

## Written evidence submitted by Dr Sean Haughey (NDE0009)

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*Does the New Decade, New Approach agreement adequately address the institutional flaws that have contributed to the periodic breakdown of devolved government in Northern Ireland?*

1. It is important to point out that Northern Ireland's stop-start experience of devolution is not solely attributable to institutional weaknesses in the region's model of devolved government. A commitment to genuine power sharing has not always been forthcoming from the region's political parties and, as such, problems to do with *agency* as well as *structure* have contributed to Executive breakdowns. That being said, certain institutional features have made the system of devolved government in Northern Ireland vulnerable to instability. Chief amongst these was the procedure for appointments to the Executive Office following the resignation of a First or deputy First minister.
2. Prior to NDNA, the Northern Ireland Act (1998) provided parties only seven days to replace a First or deputy First Minister before the Secretary of State for Northern Ireland was required to intervene. NDNA has extended this period to 24 weeks, a reform which buys Executive parties time and breathing space to resolve differences. Crucially, NDNA reforms enable executive ministers to remain in post during this period (albeit in a caretaker capacity). The Assembly will also continue to sit, enabling its MLAs and committees to go about their parliamentary responsibilities unabated.
3. Therefore, the scenario of a First or deputy First Minister resigning and collapsing the institutions in quick succession is no longer realisable. The effect of this will be to lessen the immediate significance and political gravitas of an Executive Office resignation. Previously, the resignation of a First or deputy First minister had quick and significant ramifications. Within one week of a replacement not being appointed, executive ministers would essentially be out of office, the Assembly would not sit, and parliamentary proceedings would grind to a halt. It is to be welcomed that NDNA has removed the capacity to shut down the government with (almost) immediate effect from the gift of any one party.
4. Unless the Assembly decided to dissolve itself – a move that requires the support of at least two-thirds of its MLAs – these new arrangements considerably extend the period of time that passes between an Executive Office resignation and fresh elections. At least five months could pass after a resignation before the Secretary of State proposes a new Assembly election date. This removes the temptation and possibility of collapsing the institutions so as to precipitate a 'snap' election.
5. Whilst the Assembly's Petition of Concern (PoC) has never been the direct or primary cause of government breakdown, use (or misuse) of this mutual veto has increasingly become a source of conflict between parties in Northern Ireland. Misuse of the PoC is now less likely due to the much-needed regulations introduced by NDNA.<sup>1</sup> In bygone mandates, any party with 30 or more MLAs could use the PoC for narrow party political purposes, such as protecting their

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<sup>1</sup> For a full account of these reforms see S. Haughey (2020), 'Back to Stormont: The *New Decade, New Approach* Agreement and What it Means for Northern Ireland', *The Political Quarterly*, 91(1), pp.134-140.

members from sanction after being found guilty of misconduct. NDNA's requirement that a valid petition requires the support of at least two political parties means PoC solo runs are no longer possible. Motions that relate to misconduct are now immune from the mutual veto, as are motions with no legal or procedural consequence. Sensible steps have been taken to prevent parties from having their members sign PoCs in advance,<sup>2</sup> and written statements explaining the rationale for each PoC are now required by the Assembly's Bill Office. For the sake of maximum transparency, these written statements/rationales should be made publicly available on the Assembly's website.

6. The Party Leaders' Forum established by NDNA – a 'safe space' to discuss issues and concerns each month – is to be welcomed and could prove effective in nipping some inter-party and inter-communal problems in the bud before they escalate or make their way onto the airwaves. This forum will work best when it is attended by party leaders themselves. This may not always be possible of course, and NDNA does make provision for party leaders to nominate permanent representatives to attend in their stead. Permanent representatives should be senior figures within their respective parties, otherwise their concerns may not be taken as seriously.
7. Institutional reform in and of itself does not guarantee the devolved institutions the stability they need. Behavioural change on the part of MLAs and their party leaders is key if devolution is to be placed on a more sustainable footing. Achieving what is required is easier said than done, although an optimistic reading of the Executive's performance in recent weeks would suggest that *modest* progress has been made on this front. A sense of collective purpose, cooperation between ministers, and some semblance of collegiality and mutual respect represent progress. The challenge will be to maintain and build upon this approach after the COVID 19 pandemic ends.

*What effect will the institutional reforms in the New Decade, New Approach deal have on collective responsibility and cross-departmental working in the Executive?*

8. It is important to note that collective responsibility and cross-department working are two different things, and that the latter can be achieved without the former. Collective responsibility is a centuries-old convention whereby government ministers, whilst entitled to disagree in private, should speak with one voice in public when it comes to government policy.<sup>3</sup> Cross-departmental working, or joined-up government, occurs when ministers coordinate their departments to address problems in an integrated and crosscutting manner.<sup>4</sup>
9. Northern Ireland's system of government is not particularly conducive to collective responsibility. For obvious reasons, collective responsibility is easier to achieve in single-party governments: ministers belong to the same party, share ideological beliefs, and have similar

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<sup>2</sup> Leaked correspondence revealed this to be a common practice among parties in the Assembly. See S. Haughey (2019), 'Worth Restoring? Taking Stock of the Northern Ireland Assembly', *The Political Quarterly*, 90(4), p. 709.

