

**The Independent Chairmen**  
**Draft Paper for Discussion + proposed SDLP amendments**

**STRAND ONE**

**DEMOCRATIC INSTITUTIONS IN NORTHERN IRELAND**

1. The following is intended to provide for a democratically elected Assembly in Northern Ireland which is inclusive in its membership, capable of exercising executive and legislative authority, and subject to safeguards to protect the rights and interests of all sides of the community.

**The Assembly**

2. An Assembly will be elected by PR(STV) from existing Westminster constituencies.

*(Note from the Independent Chairmen: There is disagreement among participants as to the size of the Assembly and as to whether the election system should provide greater opportunity to small parties to be represented in the Assembly. We believe that it should.)*

*Options for your consideration include, but are not limited to:*

- (a) *increasing the number of seats per constituency from 5 to 6; and/or*
- (b) *providing a top up of 10-20 additional seats.)*

2. **A 108 member Assembly will be elected by PR(STV) from existing Westminster constituencies.**

3. The Assembly will exercise full legislative and executive authority in respect of those matters currently within the responsibility of the six Northern Ireland Government Departments, with the possibility of taking on responsibility for other matters as detailed elsewhere in this agreement.
4. The Assembly - operating where appropriate on a cross community basis - will be the prime source of authority in respect of all devolved responsibilities.



### Safeguards

5. There will be safeguards to ensure that all sections of the community can participate and work together successfully in the operation of these institutions and that all sections of the community are protected including:

*(Note from the Chairmen: there is disagreement among participants as to whether the executive heads of departments should be titled "Assembly Secretaries" or "Ministers". Throughout this text the position will be titled "Assembly Secretary/Minister".)*

- (a) allocations of the Committee Chairs, Assembly Secretaries/Ministers and Committee memberships in proportion to party strengths;
- (b) the European Convention on Human Rights (ECHR) and any Bill of Rights for Northern Ireland supplementing it which neither the Assembly nor public bodies can infringe, together with a Human Rights Commission;
- (c) arrangements to provide that key decisions and legislation are proofed to ensure that they do not infringe the ECHR and any Bill of Rights for Northern Ireland;
- (d) arrangements to ensure that key decisions are taken on a cross-community basis;

*(Note from the Chairmen: There is disagreement among the participants as to the nature of such arrangements. Options for your consideration include, but are not limited, to the following:*

- (a) That this might require that any key decision would only pass if it is supported by;

*either a majority of those members present and voting which includes majorities of those who identify themselves (at the outset) as Nationalist and Unionist respectively*

*or a weighted majority (two thirds of those members present and voting.)*

*In this alternative key decisions requiring cross-community support would be designated in advance (eg election of presiding officer, standing orders, budget allocations, employment equality, cultural issues) and/or triggered by a right of petition exercised by a significant minority of Assembly members, ( \_ %); or*

- (b) *Some combination of parallel consent and a weighted majority; or*
- (c) *Another alternative would be to give to the Chair and Deputy Chair of the Executive/Liaison Committee (see paragraph 17 below) joint authority over*



*key decisions; this would insure cross-community support. Obviously, its effectiveness would depend on the definition of what are key decisions.)*

- (e) an Equality Commission to monitor a statutory obligation to promote equality of opportunity in specified areas and parity of esteem between the two main communities, and to investigate individual complaints against public bodies.

5(d) Arrangements to ensure that decisions are taken on a cross-community basis; this will require that any key decision would only pass if it is supported by either:

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

(ii) weighted majority comprising 2/3 of members present and voting including at least 1/3 of each of the nationalist and unionist designations present and voting.

Key decisions requiring cross-community support will be designated in advance, including election of the Chair of the Assembly, the First and the Second Secretary, 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 (25/108).

#### Operation of the Assembly

[NEW] At their first meeting, members of the Assembly will register a designation of identity - nationalist, unionist or other - for the purposes of measuring cross-community support in Assembly votes under the relevant provisions above.



