

From:
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Before I answer the questions laid out by you in your consultation, I would like to bring to your attention that you have not included any consultation about legislation to provide, "greater transparency regarding political donations," - *Owen Patterson, 14 August 2012.*

I am aware that you had a public consultation on this issue in autumn 2010, but that consultation referred specifically to the renewal of expiry of the Prescribed Period that had begun in 2006, and I would regard new primary legislation that would overrule clauses 71 (D) and (E) of PPERA, which were added by the 2006 NI Miscellaneous Act, as needing new public consultation. A decision was made as a result of the 2010 consultation (to renew the Prescribed Period, in spite of an overwhelming majority of responses asking for the opposite of this, ie full transparency) and I believe that the public has the right to new consultations on both a further renewal of the Prescribed Period, which the SOS has asserted will take place by 28 February 2013, and for new primary legislation that would overrule PPERA/2006 NI Act, and would give Northern Ireland a standard of donor transparency that would be distinctly lower than the rest of the UK.

The intention of the 2006 Act was to extend the principle of donor transparency to Northern Ireland, with the Prescribed Period being used to phase in the introduction of this normalisation of our democracy to be in line with the rest of the UK on the matter of access to information about the donors to our political parties. To now propose to use new primary legislation to override the 2006 Act, and the clauses it introduced to PPERA, can only be a method for undermining the principle of parity with the rest of the UK, and introducing a legislative measure that would cement weaker rights for Northern Ireland citizens on this matter.

If the Secretary of State proceeds both with renewal of the Prescribed Period, and with the introduction of new Northern Ireland political donations transparency legislation, without public consultation, I will be exploring what legal options are at citizens' disposal to oppose these decisions.

Below are my answers to your consultation.

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

The Assembly should drop to 90 MLAs at the next election (a loss of one MLA per constituency) and lose an MLA per constituency at each of the consequent elections, until its total membership is 58 MLAs, which is still more MLAs per capita than AMs, MSPs or MPs.

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

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

The Assembly elections should go ahead in May 2015, as was expected by the electorate when they voted in 2011. The best option for doing this efficiently, and with maximum turnout for both elections, is to have them on the same day.

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

Yes, but not this current Assembly. We should be voting for a 5 year Assembly in May 2015, but the current Assembly should dissolve in time for that election, and not run on until 2016.

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

Yes.

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

Yes. If an MP cannot be a Lord, then neither should any other elected representative in the UK.

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?

Use primary legislation. The local MLAs cannot be relied upon to reach agreement on this. Two powerful members of the DUP, Sammy Wilson and Gregory Campbell, may thwart any attempt to get them out of both jobs, as might SDLP leader Dr McDonnell.

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?

We must work out a procedure for protecting against sectarian majoritarianism, whilst delivering increasingly normalised parliamentary function. Enforced coalition leads to the formation of Executive before a legislative programme has been agreed, which means that most people still vote on the basis of sectarian identity, rather than policy choice.

A redefined Petition of Concern, that would be limited so that it couldn't be used as blanket veto as it is now, would be a sufficient safeguard against sectarian majoritarianism. Right now the Petition is being used as sectarian minoritarianism, and has led to complete legislative stalemate in the Assembly. If the appropriate use of this safeguard mechanism could be properly defined (ie, only when a piece of legislation could be proven to be aimed against one of the two sectarian communities), then we could safely move to voluntary coalition, with the requirement being the ability to agree a programme for government with a majority of MLAs before ministers could be appointed. If the official Opposition could only use Petition of Concern to protect people from sectarian legislation (and not to thwart general social and economic policies that it didn't like) then a DUP/UUP coalition would not be a threat to Nationalists in the same way that Stormont from 1922-72 was. There would be no point in DUP/UUP or SDLP/Sinn Fein agreeing sectarian policies during their negotiations to form an Executive, because the Nationalist or Unionist MLAs would be guaranteed to block such legislation with a Petition of Concern, once it got to the Assembly, so the only policies and legislation to be discussed by parties seeking to form an Executive would be non-sectarian in nature.

This cannot work with the Petition of Concern in its current state. Limitations on the use of Petition of Concern must be enacted by the SOS whether or not he enacts the right to form opposition and/or end mandatory coalition. It has been used in the most anti-democratic manner since the restoration of devolution in 2007. Without reform of Petitions of Concern, you cannot have voluntary coalition, because stalemate on all normal matters of government is guaranteed.

I would further suggest that the office of the Secretary of State looks into the practice of "pre-resignation" where a political party forces all potential candidates to sign a letter of resignation before they are allowed to stand as a candidate for that party. I have heard well-founded rumours that all DUP MLAs signed such letters before they stood for the 2011 Assembly Elections, meaning that should they displease the party leadership, they can be automatically resigned from their post, and replaced by the party. You cannot have a by-election in a multi-seat constituency, and so when an MLA resigns their seat the party is allowed to co-opt a replacement member until the next election. If it is true that the DUP has the ability through the signed resignation letters of all their MLAs to remove a recalcitrant party member from the job that they were elected by the public to do, this would greatly undermine the principle of democracy. It should be made illegal for any employee or member of a political party to require anyone to sign away their right to rebel against said party whilst retaining their democratically won job as a public representative. This is extreme, anti-democratic party whipping, and has no place in normal democracy.

Power-sharing is only necessary in a sectarian society. An Assembly elected by a sectarian society cannot be entrusted to de-sectarianise that society, because it is inevitably sectarian itself, and has an interest in maintaining the sectarianism that led to its members being elected. The NIO must work directly with the people of Northern Ireland, away from the interference of the Assembly, in order to deliver desectarianisation, and normalisation, so that our devolved institutions can eventually operate without anti-sectarian safeguards.