<sup>3</sup> M. Everett (2016), *Collective Responsibility*, House of Commons Library Briefing Paper, 7755, 14 November.

<sup>4</sup> R. Wilford (2009), 'Consociational government: Inside the devolved Northern Ireland Executive', in R. Taylor (ed.), *Consociational Theory: McGarry and O'Leary and the Northern Ireland Conflict* (London: Routledge).

policy preferences. Multiparty government, on the other hand, can complicate things vis-à-vis collective responsibility since ministers possess differing (potentially opposing) goals. Even at Westminster, where collective responsibility is regarded as fundamental to the British Constitution, two-party coalitions have put collective responsibility under stress.<sup>5</sup> In Northern Ireland, where five party coalitions are not unusual, it should come as no surprise that executives have not always spoken with one voice.

10. The allocation of ministerial portfolios using the d'Hondt formula poses a further challenge to collective responsibility. Parties enter the Northern Ireland Executive as of right – having met the electoral threshold – not because they have found common ground with their coalition partners (as would be the case in other coalition settings). D'Hondt brings together multiple parties with differing perspectives and a government is formed regardless of the extent of agreement between its members. This maximally inclusive approach to government formation is a key component of Northern Ireland's power-sharing system, however it can make for disparate coalitions
11. It is unrealistic to expect the same degree of collective responsibility from governments in Northern Ireland as from governments in Holyrood, Cardiff, or Westminster. This is not to suggest that the public ministerial spats of previous executives are acceptable – they are not. Collective responsibility should of course be encouraged in Northern Ireland, however, for the sake of realistic expectations, it is important to acknowledge that the region's specific circumstances make it more difficult to achieve.
12. There is certainly room for improvement when it comes to Northern Ireland Executives presenting a more unified and collective front. Part of the challenge will be to create a culture of collective responsibility where none existed. In that regard, it is welcome that from NDNA new guidance has been issued to accompany the Ministerial Code ('Guidance for Ministers in the Exercise of their Official Responsibilities'). This guidance discourages ministers from speaking out in the Assembly against agreed positions of the Executive and notes that ministers should not support Assembly motions that could have adverse implications for the Executive.
13. Although its enforceability is open to question, this guidance represents progress. One obvious limitation, however, is that it refers to the conduct of ministers '*in the Assembly*' [emphasis added]. This specificity is problematic in that it excludes the conduct of ministers outside of the Assembly. It is also puzzling. A minister criticising Executive policy on TV or radio could prove more damaging to the government's reputation than if they were to criticise Executive policy on the floor of the Assembly. The committee might wish to recommend to the Northern Ireland Executive that it reconsider the wording of this guidance. A requirement for ministers not to challenge Executive policy whether they are speaking in or outside of the Assembly would be preferable. Certain exemptions could apply, for example in cases where ministers are conveying the concerns of their constituents. The Welsh Government's Ministerial Code makes a similar exemption in its collective responsibility clause.<sup>6</sup>

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<sup>5</sup> F. Matthews (2014), 'The Coalitionising of Collective Responsibility', Paper prepared for the Annual Political Studies Association Conference, 14-16 April.

<sup>6</sup> See page six of the Welsh Government's Ministerial Code (November 2019 version): <https://gov.wales/sites/default/files/publications/2019-11/ministerial-code-november-2019.pdf> (accessed 2 April 2020).

14. The new guidance accompanying the Ministerial Code does not go far enough with respect to ministers' use of social media. Ministers past and present have not always acted with sufficient restraint in their social media usage and it is noticeable that press reports of disunity in the Executive often refer to ministers' social media. At the very least, ministers should be reminded to consider the implications of their social media usage on the collective reputation of the Northern Ireland Executive. Disagreements between ministers in the Executive are to be expected, however ministers should be encouraged to convey differences of opinion through official channels such as meetings of the Executive Committee or the Party Leaders' Forum. As a general rule, ministers should be encouraged to use official social media accounts as far as possible when discussing Executive policy.
15. Whereas collective responsibility is desirable, cross-departmental working is essential. In NDNA, parties agreed to adopt a new Conduct of Executive Business document that will likely contain provisions to facilitate better cross-departmental working. At the time of writing this document is still under consideration by the Executive and has yet to be made public.
16. In his report on the Renewable Heating Incentive Inquiry, Sir Patrick Coghlin has recommended that parties in Northern Ireland, supported by the Northern Ireland civil service, 'agree a set of actions [...] to promote behaviours of collaboration and joined-up departmental working'.<sup>7</sup> One idea worth exploring would be to establish a dedicated unit for cross-departmental cooperation in the Executive. Ideally, such a unit would have its own staff and resources dedicated to facilitating and enhancing cooperation between departments.

