



Northern Ireland
Assembly

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Assembly and Executive Reform (Assembly Opposition) Bill (Northern Ireland) 2015

1 Introduction

This Bill paper has been produced for the Assembly and Executive Reform (Assembly Opposition) Bill (Northern Ireland) 2015 (the Bill). The Bill seeks to make a number of changes to the way the Assembly undertakes business, primarily by providing for formally recognised Opposition. It also proposes changes to the formation and working of the Executive.

In some cases the Bill instructs that changes be made to the Standing Orders of the Northern Ireland Assembly. In others, the Bill allows for Assembly and Executive Review Motions to be submitted to the Secretary of State, asking for changes to be made to the Northern Ireland Act 1998.

This paper provides an overview of the Bill and provides commentary on key areas that emerged during Second Stage debate and subsequent Committee Stage. These include technical groups, establishment of a budget committee, government as a single legal entity and the role of the Speaker.

Some of the issues have already been considered by the Assembly and Executive Review Committee in its report *Review of D'Hondt, Community Designation and Provisions for Opposition*¹.

Furthermore, separate papers have been produced on the estimated costs associated with the Bill, including the clauses dealing with financial assistance for opposition parties. This paper, therefore, does not address these issues.

2 The Bill

The Bill has nine parts, 24 clauses and one schedule. The schedule sets out some, but not all, of the provisions that could be included in an Assembly and Executive Reform Motion (AERM), the mechanism by which the Assembly would ask the Secretary of State to make legislative changes outside its competence. This would include changes to the Northern Ireland Act including, for example, petitions of concern and community designation.

The sponsor of the Bill recognises that Standing Orders could facilitate some of the Bill's provisions, but wanted any such changes to have the weight of legislation behind them.

The next section of the paper considers the key clauses in the Bill and draws on comparisons with other jurisdictions.

Clause 2 – Formation of the Opposition

Clause 2 requires Standing Orders to make provision for the formation of an Opposition. The Opposition may be formed by one or more qualifying parties or one or more technical groups. More information on qualifying parties and technical groups is provided below.

A significant portion of the changes proposed in this area could be achieved by amending Standing Orders. There is nothing to prevent a party or parties leaving the Executive if they wish, as has been evidenced in recent weeks. Similarly, Assembly Standing Orders could provide for a Leader and Deputy Leader of the Opposition, formation of technical groups, enhanced speaking rights for the Opposition, establishment of a budget committee among other things, if the Assembly approved such changes.

Clause 3 requires that the Opposition be formed within a set timeframe – the first meeting of the Assembly following an election. This may be relatively straightforward for larger parties who choose not to take their seats in the Executive, as the Bill is clear that these “qualifying parties” will have the option of nominating the Leader and Deputy

¹ <http://www.niassembly.gov.uk/assembly-business/committees/assembly-and-executive-review/reports/review-of-dhondt-community-designation-and-provisions-for-opposition/>

Leader of the Opposition. A “qualifying party” is defined as a “political party which does not have a member who is a Minister, but which was entitled to nominate a person to Ministerial office under section 18(2) to (6) of the Northern Ireland Act 1998, at the time those nominations were made”.

However the Bill also places a similar timeframe on the formation of technical groups if it falls to one or more of those groups to form the Opposition. This could be overly restrictive as in practice such groups are likely to be formed by independent Members or Members from parties who have returned one or two MLAs. If it is envisaged that a technical group could serve as the Opposition in the event of larger parties choosing to take their Ministerial seats, then it may be beneficial to allow more flexibility in terms of the formation of such a group.

Clause 6 – Leader and Deputy Leader of the Opposition

Clause 6 provides for qualifying parties to nominate the Leader and Deputy Leader of the Opposition. These posts could be filled by one or two parties. For example, if this provision applied today, the Ulster Unionist Party would nominate both the Leader and Deputy Leader as the other qualifying parties remain within the Executive.

The role of technical groups in this area is discussed below.

Technical groups

The role of technical groups is mentioned throughout the Bill. Clause 2 defines a technical group as “any group of members comprising 5% or more of the total number of members of the Assembly, none of whom are Ministers or members of a political party which has a member who is a Minister.” There is no detail on the power of technical groups to admit or bar prospective members, an issue that has arisen in Dáil Éireann, as outlined further below. In addition, the Bill speaks of groups, but further information may be required as to what circumstances would lead to the formation of more than one group, if the intention is for a technical group to exist to obtain more speaking rights for its Members, rather than for ideological reasons.

Clause 6 also provides for technical groups to fill the posts of Leader and Deputy Leader of the Opposition, in the event that qualifying parties do not fulfil this role. This could, in theory, result in a situation where all of the rights and benefits envisaged in this Bill for the Opposition fall to a group of 5. It could be argued that this is somewhat disproportionate, given the potentially small numbers of members involved. Of course, it cannot be predicted how large any future technical group might be, or indeed how many groups there might be.

The formation of technical groups is not dependent on the actions of qualifying parties. Clause 16 states: “Standing Orders must make provision allowing for technical groups to be formed even if the Opposition is formed by one or more qualifying parties, in accordance with this section.

Working examples of technical or political groups exist in Dáil Éireann, the Scottish Parliament and the European Parliament.

Dáil Éireann

Standing Orders in Dáil Éireann provide for the formation of technical groups². Currently, according to the Ceann Comhairle's office, there are 21 members of Dáil Éireann's technical group³. This represents an increase of 5 Teachtaí Dála (TDs) in the group since May 2012. The current chairperson is Finian McGrath TD and Catherine Murphy TD is the whip. According to information provided by Dáil Éireann, the technical group deputies 'do not have a leader as such but meet to allocate speaking time amongst themselves.'

An important decision was reached in October 2014 when the Ceann Comhairle, Seán Barrett TD, ruled that the technical group 'is a speaking rights mechanism' and that 'a member who has severed all links with his/her party is eligible to join the group.'⁴ This was in response to a challenge from independent TDs including Catherine Murphy, John Halligan and Thomas Pringle who opposed Barrett's determination to allocate technical group speaking time to Reform Alliance TDs, Lucinda Creighton and Peter Mathews. Legal advice sought by the technical group had stated that Standing Orders enabled it to determine who was permitted to join the group. This counsel was disregarded by the Ceann Comhairle:

In a statement, Sean Barrett said the Technical Group is no more than a technical mechanism that has existed for decades in the rules of the Dáil.

