

Statement to the Houses of the Oireachtas Joint Committee on the Implementation of the Good Friday Agreement in advance of the meeting on 13 July 2021, 9.30am.

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1. Continuing support for the Executive and Assembly

My core argument is that attitudinal changes are more important than institutional reforms in creating a stable Northern Ireland Assembly. It is important to make the following positive points:

- a) The Assembly can be an effective legislature. The total of 137 Bills it passed between 2007-16 was not far short of the 153 passed by the devolved Scottish Parliament during the same period and exceeded the 51 passed by the National Assembly for Wales.
- b) The public has never lost faith with the Executive and Assembly. At the June 2017 Westminster election, 70% of electors ‘strongly agreed’ or ‘agreed’ they should be restored. By the time of the Westminster December 2019 election, this figure had *risen* to 81%, despite the hiatus since January 2017. Only 2% said they ‘disagreed’ or ‘strongly disagreed’¹ with their return. Support for direct rule has never risen above 12% in the last four Westminster Northern Ireland election surveys.
- c) Moreover, this support transcends communal boundaries. In 2019, 89% of unionists, 83% of nationalists and 80% of ‘others’ supported restoration of the institutions.²
- d) The same survey showed that substantial but not overwhelming majorities (with sizeable numbers of ‘don’t knows’) in each community believed that a) unionists and nationalists must both be in the executive sharing power (61% overall, with only 8% dissenting) and that legislation should require support from majorities in each (55% overall, with only 7% dissenting). However, only 27% believed the parties had cooperated well in the Executive.
- e) 81% of Assembly votes have been taken by simple majority. This is not an institution paralysed by the requirements for cross-community consensus although it should be acknowledged that some of the 18% of decisions which have required cross-community consent (a further 1% have required parallel consent) are highly contentious.
- f) As can be seen therefore, the Executive and Assembly – and the principles of devolved power-sharing - are backed by very significant public support. However, the Executive and Assembly have been suspended for 38% of the time since power was devolved on 2nd December 1999 and remain unstable.

2. Useful reforms to the institutions which might be considered

The following reforms might usefully be considered as means of stabilising the institutions:

- a) Formally re-title the First and Deputy First Ministers as Joint First Ministers, to be provided by the two largest parties in the Assembly. This will reflect accurately their actual status.

- b) Designation size should be immaterial in the personnel to fill these roles. They should be filled according to Assembly representation, with share of the vote determining the outcome in the event of a tie in seat numbers.
- c) Extend the requirements for petitions of concern beyond two parties which can be from the same designation to two parties which must be from different designations. See my commentary on the current Northern Ireland Bill below.
- d) Consider longer-term the removal of communal designations either a) upon entry to the Assembly, replaced by qualified majority voting or b) remove designations for all legislation except items where this is requested by at least 35% of MLAs.
- e) Prior to the removal of communal designations, the current 40% threshold for communal support where cross-community voting is required could be lowered
- f) The provisions for an official Opposition outlined in New Decade New Approach should be bolstered to encourage its development, including greater facilitation of scrutiny and opportunities to introduce Bills.
- g) Financial sanctions against MLAs in the event of a collapse of devolution should be immediate. The only such sanctions were imposed by the ex-Secretary of State, Karen Bradley. She trimmed MLA salaries by 15% (£7,425) in November 2018. A further cut of £6,187 followed in January 2019, bringing salaries down to £35,888 from £49,500. Similar percentage reductions should ensue following collapse.

3. Commentary on the reforms proposed in Northern Ireland (Ministers, Elections and Petitions of Concern) Bill

As part of my statement, I thought it appropriate also to comment on two aspects of reforms proposed in the Northern Ireland Bill (Ministers, Elections and Petitions of Concern) Bill currently proceeding through the Westminster Parliament.

3.1 The Proposals for preventing Executive collapse

- a) Northern Ireland is on its eleventh Secretary of State since devolved power-sharing was introduced. Only four have not had a collapsed set of institutions with which to deal.
- b) The UK government skipped around the previous supposed 14-day deadline for nominations for First and Deputy First Minister. There were no such nominations between the last Assembly election, on March 2nd 2017 and the restoration of devolution on January 11th 2020. That was 58 sets of 14 days and yet there was no election either. Successive Secretaries of State passed legislation to facilitate postponement.

- c) Currently, 7 days are allowed to nominate a new First and Deputy First Minister if vacant, with 14 days permitted for this task after an election. The Bill extends this period to up to 24 weeks. During those weeks, Executive ministers will be allowed to stay in their jobs, even if election misfortune has reduced the number of ministries their party should hold. This non-changing of the guard extends to 48 weeks if the First or Deputy First Minister step down and there is difficulty in replacing.
- d) The risk of such ‘solutions’ is that they keep in place a “zombie government” of “caretaker ministers” (the term ‘caretaker ministers’ is used to describe the postholders in New Decade New Approach).
- e) It is unclear what powers these caretaker ministers will possess. New Decade New Approach says decisions must be taken as set out in the ministerial code, with an Executive Committee to consider any decisions that are “significant and controversial or cross-cutting”. We need to know whether these ministers are staying on as individual post-holders or as part of an Executive Committee.
- f) There are potential unintended consequences. Given the knowledge that compromises could conceivably be deferred for up to 48 weeks, with ministerial teams still in place whilst they grandstand, will this discourage immediacy of resolution?

3.2 Petitions of Concern

- a) The Bill makes reasonable but largely superfluous recommendations concerning petitions of concern, once used extensively to veto legislation. Since the Assembly was reduced in size to 90 with no party holding 30 seats, the petition of concern problem has faded.
- b) The legislation prohibits solo party runs on such petitions but given 30 signatures are required for such devices, single party vetoes have disappeared anyway. It is 2021 legislation for a mainly 2011-16 problem, when the Assembly was subject to 115 such petitions.
- c) It is claimed by the Bill’s authors that “there are concerns that the petition of concern has departed from its intended purpose which was to ensure that all sections of the community are protected”. If true, why not require that petitions of concern need support from parties across at least two of the three Assembly designations? That would be closer to “all sections of the community” than a communal veto.
- d) Other vetoes are now much more significant than petitions of concern e.g. the ‘cross-cutting’ or ‘cross-community’ considerations which can lead to ministerial objections to legislation; the omnipotent communal designations and the cross-community voting requirements for some legislation.

Summary

Ultimately no amount of legislation can insulate the Executive and Assembly from collapse. It is political attitudes which need changing (e.g. on Irish language provision) to stabilise the institutions.

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¹ Source: ESRC 2019 Northern Ireland General Election survey: Principal Investigator: Tonge.

² Ibid.