



Northern Ireland  
Assembly

# Research and Library Service Briefing Note

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## **Coalition government and the power of Ministers and the Executive**

### 1 Introduction

This briefing note looks at key aspects of the nature of coalition government in Northern Ireland and the power and role of Ministers and the Executive. It outlines the legislative basis of the current arrangements and, where appropriate, also makes comparisons with the other devolved legislatures in the UK.

### 2 Coalition government

The consociational nature of the Belfast/Good Friday Agreement was based on the need to accommodate competing political views “where the wider social and political context is inimical to majoritarianism, as is typical of deeply divided societies”<sup>1</sup>. Consequently, coalition government in Northern Ireland is not based on inter-party negotiations following an election. Rather, membership of the Executive is “an automatic entitlement of electoral strength, determined... by the application of the mechanical d’Hondt divisor”<sup>2</sup>, which allocates seats on the basis of the highest average (the number of seats each party wins at an Assembly election is divided initially by one and thereafter by one more than the number of seats won, until all seats are allocated).

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<sup>1</sup> Rick Wilford ‘The Assembly’ in *A guide to the Northern Ireland Assembly: agreeing to disagree?* Edited by Robin Wilson, TSO 2001

<sup>2</sup> Paul Mitchell *Transcending an ethnic party system?* In *Aspects of the Belfast Agreement*, edited by Rick Wilford, Oxford University Press 2001

The Belfast/Good Friday Agreement and subsequent legislation ensured that parties which won a significant number of votes stood a good chance of participating in government. This particular application of d'Hondt appears unique to Northern Ireland as “nowhere else in the world is government formed by the d'Hondt rule, whose more normal role is the allocation of top-up seats under additional member systems of PR”<sup>3</sup>

The current system of coalition has both its critics and supporters. Those who oppose it describe it as compulsory and as an “involuntary coalition brought together on the basis of a mechanical principle (outside the control of the Assembly)”<sup>4</sup>. Supporters argue that participation is not mandatory as parties may decide not to nominate under d'Hondt and that no party is required to enter government (although this means a ministerial position will go to another party).

Oppositions usually arise through conventions established over time, rather than from a specific legislative provision. However, some of the recognisable concepts of an opposition are outlined below:

- To provide representation, debate, scrutiny and influence over the Government and presenting alternatives
- The opposition is reasonably cohesive, regardless if it comprises one or more parties (this assumes there is party machinery and its members are subject to party whip)
- It is formally recognised, for example through rights and privileges, financial resources and seating arrangements

Any attempt by parties to establish an opposition may have financial and procedural implications for the Assembly. Opposition parties enjoy certain rights and privileges, such as the following based on the Westminster model:

- Opposition days – the opposition can determine the business of the House for 20 days within each session. Seventeen are at the disposal of the Leader of the Opposition (who also receives a salary for this role) and three are reserved for the leader of the second-largest opposition party.
- Agenda-setting – the Opposition forms part of informal consultations in determining the business of the House
- Law-making process – the Opposition has no right of veto but legislation has to be agreed in identical form in both Houses if it is to be enacted
- Questions to the Government – this includes questions to individual departments on a monthly basis and the weekly questions to the Prime Minister

<sup>3</sup>Robert Wilson 'The Executive Committee' in A Guide to the Northern Ireland Assembly, edited by Robin Wilson, TSO 2001

<sup>4</sup> John McGarry and Brendan O'Leary, *Consociational theory, Northern Ireland's conflict and its Agreement – what critics of consociation can learn from Northern Ireland*, Government and Opposition volume 41, Issue 2 pp 249-277

Opposition parties also receive financial assistance for policy development, carrying out Parliamentary business, travel and associated expenses and funding the Opposition Leader's office<sup>5</sup>.

### **Legislation**

The Belfast/Good Friday Agreement stated that the First and deputy First Ministers were to be elected on a cross-community vote, with Ministers allocated using the d'Hondt method with reference to a party's strength in the Assembly<sup>6</sup>. The Northern Ireland Act 1998 gave effect to this. Sections 16A, 16B and 16C of the St. Andrew's Agreement Act 2006 replaced section 16 of the 1998 Act to create new arrangements for the appointment of the First and deputy First Minister. Under the new section 16A, the First Minister is nominated by the largest party within the largest political designation (Unionist, Nationalist or Other) and the deputy First Minister is nominated by the largest party within the next largest designation. Once these nominations have been made, the d'Hondt procedure for filling the Ministerial offices is run. These procedures take place within seven days following the first meeting of the Assembly after an election<sup>7</sup>.