Essentially, he said, it is a speaking rights mechanism and should not be confused with a political party. He said he has advocated on several occasions that it is a fundamental right of all democratically elected members to speak in the House.

Mr Barrett said he is extremely mindful of his obligation to uphold the rights and privileges of all members, in accordance with the constitution and the standing orders of Dáil Éireann.

To suggest otherwise, he said "is simply wrong".

He said the criteria is set out in standing order 120 (a member who informs) the Ceann Comhairle that they have joined a Technical Group automatically becomes a member of that group⁵.

Scottish Parliament

Since November 2012, a political/technical group has been in operation in the Scottish Parliament as provided for in Rule 5.2 'Members of the Parliamentary Bureau' and 5.6 'Special cases of Parliamentary Business' of the Standing Orders⁶.

² See Standing Order 120: <http://www.oireachtas.ie/documents/proceduraldocuments/modsod20150305.pdf>

³ Correspondence from Houses of the Oireachtas official on 12 October 2015.

⁴ Correspondence from Houses of the Oireachtas official on 14 October 2015.

⁵ <http://www.rte.ie/news/2014/1024/654683-technical-group/>

This technical group is composed of 5 Members of the Scottish Parliament (MSPs) including 3 Independents (John Finnie, Jean Urquhart and John Wilson) and 2 from the Green Party (Patrick Harvie and Alison Johnstone). Patrick Harvie MSP and Alison Johnstone MSP are spokespersons for the Green Party but the (technical) group, unlike its equivalent in Dáil Éireann, does not possess spokespersons who speak on behalf of the whole group⁷.

European Parliament

Although the European Parliament does not operate a Westminster-style Government- Opposition scenario, it has a well-established system of political groups.

The Members of the European Parliament sit in political groups – they are not organised by nationality, but by political affiliation. There are currently 8 political groups in the European Parliament.

A group may be based on a single European political party or can include more than one European party, as well as national parties and independents.

Twenty-five Members are needed to form a political group, and at least one-quarter of the Member States must be represented within the group. Members may not belong to more than one political group⁸:

Being part of a political group gives parties access to funding to cover staff and administrative costs, as well as a greater chance of getting their MEPs elected as chairs of the Parliament's committees.

It will also give a party's MEPs more speaking time during debates, as the number and length of contributions during debates is determined by group size⁹.

Clause 7 – Topical questions from Leader and Deputy Leader of the Opposition

Clause 7 states that “Standing orders must make provision that the first and second questions put to the First Minister and deputy First Minister during topical questions come from the Leader and Deputy Leader of the Opposition”.

Consideration may need to be given to introducing some flexibility into this clause, in the event that the Leader and/or Deputy Leader of the Opposition are not in a position to ask the first and/or second questions to the First Minister and deputy First Minister.

Clause 8 – Enhanced speaking rights for Opposition

⁶ Standards, Procedures and Public Appointments Committee, 'Standing Orders of the Scottish Parliament', retrieved 13 October 2015:

http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/SO_4thEdition_8thRevisionJune2014_complete.pdf

⁷ Correspondence from Scottish Parliament official on 15 October 2015.

⁸ <http://www.europarl.europa.eu/aboutparliament/en/20150201PVL00010/Organisation>

⁹ <http://www.bbc.co.uk/news/uk-politics-parliaments-34574041>

Clause 8 instructs Standing Orders to make provision for enhanced speaking rights for the Opposition and to include a minimum of 15 days per year set aside for Opposition business.

There is a lack of clarity on what constitutes “enhanced speaking rights”, although this would likely be set down in Standing Orders.

Regarding days set aside for Opposition business, the National Assembly for Wales makes a distinction between Government business and Assembly business:

The aggregate of time allocated as between government and Assembly business in plenary meetings in an Assembly year must, so far as is reasonably practicable, be in the proportion of 3:2¹⁰.

The Scottish Parliament sets aside 16 half sitting days in each Parliamentary year to consider business chosen by parties not represented in the Scottish Government or by a technical group. A half-sitting day is defined as: “that part of a sitting day between 14:30 and 17:00 on a Monday, between 09:15 and 12:30 or 14:30 and 17:00 on a Tuesday, Wednesday or Thursday or between 09:30 and 12:00 on a Friday”¹¹.

Clause 9 – Opposition right to chair Public Accounts Committee

Clause 9 provides that the Leader of the Opposition will nominate the chairperson of the Public Accounts Committee. The deputy chairperson of the committee will be nominated by the Deputy Leader of the Opposition.

In legislatures in the UK and Ireland, membership of Public Accounts Committees (PACs) is based on party balance in accordance with the relevant Standing Orders¹². This also applies in the international context, where PAC membership reflects party balance in the legislature. This means that the party of government or majority party controls the majority of seats on the PAC. However, this is usually counterbalanced by having a member of the opposition chair the PAC¹³. This is the case in the Scottish Parliament, National Assembly for Wales and Dáil Éireann: “Giving the chairmanship of the PAC to the opposition serves to re-equilibrate the balance of power between the government and the opposition, and indicates the willingness of both the majority and the minority to operate within the PAC in a nonpartisan manner”¹⁴.

¹⁰ Standing Orders of the National Assembly for Wales:

http://www.assembly.wales/NAFW%20Documents/Assembly%20Business%20section%20documents/Standing_Orders/Clean_SOs.eng.pdf

¹¹ Standing Orders of the Scottish Parliament:

http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/StandingOrders4thEdition_October2015_Complete.pdf

¹² SO 52 of the Northern Ireland Assembly, SO 6.3 of the Scottish Parliament, SO 17.3 and 18.3 of the National Assembly for Wales, SO 163 of Dail Eireann and <http://www.parliament.uk/documents/commons-information-office/Brief-Guides/Select-Committees.pdf> for House of Commons

¹³ <http://www.oecd.org/dataoecd/19/24/49778002.pdf>

¹⁴ As above

However, in Australia the PAC is chaired by a member of the Parliamentary majority, where it is seen as “advantageous to have a government Member as Chair, as this can assist with the implementation of the PAC’s recommendations. It is regarded as the duty of the Chair to advocate that the PAC’s recommendations be taken up and implemented by the government”¹⁵.