*Does the introduction of reforms allowing 'caretaker' Ministers to remain in place following a breakdown in power-sharing mean that the civil service will never again have to run Northern Ireland?*
17. The provision enabling caretaker ministers to remain in office during periods of government breakdown is prudent and necessary. Although their authority is constrained in that they cannot take decisions that are 'significant or controversial', caretaker ministers will facilitate continuity in basic day-to-day executive decision-making. This is infinitely preferable to what transpired during the most recent period of government breakdown when, faced with little option, departmental officials were taking decisions that should be reserved for elected and accountable ministers. A repeat of this scenario is now unlikely. Should a government breakdown occur in future, it would be difficult to justify civil servants exercising departmental functions with caretaker ministers still legally in office. Questions may arise as to what constitutes a 'significant' or 'controversial' decision, but that will be a dilemma for the relevant caretaker minister (and perhaps the courts).
18. A familiarity with Northern Ireland's political history inclines one against using phrases like 'never again'. In the unlikely (but not unthinkable) event of parties failing to form an Executive after 24 or 48 weeks,<sup>8</sup> the time limit set for caretaker ministers will expire. My reading of the

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<sup>7</sup> The Report of the Independent Public Inquiry into the Non-domestic Renewable Heat Incentive (RHI) Scheme, Volume 3, p.208. Available at: <https://www.rhiinquiry.org/sites/rhi/files/media-files/RHI-Inquiry-Report-Volume3-Chapters42-56.pdf> (accessed 1 April 2020).

<sup>8</sup> 24 or 48 weeks depending on the circumstances giving rise to there being no executive. See *The New Decade, New Approach Deal*, January 2020, p24. Available at:

Northern Ireland (Executive Formation and Exercise of Functions) Act (2018) is that civil servants may still exercise departmental functions in this scenario if such functions are deemed to be in the public interest.

*What effect will linking funding for public services to the formation of the Executive have on the future stability of the Executive and governance in Northern Ireland?*

19. The UK Government made clear that its financial commitments in NDNA were contingent upon the restoration of the Northern Ireland Executive. The Executive was indeed restored and funding from the Treasury duly released.<sup>9</sup> NDNA does not state that this approach – linking funding for public services to executive formation – should guide future UK governments during periods of executive breakdown. Whilst such an approach would likely act as a strong incentive for parties to form and sustain an executive, the notion of withholding resources from public services so as to encourage political agreement seems inherently unfair to citizens in Northern Ireland.

*Whether the deal excludes other measures that might improve good governance in Northern Ireland.*

20. Understandably, much of the focus in Northern Ireland has been on the very survival of the devolved institutions. Now that NDNA has helped place the institutions on a more secure footing, it is right that attention now turns from sustainable government to good governance. What exactly constitutes ‘good’ governance is of course open to question. That said, given devolution’s recent history in Northern Ireland, it is imperative that the Assembly and Executive work towards reconnecting with the public.
21. To facilitate greater public engagement, the Assembly should update its procedures for receiving public petitions to enable the submission of electronic petitions (e-petitions). At present, the Assembly is the only UK legislature that does not accept e-petitions from the public. E-petition systems do come with costs as well as benefits, however the experience of legislatures elsewhere in the UK would suggest that, on the whole, they play a positive role in fostering engagement between citizens and democratic institutions.<sup>10</sup>
22. The Assembly is also the only UK legislature that does not have an academic (post-PhD) fellowship scheme.<sup>11</sup> This too is worth redressing. These schemes utilise universities and academics to enhance a legislature’s capacity to fulfil its scrutiny, representative, and legislative functions. As well as increasing the use of academic skills and research in the Assembly, such a

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856998/2020-01-08\\_a\\_new\\_decade\\_a\\_new\\_approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf) (accessed 30th March 2020).

<sup>9</sup> Although the Northern Ireland Finance Minister has stated that the financial package received from the Treasury falls short of what is required to honour the commitments made in NDNA.

<sup>10</sup> C. Leston-Bandeira (2019), ‘Parliamentary petitions and public engagement: an empirical analysis of the role of e-petitions’, *Policy & Politics*, 47(3), pp. 415-436.

<sup>11</sup> D. Beswisk and M. Geddes (2020), *Evaluating academic engagement with UK legislatures: Exchanging knowledge on knowledge exchange*, available at: [http://www.pol.ed.ac.uk/\\_data/assets/pdf\\_file/0008/268496/Evaluating\\_academic\\_engagement\\_with\\_UK\\_legislatures\\_Web.pdf](http://www.pol.ed.ac.uk/_data/assets/pdf_file/0008/268496/Evaluating_academic_engagement_with_UK_legislatures_Web.pdf) (accessed 2 April 2020).

scheme would promote knowledge and understanding of devolution in Northern Ireland to university and academic audiences throughout the UK.

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