6. *(Note from the Chairmen: The parties are in disagreement as to the allocation of the position of Chair of the Assembly and as to whether there should be a Deputy Chair. Options for your consideration include, but are not limited to, the following:*

*(a) The Chair and Deputy Chair of the Assembly will be elected on a cross-community basis, as set out in paragraph 5(d) above.*

*(b) There will be a Chair of the Assembly, elected from among those who are not aligned with either of the two major communities.)*

**6. The Chair of the Assembly will be elected on a cross-community basis, as set out in paragraph 5(d) above.**

7. There will be a Committee for each of the main executive functions of the Northern Ireland Administration. The Chairs and Deputy Chairs of the Assembly Committees will be allocated proportionally, using the d'Hondt system. Membership of the Committees will be in broad proportion to party strengths in the Assembly to ensure that the opportunity of Committee places is available to all members.

8. The Committees will have a scrutiny, policy development and consultation role with respect to the Department with which each is associated, and will have a role in initiation of legislation. They should have the power to:

- agree Department budgets and Annual Plans
- approve relevant legislation and take the Committee stage of relevant primary legislation
- call for persons and papers
- initiate enquiries and make reports

**8. The Committees will have a scrutiny, policy development and consultation role in respect of the Department with which each is associated, and will have a role in initiation of legislation. They should have the power to:**

- **consider departmental budgets and annual plans;**
- **approve relevant legislation and take the committee stage of relevant primary legislation;**
- **call for persons and papers;**
- **initiate inquiries and make reports;**
- **consider and advise on matters brought to the committee by its Secretary;**



9. Standing Committees other than Departmental Committees may be established as may be required from time to time.

**[NEW] The Assembly may appoint a special committee to examine and report on whether a measure or a proposal for legislation is in conformity with equality requirements, including the ECHR/Bill of Rights. The committee shall have the power to call people and papers to assist in its consideration of the matter. The Assembly shall then consider the report of the Committee and can determine the matter in accordance with the cross-community consent procedure.**

**[NEW] The above special procedure shall be followed when requested by the executive, or by the relevant Departmental Committee, voting on a cross-community basis.**

**[NEW] When there is a petition of concern as in 5(d) above, the Assembly shall vote to determine whether the measure may proceed without reference to this special procedure. If this fails to achieve support on a cross-community basis, as in 5(d)(i) above, the special procedure shall be followed.**

#### **Executive Authority**

*(Note from the Chairmen: there is disagreement among the participants as to whether executive authority should be vested in an Executive Committee or a Liaison committee. Throughout this text the Committee will be titled "Executive/Liaison Committee".)*

10. Executive authority to be discharged on behalf of the Assembly by up to (ten) Assembly Secretaries/Ministers, with posts allocated to parties on the basis of the d'Hondt system by reference to the number of seats each party has in the Assembly.

**10. Executive authority to be discharged on behalf of the Assembly by a First Secretary, Second Secretary and up to [ten] Secretaries with Departmental responsibilities.**



[NEW] The First Secretary and Second Secretary shall be jointly elected into office by the Assembly voting on a cross-community basis, according to 5(d)(i) above.

[NEW] Following the election of the First Secretary and Second Secretary, the posts of Secretaries will be allocated to parties on the basis of the d' Hondt system by reference to the number of seats each party has in the Assembly.

[NEW] The Secretaries, will constitute an Executive Committee, which will be convened, and presided over, by the First and Second Secretaries.

[NEW] The duties of the First and Second Secretary would include *inter alia* dealing with and co-ordinating the work of the Executive Committee and the response of the NI administration to external relationships, as set out in Annex B.

[NEW] (Note: modified paragraph 18.)The Executive/Liaison Committee will provide a forum for the discussion of and agreement on issues which cut across the responsibilities of two or more Assembly Secretaries/Ministers, for prioritising executive and legislative proposals and recommending a common position where necessary, (eg in dealing with external relationships).

[NEW] (Note: modified paragraph 19.) The Executive Committee will seek to agree each year, and review as necessary, a programme incorporating an agreed budget linked to policies and programmes, subject to approval by the Assembly, after scrutiny in Assembly committees, on a cross-community basis.

11. A party may decline the opportunity to nominate a person to serve as an Assembly Secretary/Minister or may subsequently change its nominee.