In 2005 the World Bank Institute outlined the characteristics of the ‘ideal’ PAC¹⁶, based on responses to a survey on PAC effectiveness by Commonwealth PAC Chairs. The key requirements are that:

- it would be small (5-11 members);
- senior opposition figures would be involved with it, possibly chairing it;
- the chair would be a senior, fair-minded, respected parliamentarian;
- it would be adequately staffed;
- its roles would be clearly understood;
- it would hold regular and frequent meetings;
- hearings would be open with transcripts made publicly available;
- a steering committee would plan work; typically taking evidence from an official;
- auditors’ reports would be referred automatically to the PAC with the Auditor meeting them to discuss them;
- the PAC would sometimes investigate issues other than those raised by the Auditor;
- it would strive for consensus;
- reports would be issued to Parliament at least annually;
- it would have measures for monitoring the implementation of recommendations;
- the Auditor would be used as an adviser; and
- there would be an annual parliamentary debate of its work

Clauses 10 and 17 – membership of Business Committee

Clause 10 requires Standing Orders to make provision for Opposition representation on the Business Committee. Clause 17 does the same for technical groups in circumstances where the Opposition is formed by one or more qualifying parties.

Standing Orders of the Scottish Parliament and National Assembly for Wales allow for representation on the respective business committees of non-executive parties and political groups:

¹⁵ <http://www.oecd.org/dataoecd/19/24/49778002.pdf>

¹⁶ http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2005/05/16/000090341_20050516071440/Rendered/PDF/wps3613.pdf World Bank Institute, 2005

Scottish Parliament - Scottish Parliamentary Bureau

1. The Parliamentary Bureau shall consist of—

(a) the Presiding Officer;

(b) a representative of each political party represented by 5 or more members of the Parliament (—a party representative) who is nominated by the leader within the Parliament of that party; and

(c) a representative of any group formed under paragraph 2 (—a group representative) who is nominated by that group.

2. Members who represent a political party with fewer than 5 representatives in the Parliament and members who do not represent a political party may join together to form a group for the purposes of nominating a group representative under paragraph

1(c). The number of members in any such group shall be at least 5.

National Assembly for Wales - Business Committee

As soon as possible after an Assembly election, the Minister with responsibility for government business must table a motion to appoint as members of the Committee, the Presiding Officer, one Member nominated by each political group represented in the Assembly and (if any three or more Members who are not members of a political group decide to form a grouping for the purposes of Standing Order 11) a Member nominated by each grouping of Members.

Clause 19 – Establishment of Budget Committee

Clause 19 instructs Standing Orders to provide for the establishment of a committee to scrutinise the draft budget laid before the Assembly under section 64 of the NIA 1998. This section looks at budget scrutiny practice in other jurisdictions.

Dedicated budget committees are not common in legislatures in the UK and Ireland. Rather, budget scrutiny is carried out a range of committees, although one committee may have primary responsibility for this task.

Scottish Parliament

The Finance Committee of the Scottish Parliament examines the Scottish Government's revenue-raising and spending plans, both through the annual budget process and the examination of the cost implications of bills¹⁷. Standing Orders further state:

1. At Stage 1 of a Budget Bill, the Bill shall be referred immediately to the Parliament for consideration of its general principles and a decision on whether they are agreed to. A report on the Bill's general principles from a committee shall not be required. If the Bill is considered by the Delegated Powers and Law Reform Committee under Rule 9.6.2, that committee shall report to the Parliament on the relevant provisions before Stage 3. **Stage 2 shall be taken by the Finance Committee**¹⁸.

¹⁷ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29822.aspx>

¹⁸ Standing Orders of the Scottish Parliament

The Financial Scrutiny Unit provides independent analysis and support to committees of the Scottish Parliament and to individual Members on budgetary trends and issues, including independent costing of specific spending proposals, and providing research on all areas of the economy and public finances as they affect the Scottish Government and Parliament¹⁹.

National Assembly for Wales

The Finance Committee is the ‘responsible committee’ that, under Standing Orders, must carry out scrutiny of the budget. However, this does not preclude other committees from reporting:

The Committee is responsible for reporting on this draft budget and can also recommend changes to the amounts proposed in the draft budget providing these changes do not increase or decrease the overall amount of resources or cash proposed. Although the Committee is responsible for reporting on the draft budget, under the Assembly’s rules, other committees may also consider and report to the Finance Committee on the draft budget²⁰.

The Committee employs an expert advisor to assist in its scrutiny.

House of Commons

The Treasury Select Committee conducts an inquiry into the Government’s budget proposals and publishes a report with recommendations. All Commons select committees, including the Treasury Select Committee, are empowered to “examine the expenditure, administration and policy of the principal government departments” as set out in Standing Orders.

The House of Commons also has a Scrutiny Unit which provides a wide range of financial expertise to departmental select committees. It undertakes systematic reviews of:

- Main and Supplementary Estimates
- Departmental Annual Reports and Accounts
- Spending Review settlements, Budget Statements, Autumn Statements etc²¹

Financial scrutiny

The more fundamental issue may be what resources are available to legislatures in carrying out budget scrutiny. The establishment of a Budget Committee for the Northern Ireland Assembly may not in itself lead to more rigorous financial scrutiny of

¹⁹ <http://www.scottish.parliament.uk/parliamentarybusiness/16305.aspx>

²⁰ <http://www.assembly.wales/laid%20documents/cr-ld9985%20finance%20committee%20report%20-%20scrutiny%20of%20welsh%20government%20draft%20budget%202015-16%20-%20adrodidiad%20v%20pwyllgor%20cyllid/cr-ld9985-e.pdf>

²¹ <http://www.parliament.uk/mps-lords-and-offices/offices/commons/scrutinyunit/about-us/>

the Executive. Rather, it may need to be supported by independent, specialist scrutiny units and/or external advisors to assist the committee in its work. The Public Finance Scrutiny Unit (PFSU) already offers specialist support, advice and training to members and committees of the Northern Ireland Assembly²² and it is likely that it would play a key role in the work of any future Budget Committee. Nevertheless, the Assembly's Committee Review Group produced a report in 2013 which ruled out the establishment of a dedicated Budget Committee²³. As shown, there is a growing trend towards this type of model:

The creation by parliament of an independent unit or body to assist parliamentary scrutiny and to undertake research can potentially address bias toward spending and deficits, and more generally enhance fiscal discipline, raise the quality of debate and scrutiny, and promote transparency and accountability...²⁴.