## **3 The Executive and the role of Ministers**

### **The Executive**

Section 20 of the 1998 Act makes provision for an Executive Committee and specifies that the functions of the Committee shall be those set out in paragraphs 19 and 20 of Strand One of the Belfast/Good Friday Agreement. The functions are to provide a forum for the discussion of and agreement on issues which cut across the responsibilities of two or more Ministers, for prioritising executive and legislative proposals and for recommending a common position where necessary (e.g. in dealing with external relationships). It is also tasked with seeking to agree on an annual basis, and review as necessary, a programme for government incorporating an agreed budget linked to policies and programmes<sup>8</sup>. It has been argued that the idea that the Committee would be a forum for agreeing 'issues which cut across the responsibilities of two or more Ministers "suggests a highly Balkanized system of government, with vertical departments operating in relative isolation... Governments do not function like that, even if vested departmental interests are frequently uppermost"<sup>9</sup>.

The St. Andrew's Agreement Act 2006 amended the 1998 Act to provide that the Executive should also be the forum for discussion and agreement on 'significant' or 'controversial' matters that are clearly outside the scope of the programme for government agreed by the Committee, or significant or controversial matters that the

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<sup>5</sup> 'Opposition in Government: key concepts and case studies', 30 July 2007 Northern Ireland Assembly briefing paper

<sup>6</sup> Paragraph 16, *The Agreement*, <http://www.nio.gov.uk/agreement.pdf>

<sup>7</sup> Explanatory Notes to the St. Andrew's Agreement Act 2006

<sup>8</sup> Paragraphs 19 and 20 of the Belfast Agreement <http://www.nio.gov.uk/agreement.pdf>

<sup>9</sup> Austen Morgan, *The Belfast Agreement: a practical legal analysis*, Belfast Press 2000

First and deputy First Ministers acting jointly have determined to be matters that should fall to the Executive Committee<sup>10</sup>.

A key aspect of the negotiations that took place at Hillsborough Castle in February 2010 was the effectiveness of the Executive. There was acceptance among the parties that improvements could be made to the way in which the Executive carried out and delivered its functions. This had followed a period between June 2008 and November 2009 when the Executive did not meet due to disagreements over the issue of policing and justice.

The Hillsborough Agreement reached on 5 February 2010 allowed for the establishment of a working group to examine and report on how the Executive might function in a more effective manner. The Agreement recognised “the importance of improving the efficiency of the Executive and greater inclusiveness. The outworking of this agreement will allow the uninterrupted functioning of the Assembly and Executive”<sup>11</sup>. In response to an Assembly question of 10 June 2010, OFMDFM stated that the working group had completed its work and had submitted a report to OFMDFM. It went on to say that the office would be writing to Ministerial colleagues seeking their views on the report, before responding to its recommendations.

### **The role and power of Ministers**

The allocation of Ministerial positions based on the d’Hondt system does not lend itself to fostering a sense of collective responsibility, as one might expect in cabinet style governments. This is a consequence of individual parties assigning their Ministers to their portfolios, rather than as a result of political horse-trading. Furthermore, the Belfast/Good Friday Agreement granted Ministers “full executive authority in their respective areas of responsibility, within any broad programme agreed by the Executive Committee, thereby empowering individual Ministers but making no “provision for collective Executive responsibility”<sup>12</sup>.

The d’Hondt method for allocating Ministerial positions allowed for minimum contact between the various Ministers and so, in theory, less potential for conflict. This was a reflection of the consociational nature of the Agreement whereby “(Ministers) are insulated from wider accountability and so better able to take the decisions needed...the consequence of this was that the NI Assembly was ‘executive dominant’ rather than ‘legislature led’”<sup>13</sup>.

The result of this unique arrangement, it has been argued, was inter-party tensions as “ministers, sequestered in their departmental silos, (went on) solo runs”, leading to an “Executive (that) lacked cohesion, direction and a collectivist style”<sup>14</sup>.

