



Northern Ireland
Assembly

Research and Library Service Briefing Note

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Voting and community designation

1 Background

This briefing paper outlines key aspects of the voting and community designation systems in the Northern Ireland Assembly and highlights the relevant legislative provisions. Both the voting system and requirement to for MLAs to designate themselves reflect attempts to accommodate the opposing political interests in a divided society.

The Standing Orders referred to in the paper are those as amended 23 March 2010.

2 Voting and community designation

The voting system and requirement to designate as 'Nationalist', 'Unionist' or 'Other' are interlocked. Community designation facilitates the test that key decisions in the Assembly can only be passed with cross-community support.

The current voting arrangements in the Assembly reflect the requirement to avoid key decisions being taken on a straightforward majority vote. The Belfast/Good Friday Agreement provided safeguards to ensure key decisions would be taken on a "cross-community basis:

- (i) either parallel consent i.e. a majority of those members present and voting, including a majority of the unionist and nationalist designations present and voting;

- (ii) or a weighted majority (60%) of members present and voting, including at least 40% of each of the nationalist and unionist designations present and voting”¹.

Key decisions requiring cross-community support are designated in advance, including election of the Chair (Presiding Officer) of the Assembly, the First Minister and deputy First Minister (this no longer applies following the St. Andrew’s Agreement Act 2006), standing orders and budget allocations. In other cases such decisions could be triggered, by a petition of concern brought by a significant minority of Assembly members (30/108)². Sections 4(5) and 42 of the Northern Ireland Act 1998 give effect to these arrangements.

Issues in the NIA 1998 that are currently subject to cross-community consent are:

- changes to the schedule of reserved and transferred matters
- election of the Presiding Officer
- determination of the number of Ministers and their portfolios
- exclusion of Ministers from office
- amendments to Standing Orders
- a financial vote, resolution or Act
- approval of the draft Budget

The Standing Orders of the Assembly require the following issues to be put to a cross-community vote:

- A decision by the Assembly to agree to a report by an Ad Hoc Committee on Conformity with Equality Requirements
- A decision by the above Committee
- A motion relating to special scheduling requirements for Public Bills
- Appointments to the Assembly Commission

The Committee on the Preparation for Government considered “community designation and the voting system” and the main issues that arose included:

- the perception that the designation system is divisive and that the vote of members that do not designate as either “Nationalist” or “Unionist” is devalued
- the possibility of removing the designation system and introducing a weighted majority voting system

¹ The Belfast Agreement, Strand One, paragraph 5

² As above

- the need for each community to develop confidence and trust before consideration can be given to removing the requirement to designate
- whether designation is necessary to protect the guarantees of the Belfast Agreement
- the need for a system that is flexible enough to accommodate future demographic and political changes is required
- the need to consider the appropriate point at which designation should be recorded

No agreement was reached at the time on changes to the system.

During the discussions in the Committee on the Preparation for Government, the Alliance Party proposed a move to a weighted majority voting system in the Assembly and the removal of the present community designation system. There was not consensus and the proposal fell³.

It has been argued that a move to a weighted majority for the passage of key decisions would protect the rights of both Nationalists and Unionists: "Nationalists now consistently have over 40% of the popular vote in recent elections (meaning) Nationalists could only be outvoted on key measures if virtually all 'Others' voted with the Unionist bloc (which is) an unlikely scenario. Nationalists and 'Others', by contrast, fall short of 60%, so they could not coerce all Unionists in the foreseeable future"⁴. This argument, of course, assumes that current voting patterns will remain reasonably steady.

In September 2009 the First Minister called for reform of the current system, stating that it was "undemocratic and entrenched community division"⁵.

Community designation

In drafting the Belfast/Good Friday Agreement, Senator George Mitchell and his co-chairmen introduced the idea of designation of identity. This was subsequently provided for in the Secretary of State's Initial Standing Orders of 29 June 1998, ahead of the Assembly's first meeting on 1 July 1998.

Presently, all MLAs are required to designate themselves individually as either 'Unionist', 'Nationalist' or 'Other' at the first meeting of the new Assembly following an election. As noted, community designation provides for a test of cross-community support for 'key decisions', including budget votes, the election of the Speaker and changes to Standing Orders. However, one result of this is that the votes of members

³ Committee on the Preparation for Government, 'Report on Institutional Issues', September 2006

⁴ McGarry and O'Leary, 'Consociational theory, Northern Ireland's conflict and its Agreement – what critics of consociation can learn from Northern Ireland', in *Government and Opposition* volume 41, Issue 2, p249-277

⁵ Press Association, 'Minister's call to replace 'undemocratic' cross-community votes', 8 September 2009

who designate themselves as ‘others’ cannot be counted in determining cross-community support.

Critics of the community designation requirement say that it entrenches division by placing Unionism and Nationalism over other forms of identity, and this is also true in other divided societies: “Lebanon’s electoral law has specified that successful candidates from certain constituencies must come from particular communities...(other countries) specify that particular office holders must be from one ethnic community or another”⁶.

It could be argued that the community designation requirement creates a disincentive for voters to vote outside their traditional bloc, but it could also be said that voters in Northern Ireland have voted along Nationalist/Unionist lines long before the creation of the current Assembly.

The St. Andrew’s Agreement Act 2006 amended section 4 the Northern Ireland Act 1998 in to require the Standing Orders of the Assembly to provide that an MLA may only change their community designation of ‘Nationalist’, ‘Unionist’ or ‘Other’ between elections if they change their party affiliation:

5A) Standing orders of the Assembly shall provide that a member of the Assembly designated in accordance with the standing orders as a Nationalist, as a Unionist or as Other may change his designation only if—

(a) (being a member of a political party) he becomes a member of a different political party or he ceases to be a member of any political party;

(b) (not being a member of any political party) he becomes a member of a political party.

Standing Order 3 states the procedure by which Members will register their designation. Any Member who does not designate will be designated ‘Other’.

It also inserted sections 16A-16C into the 1998 Act which specify how community designation should relate to the procedure of making Ministerial appointments, including the First and deputy First Ministers. For example, it separates the election of the First and deputy First Ministers and allows for them to be nominated by the largest parties in each of the two largest designations in the Assembly.

⁶ McGarry and O’Leary, ‘Consociational theory, Northern Ireland’s conflict and its Agreement – what critics of consociation can learn from Northern Ireland’, in *Government and Opposition* volume 41, Issue 2, p249-277