There are examples of such units from international jurisdictions:

- **Australian Parliament - Parliamentary Budget Office and Parliamentary Budget Officer:** The role of the Parliamentary Budget Office is to inform the Parliament by providing independent and non-partisan analysis of the budget cycle, fiscal policy and the financial implications of proposals. The role of the parliamentary Budget Officer is to:
 - Outside the caretaker period for a general election – to prepare policy costings on request by Senators and Members of the House of Representative, with the requests and the PBO's responses to be kept confidential if so requested by the requestor.
 - During the caretaker period for a general election – to prepare costings of publicly announced policies on request by authorised members of Parliamentary parties or independent members.
 - To prepare responses (other than policy costings) to requests relating to the budget by Senators or Members of the House of Representatives.
 - To prepare submissions to inquiries of Parliamentary committees on request by such committees.
 - To conduct research and analysis of the budget and fiscal policy settings²⁵.
- **Parliament of Canada – Parliamentary Budget Officer:** The Parliamentary Budget Officer (PBO) is mandated to provide independent and objective

²² The Finance and Personnel Committee of the Northern Ireland Assembly considered a range of options to enhance budget scrutiny in a 2007 report, one of which was the establishment of a financial scrutiny unit:

http://archive.niassembly.gov.uk/finance/2007mandate/reports/report_61_10_11R.htm

²³ Committee Review Group report, see paragraphs 35 and 169:

<http://www.niassembly.gov.uk/globalassets/Documents/Reports/Committee-Review-Group/NIA-135-11-15.pdf>

²⁴ <http://www.accaglobal.com/content/dam/acca/global/PDF-technical/public-sector/tech-tp-pfs.pdf>

²⁵ http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Budget_Office/officer

analysis to Parliament on the state of the nation's finances, the government's estimates and trends in the Canadian economy; and upon request from a committee or parliamentarian, to estimate the financial cost of any proposal for matters over which Parliament has jurisdiction. The PBO's legislative mandate and powers are set out in the Parliament of Canada Act. The Budget Officer is supported by 17 staff²⁶.

By way of brief comparison it is useful to look at the powerful budget committees of the United States Congress, which operate in a legislature which 'has more power and control over the Executive branch than that of most parliamentary regimes.'²⁷

- **US House of Representatives Budget Committee:** This committee consists of 5 members from each of the following committees: Committee on Ways and Means and Committee on Appropriations. One member is also drawn from the Committee on Rules. The House majority and minority parties are also represented by one member each. In total there are currently 39 members on the committee and a majority of members is necessary for the committee to be quorate.²⁸ Its main responsibilities include the budget resolution, reconciliation, budget process reform, oversight of the Congressional Budget Office, revisions of allocations and adjustments.
- **US Senate Budget Committee²⁹:** This committee consists of 22 members including a chairman and ranking member. Like its counterpart in the House, the Senate's Budget Committee was formed under the Budget Act (1974) and its principal duty is 'to develop an annual concurrent resolution on the budget.'³⁰ Further, it manages the enforcement of this resolution, tracks the appropriations process throughout the year and initiates and enforces the budget reconciliation process. Hearings on the economy and the consideration of nominations for the president's Office of Management and Budget in addition to oversight of the Congressional Budget Office also fall under the remit of the Committee.³¹

Clause 21 – Northern Ireland departments

Clause 21 states that the Northern Ireland departments shall cease to be separate bodies corporate and instead will be constituted as a single legal entity. The sponsor of the Bill stated that the purpose of this is to, in effect, stop Ministers engaging in legal action against each other and "is part of the drive towards a collective Cabinet

²⁶ <http://www.pbo-dpb.gc.ca/en/about#WHOWEARE>

²⁷ 'How do Parliaments Approve Budget Laws and Oversee Budget Processes?' <http://blog-pfm.imf.org/pfmblog/2010/01/how-do-parliaments-approve-budget-laws-and-oversee-budget-processes.html>

²⁸ <http://budget.house.gov/about/>

²⁹ For further reading on US Senate Budget Committee see 'Committee on the Budget United States Senate, 1974-2006', http://www.budget.senate.gov/republican/public/index.cfm?a=Files.Serve&File_id=3ef00980-b6ef-4a0b-b804-df74ef7b1486.

³⁰ <http://www.budget.senate.gov/republican/public/index.cfm/committee-history>

³¹ <http://www.budget.senate.gov/republican/public/index.cfm/committee-history>

responsibility and means that Departments would not be stand-alone silos in their own right³².

Isle of Man

The Isle of Man Government has recently consulted on a move towards transforming its government structures into a single legal entity. This followed discussions on the topic going back a number of years. It commissioned a report by Sir John Elvidge who recommended a move to a single legal framework. Some of the key points from the Elvidge report are summarised below:

- The report recommended that the time had come to take the step to reconstitute as a single legal entity.
- The main reason for this is that it clearly creates a favourable context for the more integrated working of government. It removes potential inhibitors to joint action by different parts of the government structure. In terms of behavioural culture within government, which is much more important in practice than organisational and process changes, it encourages a predisposition towards communication and cooperation.
- Government as a single legal entity is not the same thing as government as a single organisation...it is important to be clear that, although the arguments for a change to single legal status are strong, that change, in itself, is unlikely to have a powerful effect. It is more a matter of removing an obstacle to the Government's ambitions than of creating a tool to achieve those ambitions.
- Government as a single organisation, or even government as a well-integrated organisation, does not flow automatically from a government being a single legal entity...There are numerous examples of governments as single legal entities. Scotland and Sweden may currently be the only examples of government as a single organisation, although several other governments are currently considering whether they should seek to adopt a version of that model.
- Some of the further changes the Isle of Man Government might wish to consider were:
 - A single strategic framework for Government
 - An integrated performance management framework
 - A collective approach to political decision making

³² <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=15375&evidID=8724>

- Common systems underpinning the operation of central Government e.g. finance, ICT, HR
- Integrated financial planning and budget management within central Government
- An integrated Civil Service structure, with a clear overall point of authority
- A basis for aligning the activities of centrally funded public bodies which are at 'arm's length' from central Government with the Government's strategic framework
- A basis for aligning the activities of municipal/local Government with the Government's strategic framework³³

The Scottish experience

The Scottish Government has undergone a radical overhaul in recent years, beginning with the arrival of the Scottish National Party (SNP) in 2007. The report *Governments for the Future: Building the Strategic and Agile State – Developing strategic agility*, summarised the transformation which was delivered in large part by Sir John Elvidge. Sir John had been working on plans to re-design the structure of the Scottish Government in the years prior to 2007:

Elvidge and his team did work to identify a potential operating model for (a minority government, as the SNP was at that time) and performed an analysis of the extent to which the SNP manifesto could be delivered, offering that to the SNP leadership. He then invited the SNP leadership to consider a radical redesign of the internal structure of the government, involving the termination of the long established model of a series of functional departments (ministries).