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<sup>10</sup> Section 20 Northern Ireland Act 1998

<sup>11</sup> Agreement at Hillsborough Castle, 5 February 2010 [http://www.nidirect.gov.uk/index/castle\\_final\\_agreement15\\_2\\_-3.pdf](http://www.nidirect.gov.uk/index/castle_final_agreement15_2_-3.pdf)

<sup>12</sup> As above

<sup>13</sup> M. McMahon, Government and Politics of Northern Ireland, Colourpoint 2008

<sup>14</sup> Rick Wilford, Northern Ireland: the politics of constraint, p134-155 Parliamentary Affairs Volume 63 Number 1, 2010

## Ministerial Code

In an attempt to address issues such as these, the Committee on the Preparation for Government agreed that “elements of a Ministerial Code should be put on a statutory footing<sup>15</sup>” and that consideration should be given to how the Code could comprise issues such as Ministerial accountability and accountability between the Executive and the Assembly. Subsequently, the St. Andrew’s Agreement allowed for a statutory Ministerial Code and a draft Ministerial Code was agreed by the Transitional Assembly on 20 March 2007. Under the provisions of paragraph 4 (2) of Schedule 1 of the Northern Ireland (St Andrews Agreement) Act 2006 the draft Ministerial Code approved by the Assembly on 20 March 2007 became the Ministerial Code for the purposes of Section 28A of the Northern Ireland Act 1998 upon the restoration of devolution. The statutory Ministerial Code subsequently took effect from 8 May 2007. Although Scotland and Wales have their own Ministerial Codes for their respective governments, the concept of a statutory Ministerial Code is unique within the context of the UK.

**Table 1: Key provisions of the Northern Ireland Executive Ministerial Code**

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|---|---|
| Pledge of Office  | To support, and to act in accordance with, all decisions of the Executive Committee and the Assembly ( <i>an attempt to instil a greater sense of collective responsibility</i> )   |
| First and deputy First Ministers                        | Chairmen of the Executive Committee<br><br>the First and deputy First Ministers, as chairmen of the Executive Committee, have a duty to seek to facilitate and encourage consensus within the Committee where possible.   |
| Duty to bring matters to the attention of the Executive | Ministers must bring to the attention of the Executive Committee any matter which: <ul style="list-style-type: none"> <li>• Cuts across the responsibilities of two or more Ministers</li> <li>• Requires agreement on prioritisation</li> <li>• Requires the adoption of a common position</li> <li>• Has implications for the Programme for Government</li> <li>• Is significant or controversial or clearly outside the</li> </ul> |

<sup>15</sup> Report on Institutional Issues, September 2006

[http://www.niassembly.gov.uk/theassembly/CPFG/CPFG\\_Reports/report\\_institutional\\_issues.pdf](http://www.niassembly.gov.uk/theassembly/CPFG/CPFG_Reports/report_institutional_issues.pdf)

|  |   |
|--|---|
|  | <p>Programme for Government</p> <ul style="list-style-type: none"> <li>• Is significant or controversial and which has been determined by the First and deputy First Minister acting jointly to be a matter that should be considered by the Executive Committee</li> <li>• Relates to a proposal to make a determination, designation or scheme for the provision of financial assistance under the Financial Assistance Act (Northern Ireland) 2009</li> </ul>  |
| Determining whether a Ministerial decision needs to be considered by the Executive Committee | The Minister must set out in writing details of the decision taken or to be taken. The Executive should normally make a decision at its next meeting  |
| Decision making by the Executive Committee   | <p>First and deputy First Ministers should try to secure consensus where possible</p> <p>If consensus cannot be reached on a policy decision and a vote is required, any three Ministers may now require that vote to be taken on a cross-community basis within the Executive</p> <p>A quorum of seven is needed for a cross-community vote</p>  |
| Referral of Ministerial decisions to the Executive Committee                                 | <p>Ministerial decisions can be deferred to the Executive Committee if petitioned by 30 members of the Assembly, if a ministerial decision may have been taken in contravention of the Ministerial Code or if it relates to a matter of public importance.</p> <p>A referral to the Executive on this basis must be approved by the Presiding Officer who must first consult the parties and decide if the referral relates to a matter of public importance. A Ministerial decision cannot be referred more than once.</p> |

