHAPTER 5

RESPONDING TO THIS CONSULTATION

- 5.1 This consultation will run for 10 weeks and responses are therefore requested by **Tuesday, 23 October 2012**. Comments on the proposals should be sent by post to:

Constitutional and Political Group
Northern Ireland Office
1st Floor
11 Millbank
LONDON
SW1P 4PN

Email responses should be sent to: **cpg@nio.x.gsi.gov.uk** and faxed responses to 0207 2106550.

Please call 0207 2106566 for queries in relation to this consultation. The NIO textphone number is 02890 527668.

- 5.2 This consultation document is available on the NIO website: www.nio.gov.uk under Public Consultation. Printed copies of this consultation document may also be obtained free of charge from the above address. You may make additional copies of this document without seeking permission. This document can also be made available on request in different formats, for individuals with particular needs.
- 5.3 If you are responding on behalf of a group or organisation please make this clear. The NIO is committed to publishing a list of those organisations that comment on these proposals and to making available, to anyone who asks for it, a copy of the comments and our response to them. **If you do not wish your comments to be published in this way, you must make this clear in any response you submit.**

- 5.4 If you have any concerns or complaints about the consultation process you should contact the NIO's consultation co-ordinator on 0207 210 6545, or e-mail corporategovernance@nio.x.gsi.gov.uk or by post:

Consultation Co-ordinator
Corporate Governance Unit
Northern Ireland Office
11 Millbank
LONDON
SW1P 4PN

CHAPTER 6

RESPONSES: CONFIDENTIALITY AND DISCLAIMER

- 6.1 The information you send us may be passed to colleagues within the Northern Ireland Office, the Government or related agencies. **Individual responses may also be published on the internet at www.nio.gov.uk, unless a respondent has requested otherwise.** Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily: the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations (2004).
- 6.2 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice, with which public authorities must comply, and which deals, amongst other things, with obligations regarding confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.
- 6.3 Please ensure that your response is marked clearly if you wish your response to be kept anonymous. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. Confidential responses, included in any statistical summary of numbers of comments received and views expressed, will be anonymised. The Department will process your personal data strictly in accordance with the Data Protection Act. In most circumstances this will mean that your personal data will not be disclosed to third parties.