In a thirty minute meeting, the SNP leadership provided its full support... This was a major organisational breakthrough, enabling a more collaborative and 'whole of Government' policy making to emerge. In the new administration, former heads of departments were redeployed into a smaller number of Director General roles, focused primarily on shared responsibility for the whole of government performance. Forty-five... Directorates would implement policies and constitute the highest level of functional unit of organisation. The five Director Generals would each oversee one of the government's broad strategic objectives, such as a Safer Scotland or Smarter Scotland, integrating the contributions of all parts of the civil service rather than only directing (and acting as advocates for) a particular department, as they used to do...³⁴

³³ *Modernising Ministerial Government: Government as a Single Legal Entity*, Isle of Man Government:

<https://www.gov.im/lib/docs/hr/consultation/20141008singlelegalentityfinal.pdf>

³⁴ <http://www.sitra.fi/julkaisut/Selvityksiä-sarja/Selvityksia80.pdf>

Of course, radical changes such as the one undertaken in Scotland may not be easily transferrable to the Northern Ireland context, but it nevertheless provides an example of a more integrated, cohesive approach to policy formulation and implementation.

3 The Schedule

Replacement of cross-community support with weighted majority voting

Part 3 of the Schedule allows that an AERM may request the removal of community designation from the NIA 1998. Part 4 provides for an AERM to request the removal of the concepts of cross-community support and petitions of concern from the NIA 1998 and that they be replaced with a weighted majority vote mechanism. There has been ongoing debate about the use of Petitions of Concern³⁵, but the idea of veto rights is well-established in other consociations:

It is not just a matter of getting the representatives together, as the grand coalition does, it is also about how they behave once together. This is why veto rights, which can be either informally practiced or formally enshrined in the constitution, are important. Indeed, without the veto, the principle of majority rule can be easily enacted within the power-sharing executive or legislature, thereby defeating the very purpose of the coalition...

The areas in which veto rights apply can also vary, covering constitutional change, routine legislation or both. They can also be either restrictive or permissive in the topics to which they pertain. Restrictive veto rights limit veto use to decisions that affect the “vital interests” of groups, whereas a more permissive approach allows their use on all proposed legislation...Restricting veto rights to particular areas that affect the vital interests of groups – such as those concerning culture, language, education, symbols, etc. – has the advantage of not deadlocking the entire decision-making process...³⁶

The Speaker

The proposals on the election and role of the Speaker were of considerable interest to Members of the Assembly and Executive Review Committee’s during its evidence session with the Bill’s sponsor. The Bill calls for a secret, weighted majority ballot to elect the Speaker, who once elected would cease to be a Member of a political party. In addition, the Speaker would cease to represent their constituency and would be

³⁵ See for example:

http://www.niassembly.gov.uk/globalassets/documents/raise/knowledge_exchange/briefing_papers/series3/schwartz200314.pdf

³⁶ Allison McCulloch, *Power-Sharing and Political Stability in Deeply Divided Societies*, p.15, Routledge, 2014

replaced by another Member nominated by the nominating officer of the party. This is to ensure that constituents continue to receive representation, as there is a perception³⁷ that a House of Commons-type Speaker cannot represent his or her constituents.

House of Commons

The Speaker of the House of Commons is limited in his capacity as an MP – he cannot ask questions of Ministers, table motions or bring forward a Private Members Bill. He or she can, however, appeal directly to Ministers and other agencies on behalf of his constituents. From current Speaker John Bercow's website:

Please rest assured that I continue to represent all my constituents. Although as Speaker I do not speak in or stage debates, table questions, or sign Early Day Motions, I represent all my constituents by raising their concerns with the relevant agency or government department. As Speaker, I receive ministerial replies, often from the Secretary of State, and on an expedited basis in recognition of the fact that the Speaker does not table questions or speak on the floor of the House. I no longer address any issue in a party political manner in accordance with the convention that the Speaker remains impartial³⁸.

Paragraph 7 (g) provides that the Speaker would not be eligible to stand in the next Assembly elections, but could be re-elected as Speaker to that new Assembly. If they are unsuccessful in the ballot to elect the Speaker, then they will have no role to play in that Assembly.

The idea of appointing a Member to a separate seat upon his or her election as Speaker was considered by the House of Commons Procedure Committee in a 2011 report:

Figure 1: Extract from House of Commons Procedure Committee report - 2010 elections for positions in the House³⁹

The Speaker's Seat

20. We have been asked by the Speaker to consider the question of whether there should be a Speaker's seat in a General Election to replace the current situation whereby the Speaker stands as a non-aligned candidate in a normal parliamentary constituency. This issue was raised with the Speaker during the General Election in May 2010 and, although not directly connected to the re-election of the returning Speaker to his Commons post, it has obvious relevance to the presumptions which might lie behind that re-election.

21. The concept of a Speaker's seat (sometimes referred to as St Stephen's seat) envisages that any Member once elected by the House to the Speakership would cease to represent a normal parliamentary constituency, resulting in a by-election, and would be automatically returned at the next General Election, if he or she so chose, to stand in the Speakership election. The advantages of this proposal are that the constituents of the new Speaker would be able to

³⁷ See discussion in Assembly and Executive Review Evidence session:

<http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=15375&evidID=8724>

³⁸ <http://www.johnbercow.co.uk/node/3>

³⁹ <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmproced/1573/157305.htm#a11>

choose a new representative who could speak on their behalf in the Commons which their former Member, now the Speaker, could not, and that they would not be disenfranchised in a General Election where the major parties accepted the convention that the Speaker seeking re-election stands unopposed. It would therefore keep the Speaker out of political controversy at the time of an election while at the same time ensuring that his or her former constituents were able to express their view by voting in a normal ballot for candidates from across the political spectrum. If the Speaker lost his office, whether by resignation or defeat in the Commons, he would cease to be a member of the House...