The actions of Ministers in relation to the Ministerial Code have been the subject of court proceedings:

- in June 2010 a court ruled that a decision to adopt a draft planning policy should have gone before the Executive for approval as it cut across the responsibility of two Departments – DRD and DOE. However, the judge ruled that the breach of the Ministerial Code was inadvertent and technical<sup>16</sup>
- in April 2009 the then Social Development Minister's decision to withdraw funding for a loyalist project was ruled unlawful because she had failed to obtain approval for her decision from Ministerial colleagues<sup>17</sup>

It is unclear to what extent the Code has to date engendered a sense of collective responsibility or led to a more cohesive Executive: "Clearly the convention of collective responsibility has yet to take root when Ministers freely and publicly criticise their Executive colleagues<sup>18</sup>". Nevertheless, though there remain undoubted and unresolved tensions among the four major parties, the vastly changed context means that (the Executive has) not as yet fallen prey to the same intensity of infighting that hobbled (its) predecessor"<sup>19</sup>.

In its latest annual report the Committee on Standards in Public Life criticised the accountability mechanisms in the Executive. In particular it highlighted that:

(In) Westminster there is an independent adviser who can be asked to investigate any alleged breaches of the Ministerial Code. There is no equivalent established procedure in Northern Ireland.

When the First Minister there was recently alleged to have broken the Northern Ireland Executive Ministerial Code, the Finance Minister in the Executive established a one-off arrangement under which a Government lawyer was asked for a legal opinion." The report continued that "we remain of the view that the Northern Ireland Executive should establish a formal mechanism for the independent investigation of any future alleged breaches of the Ministerial Code and that the reports of any such investigations should be made publicly available<sup>20</sup>.

## 4 Scotland and Wales

Scotland operates a Cabinet system of government, with a First Minister elected by the Parliament and Cabinet Secretaries (formerly called Ministers) responsible for the main policy areas. Together with non-Cabinet Ministers (formerly called Deputy Ministers), they comprise the Scottish Government. Cabinet Secretaries and Ministers are chosen by the First Minister and "although they must be approved by the parliament, the First

<sup>16</sup> 'Breach of Ministerial Code over planning was technical', Belfast Telegraph 15 June 2010 retrieved 24 August 2010

<sup>17</sup> 'Ritchie 'wrong' over loyalist funds', News Letter, 30 April 2009 retrieved 24 August 2010

<sup>18</sup> Rick Wilford, Northern Ireland: the politics of constraint, p134-155 Parliamentary Affairs Volume 63 Number 1, 2010

<sup>19</sup> As above

<sup>20</sup> 'Accountability lacking, says report' Belfast Telegraph, 14 August 2010

Minister in practice has almost complete freedom in hiring and firing, except where coalition partners are concerned”<sup>21</sup>.

The use of proportional representation to elect the Scottish Parliament makes coalition government highly likely and from 1999 to 2007 this led to the necessity of parties negotiating a policy programme at the beginning of each session. However, the SNP formed a minority government after the 2007 elections. This led to “more flexibility in policy-making and legislative initiative but (required) that a majority be assembled for each piece of legislation as well as for the annual budget”<sup>22</sup>.

The Government of Wales Act 2006 introduced fundamental changes to the operation of the National Assembly for Wales, including giving the Assembly power to implement primary legislation. It also formally separated the legislature and the executive and established the Welsh Assembly Government as a separate entity from the National Assembly for Wales. Previously, the Government of Wales Act 1998 created the Assembly as a ‘body corporate’, meaning that the executive and legislative branches were unified. The National Assembly Advisory Group, which had been tasked with assisting in the design of the original devolved institution in Wales, wanted to strengthen the legislative committees against a potentially over-centralised cabinet. Ministers, for example, were required to be members of their subject committees. The 2006 Act removed this requirement. Furthermore, from 2007, the First Minister was elected by the Assembly. Once elected, the First Minister can then appoint his or her own Ministers with the approval of the Monarch. Unlike in Scotland, these appointments need not be approved by the Assembly.

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<sup>21</sup> Michael Keating, *The Government of Scotland: Public Policy Making after Devolution* (second edition), Edinburgh University Press 2010

<sup>22</sup> As above