In the context of this report, we have not conducted a full inquiry into the proposal for a special Speaker's seat, which would in any case require primary legislation. From our review of the arguments and the history of the idea, we are firmly persuaded that the advantages of the change are outweighed by the disadvantages. There are great benefits to the House and to the Speaker in the Speaker's retaining responsibility for a normal constituency and being thereby fully aware of the issues currently causing concern to constituents. The access that the Speaker, like Ministers who are also unable to speak out in debates, gains to the Government in order to raise matters relating to his or her constituents compensates in no small measure for the lack of a constituency voice on the floor of the House. We are also concerned that the proposal would remove the important democratic check on the re-appointment of a Speaker by either the public or the House and would create a new separate, distinctive and privileged category of Member to the detriment of the House. Finally, we recognise that the existence of a Speaker's seat could lead to worse consequences for a returning Speaker, if not re-elected by the House, than at present since there could be no possibility of a return to the backbenches in such circumstances and the traditional honour of a seat in the Lords could cease to be available in the foreseeable future. For all these reasons, we do not support the concept of a St Stephen's seat for the Speaker.

Dáil Éireann

Member of Dáil Éireann are elected in multi-member constituencies. However, the Irish Constitution guarantees the re-election of the Ceann Comhairle. Article 16 states: "Provision shall be made by law to enable the member of Dáil Éireann who is the Chairman immediately before a dissolution of Dáil Éireann to be deemed without any actual election to be elected a member of Dáil Éireann at the ensuing general election"⁴⁰.

According to the website of Dáil Éireann:

On assuming office and to ensure his unique role of presiding impartially over the proceedings, the Ceann Comhairle by tradition precludes himself from active participation in politics but remains free to make representations on behalf of constituents⁴¹.

Life after the Speakership

The Bill may be unclear on whether such a Member would be effectively barred for life from contesting an Assembly election, or just for the election immediately after their term as Speaker. Clause 7(f) of the Schedule makes reference to the "next Assembly elections subsequent to becoming Speaker." In practice, to date all of the Speakers who have served in the Assembly have not returned to party politics, but have instead retired or been appointed to the House of Lords. A similar point was made in respect of Speakers of the House of Commons.

⁴⁰ http://www.taoiseach.gov.ie/eng/Historical_Information/The_Constitution/February_2015_-_Constitution_of_Ireland_.pdf

⁴¹ <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/a-misc/chairede.htm>

Yet there is no obligation on Speakers/Presiding Officers to relinquish politics once they have served their term. In the case of the Scottish Parliament, Alex Fergusson served as Presiding Officer from 2007-11 but decided not to put his name forward again and was succeeded by Tricia Marwick for the current mandate. Mr. Fergusson currently serves the constituency of Galloway and West Dumfries⁴².

In Dáil Éireann, Dr. Rory O'Hanlon served as Ceann Comhairle from 2002 to 2006. He was succeeded in this role by John O'Donoghue, but Dr. O'Hanlon continued to serve in the Dáil until 2011.

Other Westminster-style legislatures observe the neutrality of the Speaker, but do not require them to relinquish party political ties. The speakers of the lower houses in Canada, Australia and New Zealand stand as candidates for their respective parties at a general election, and are opposed by candidates as in any other constituency⁴³.

Bronwyn Bishop served as Speaker of the Australian House of Representatives from 2013 to 2015 but returned to the backbenches after resigning due to an expenses scandal⁴⁴.

Election of the Speaker

Clause 7(a) of the Schedule states “that the Speaker be elected in a secret ballot under a weighted majority vote”. The Speaker is currently elected on a cross-community basis. Below are some examples of how other jurisdictions elect their Speaker/Presiding Officer.

House of Commons

If the Speaker is returned at a general election and wishes to resume the Speakership, a motion is put before the House ‘that x do take the Chair of this House as Speaker’. If the question is challenged the decision is made by division. The House debated a proposal on 26 March 2015 that a secret ballot should be used to determine the question, if it is challenged. The House disagreed with the proposal. If there is no returning Speaker wishing to stand again, or the House votes against the appointment of the former Speaker, a contested election by exhaustive secret ballot must take place to choose a new Speaker. The ballot would then take place on the following day⁴⁵. Deputy Speakers are elected using the single transferrable vote.

Figure 2: Process for electing the Speaker of the House of Commons

Ballot for election of the Speaker⁴⁶

Written nominations are submitted to the Commons Table Office between 9.30am and 10.30am on the morning of

⁴² <http://www.alexfergusson.org.uk/content.asp?page=2>

⁴³ Democratic Audit UK: <http://www.democraticaudit.com/?p=1288>

⁴⁴ <http://www.bbc.co.uk/news/world-australia-33751156>

⁴⁵ Information from: <http://www.parliament.uk/about/faqs/house-of-commons-faqs/speakers-election/>

⁴⁶ As above

the election. The House meets at 2.30pm.

The Father of the House presides over the election, sitting at the Table of the House rather than in the Speaker's Chair. Each candidate addresses the House. The order of candidates is chosen by the Father of the House by drawing lots earlier in the day.

The first round of voting is then held. MPs go to one of the division lobbies where they must put a mark on the ballot paper against the name of only one candidate. After the votes have been counted (which may take a couple of hours) the Father of the House announces the results in the Chamber. If no candidate achieves over half the vote there will be further rounds of voting.

For following rounds, the names of any candidates who obtained less than 5% of the votes cast in the previous ballot, of the candidate with the fewest votes in the previous ballot, and of any candidates who choose to withdraw from the election, are removed from the ballot paper. Successive ballots are held until one candidate obtains over half of the votes cast or only one candidate remains when the exclusions described above are applied.

A motion is put before the House 'that x do take the Chair of this House as Speaker'. If the question is challenged a decision is made by division. If it is defeated, the House must meet again the following day and start the process all over again, from scratch. When the House has agreed, the Member named in the motion takes the Chair as Speaker-elect.

Scottish Parliament

Provision is made for the election of the Scottish Parliament's Presiding Officer under Rules 3.2 and 11.9 of the Scottish Parliament's Standing Orders.⁴⁷ This rule refers to two circumstances during which an election for Presiding Officer may be necessary. The first scenario relates to the period immediately after a Scottish Parliament general election and the second refers to a situation in which 'the presiding officer ceases to hold office before the Parliament is dissolved, the Parliament shall elect another from among its members.'⁴⁸

Regarding the first circumstance, Standing Orders states that 'the voting period at the election (the voting period) shall take place at such time during the first meeting as may be notified in the Business Bulletin or as may be appointed by the person chairing the meeting.'⁴⁹

In relation to the second situation, 'the voting period shall take place on the day and at the time appointed by the Parliament on a motion of the Parliamentary Bureau. That date shall not be later than 14 days after the date on which the Presiding Officer ceased to hold office. Where the Parliament is in recess when the Presiding Officer ceases to hold office, the voting period shall take place on the date and at the time appointed by a deputy Presiding Officer, which shall be notified in the Business

⁴⁷ 'Scottish Parliament Standing Orders'

http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/SO_4thEdition_8thRevisionJune2014_complete.pdf

⁴⁸ As above

⁴⁹ 'Scottish Parliament Standing Orders'

http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/SO_4thEdition_8thRevisionJune2014_complete.pdf

Bulletin. That date shall not be later than 14 days after the final day of that recess period.⁵⁰

Voting for the presiding officer is completed by secret ballot and held during the voting period referred to above. Provision is also made within Standing Orders for more rounds of voting if there is more than one candidate in the election.

Under **Rule 11.9.3** the election result is valid 'only if the number of members who voted is more than one quarter of the total number of seats for members. For this purpose, in calculating the number of members who voted—

- (a) account shall be taken not only of those voting for or against a candidate, but also of those voting to abstain; and
- (b) where there is more than one round of voting the result of each round of voting shall be treated as a separate result and the number of members who voted shall be taken to be the total number who voted in that round.

If the result of any vote at an election is invalid under this Rule, no candidate shall be elected at that election.⁵¹

A candidate requires a simple majority vote to be elected whether opposed by another candidate or unopposed. Where there are more than two candidates, a nominated person requires more votes than the other candidates to be deemed elected.

National Assembly for Wales

Provision is made for the election of the National Assembly for Wales's Presiding Officer in Standing Order 6.⁵² The process for electing a new Presiding Officer is chaired by the former Presiding Officer. Where the former Presiding Officer wishes to stand for re-election, the proceedings are overseen by the Clerk of the Assembly.

⁵⁰ As above

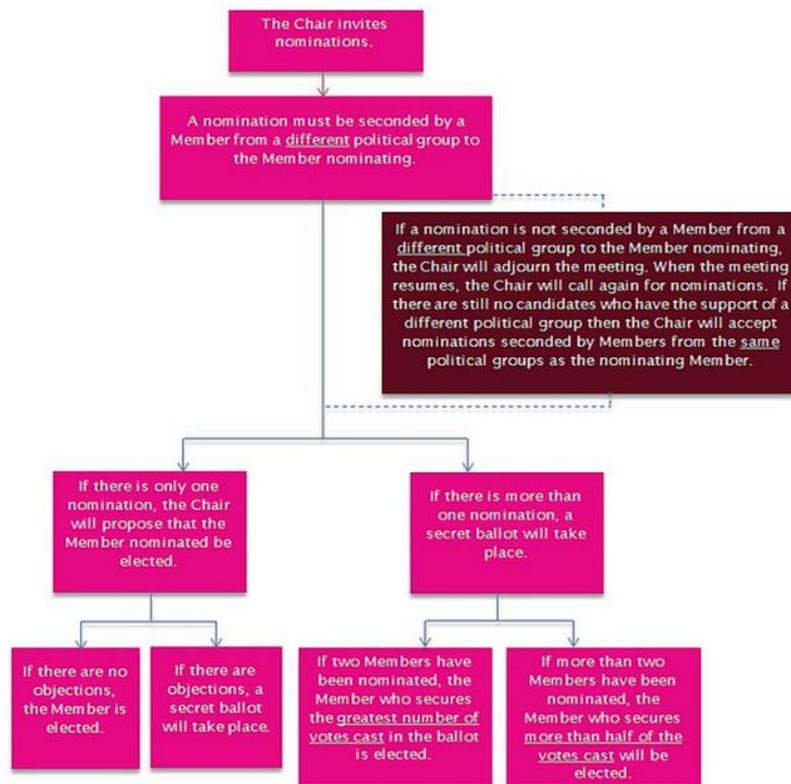
⁵¹ 'Scottish Parliament Standing Orders'

http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/SO_4thEdition_8thRevisionJune2014_complete.pdf

⁵² 'National Assembly for Wales Standing Orders (version with tracked changes)',

http://www.assembly.wales/NAfW%20Documents/Assembly%20Business%20section%20documents/Standing_Orders/Tracked_SOs.eng.pdf

Figure 3: Process for electing Presiding Officer of the National Assembly for Wales



Dáil Éireann

Provision is made for the Ceann Comhairle's (Chairman of Dáil Éireann) election under Standing Order 6.⁵³ Any Teachta Dála (TD) may bring a motion calling for a new Ceann Comhairle's election to the Clerk of Dáil Éireann who chairs the proceedings.

Where there is one nominee the motion is put to the Dáil by the Clerk and, if there is a majority of TDs present and voting in favour of the candidate, he/she is deemed elected. Where the election results in a tie 'the vote shall be decided in the negative.'⁵⁴

Also, if there is more than one candidate the Clerk puts the motions to the Dáil 'in the order in which the members shall have been proposed.'⁵⁵ The voting process is similar to the election of a single candidate.

⁵³ 'Dáil Éireann Standing Orders' <http://www.oireachtas.ie/documents/proceduraldocuments/modsod20150305.pdf>

⁵⁴ As above

⁵⁵ 'Dáil Éireann Standing Orders' <http://www.oireachtas.ie/documents/proceduraldocuments/modsod20150305.pdf>

In the event that a Ceann Comhairle-elect is not agreed during these proceedings Standing Order 7 grants provision for the Dáil ‘on motion made without notice’, to ‘appoint any member to act as Ceann Comhairle for the time being. Until such member is appointed the Clerk shall continue to act as Chairman.’⁵⁶

Nomination of Ministers and chairpersons of statutory committees

Part 11 of the Schedule states that the AERM “may request that members are nominated to serve as chairpersons and deputy chairpersons of statutory committees as part of the same process for members being nominated to Ministerial office...”.

RaISe has previously calculated⁵⁷ the number of positions each party would be entitled to if D’Hondt was run as a single process, rather than separately for Ministers, Committee chairs, deputy chairs etc. The calculations were therefore based on the following:

- 11 Ministers
- 12 Statutory Committee chairs
- 12 Statutory Committee deputy chairs
- 5 Standing Committee chairs⁵⁸
- 5 Standing Committee deputy chairs

Table 1: Party entitlement if D’Hondt is run as a single process

Party	DUP	Sinn Fein	UUP	SDLP	Alliance
Entitlement	17	12	7	6	3

Obviously the research cannot predict which positions the parties would choose. Furthermore, there is a convention that Ministers and the Speaker do not take committee places.

Collective Ministerial Responsibility, Threshold for nomination of Minister and Programme for Government

Paragraphs 9 to 13 of the Schedule deal with the formation and running of the Executive. Part 9 states that an AERM “may request that the Ministerial Code referred to in section 28A of the Northern Ireland Act 1998 include provision that Ministers uphold the principle of collective responsibility.” In the Westminster tradition, the convention of collective ministerial responsibility means that all ministers should

⁵⁶ ‘Dáil Éireann Standing Orders’ <http://www.oireachtas.ie/documents/proceduraldocuments/modsod20150305.pdf>

⁵⁷ Calculations were carried out in August 2014 using results from the 2011 Assembly elections.

⁵⁸ The Business Committee does not employ D’Hondt for appointing the Chair and deputy Chair. It is chaired by the Speaker.

promote and publically support Government policy, even if they may have private misgivings about it⁵⁹:

As such, the (Westminster) Cabinet (and in turn, its committees) is a key forum for collective decision-making, providing an arena for policy discussion and the frank exchange of views. Any decisions in which such discussions result are deemed binding on all ministers, and as such collective responsibility is further reinforced by the requirement of strict confidentiality, with all opinions expressed and advice offered remaining private. It is also important to note that all aspects of the convention applies to all ministers, even when a minister had no part in that decision or was not a member of the forum in which the decision was taken (e.g. Cabinet or a specific cabinet committee)⁶⁰.

Yet how does the convention fit with an Executive that is not formed by political bargaining, but through the automatic entitlement to seats if a certain electoral threshold is reached? This may be an area that warrants further consideration.

Paragraph 10 of the Schedule states that “(an AERM) may request that a political party must have a minimum of 16.6% of the total number of members of the Assembly before that party is eligible to nominate a person to hold Ministerial office...”. In a 108 Member Assembly, this translates to 18 Members. There is precedent in other consociations for a threshold to join the Executive:

It may...be that...different segments receive some form of constitutional protection of their executive status and/or that all political parties above a specified minimum size in parliament are entitled to membership in the cabinet. In Belgium, for instance, the constitution guarantees that an equal number of Dutch-speakers and French-speakers will comprise the executive, while Cyprus’s short-lived consociation (1960-1963) mandated executive, parliamentary and civil service representation on a seven to three ratio for the Greek and Turkish communities, respectively...in Fiji any party with at least 10 per cent of legislative seats could enter cabinet under the terms of the 1997 constitution. The key to executive power-sharing is that it includes substantive cross-community participation rather than any specific institutional reform⁶¹.

Furthermore, Paragraph 13 of the Schedule (Programme for government), places an obligation on parties to establish such a programme before their members take up Ministerial office and not later than four weeks after the election of a new Assembly.

However, the experience in other consociations shows that executive formation can be a lengthy process and that the current model in Northern Ireland is, by comparison, reasonably straightforward:

⁵⁹ See House of Commons briefing paper for further information: <http://researchbriefings.files.parliament.uk/documents/RP04-82/RP04-82.pdf>

⁶⁰ Dr. Felicity Matthews, *The Coalitionising of Collective Responsibility*, Paper prepared for the Annual PSA Conference 14-16 April, 2014: <https://www.psa.ac.uk/sites/default/files/conference/papers/2014/Collective%20Responsibility,%202014,%20PSA.pdf>

⁶¹ Allison McCulloch, *Power-Sharing and Political Stability in Deeply Divided Societies*, p. 12, Routledge, 2014

Grand coalitions (of Executive parties) on their own are not intrinsically moderate nor do they automatically translate into political stability. Bringing together diverse groups, particularly when they are likely to have some antipathy toward one another, carries its own risks, including the prospect of deadlock of executive formation. This has come to pass in Lebanon where the presidency remained vacant for several months between 2007 and 2008, in Bosnia where it took over a year to form the Council of Ministers after the October 2010 elections, and in Belgium where it took a full 541 days to form the government after the June 2010 elections. Yet, there are ways to circumvent such deadlock. Northern Ireland's method of sequential portfolio allocation, via the D'Hondt method, is one strategy. It has been commended for its automaticity and inclusivity. Since the allocation of portfolios is made contingent on the legislative seat share of parties, this mechanism of allocation not only saves parties from having to vote for one another, often a "politically impossible" venture, it also avoids the protracted executive formation experienced in Lebanon, Bosnia and Belgium. Its inclusivity assumes that parties want "voice" (that is, that they want power)⁶².

Part 13 of the Schedule is silent on what consequences, if any, would follow from a failure to agree a programme for government and budget outlines.

The mechanics of government formation in Belgium show the complexity involved in forming a workable Executive:

As soon as the parties have given their agreement, the party leaders of the new coalition meet again to discuss or to finalise the distribution of portfolios. This is another complex negotiation in which a number of subtle equilibria have to be respected. The basic rule is that ministerial posts are divided proportionally between the parties by using a system of 'points'. The position of prime minister counts for three points, while all other ministers, the presidency of both houses of parliament and the membership of the European Commission count as two points. The number of seats of each party in the parliament is then used to compute how many points each party is allowed to claim. With only 15 ministers and with the obligation to have 7 French speakers and 7 Dutch speakers, this basic logic needs some adjustment. The normal means to correct the mathematical balance is by appointing a number of 'secretaries of state' to be used as 'small change'. These are junior ministers, and their number is not limited by the constitution. In the distribution of portfolios they count for one point...⁶³

Part 12 of the Schedule appears problematic in that it provides for an AERM to request that a member may leave the Opposition and be nominated for Ministerial office in accordance with section 18(2) to (6) of the Northern Ireland Act 1998. The Explanatory and Financial Memorandum provides no detail on the policy intention behind this. This appears to allow for the potential scenario that at any time a qualifying party that had

⁶² Allison McCulloch, *Power-Sharing and Political Stability in Deeply Divided Societies*, pp. 80-81 Routledge, 2014

⁶³ Kris Deschouwer, *The Politics of Belgium: Governing a Divided Society*, pp150-151, 2012

originally decided not to take its Ministerial seat or seats could request its entitlement. This could have implications for the stability of the Executive.