(Note: original 12 to follow original 15)



13. Assembly Secretaries/Ministers will be political Heads of the Northern Ireland Departments, and will liaise regularly with their respective Committee.
14. As a condition of appointment, Assembly Secretaries/Ministers will affirm their readiness to discharge effectively and in good faith all the responsibilities attaching to their posts, provided, however, that refusal to serve as an Assembly Secretary/Minister will not be grounds for removal from the Assembly.

**14. As a condition of appointment, Secretaries, including First and Second Secretaries (see below), will affirm the terms of a Code of Practice (Annex A) undertaking to discharge effectively and in good faith all the responsibilities attaching to their office.**

15. Assembly Secretaries/Ministers will have full executive authority in their respective areas of responsibility, within any broad programme agreed by the Executive/Liaison Committee (see below) and endorsed by the Assembly as a whole on a cross-community basis; or in accordance with budgetary policy or legislative proposals approved, on a cross-community basis, after scrutiny by the Departmental Committee and by the Assembly. In the event of any dispute between an Assembly Secretary/Minister and the Committee, the Assembly as a whole to have the power of decision exercised on a cross-community basis.

**15. Secretaries will have full authority in their respective areas of responsibility, acting within budgetary policy and within any broad programme agreed by the Executive Committee (see below) and endorsed by the Assembly as a whole.**

12. An individual may be excluded or removed from office by a decision of the Assembly taken on a cross-community basis, when he loses the confidence of the Assembly, voting on a cross-community basis either for failure to meet his responsibilities or because the Assembly believes, on a cross-community basis, that his retention of office is incompatible with democratic expectations and constraints.

**An individual may be removed from office following a decision of the Assembly taken on a cross-community basis when he loses the confidence of the Assembly, voting on a cross-community basis, for failure to meet his responsibilities including, inter alia, those set out in the Code of Practice.**



### **Executive [Liaison] Committee**

[note: no separately headed section- relevant provisions amended and inserted above]

- 16. - [Delete]
- 17. - [Delete]
- 18. - [Delete]
- 19. - [Delete]

### **Code of Practice**

- 20. A Code of Practice will be drawn up by Assembly on the basis of a cross-community vote. Any amendments to the Code will be made on a cross-community basis. The Code would codify and build upon the provisions of this agreement.

- 20. - [delete]

### **Legislation**

- 21. The Assembly will have authority to pass primary legislation for Northern Ireland, in devolved areas, subject to:
  - (a) the ECHR and any Bill of Rights for Northern Ireland supplementing it which, if the courts found to be breached, would render the relevant legislation null and void;
  - (b) decisions by simple majority of members voting except when decision on the cross-community basis is required;
  - (c) detailed scrutiny and approval in the relevant departmental committee;
  - (d) mechanisms, based on arrangements proposed for the Scottish Parliament, to ensure suitable co-ordination, and avoid disputes, between the Assembly and Westminster Parliament;
  - (e) option of the Assembly seeking to include Northern Ireland provisions in United Kingdom-wide legislation in Westminster Parliament especially on devolved issues where parity normally maintained (e.g. social security, company law).
- 22. The Assembly will have the authority to legislate in reserved area with the approval of the Secretary of State and subject to Parliamentary control.
- 23. Disputes over legislative competence will be decided by the Courts.



24. Legislation could be initiated by an individual, a Committee, or an Assembly Secretary/Minister.

### **Relations with other Institutions**

25. Arrangements to represent the Assembly as a whole, at Summit level and in dealings with other institutions, will be in accordance with paragraph 17. Otherwise, representation to be by the Assembly Secretary/Minister of the relevant departmental committee.
26. Terms will be agreed between appropriate Assembly representatives and the government of the United Kingdom to ensure effective co-ordination and input by Assembly Secretaries to national policy making, including on EU issues.
27. Role of Secretary of State:
- (a) to remain responsible for NIO matters not devolved to the Assembly, subject to regular consultation with the Assembly and Assembly Secretaries/Ministers;
  - (b) to approve and lay before the Westminster Parliament any Assembly legislation on reserved matters;
  - (c) to represent Northern Ireland interests in the United Kingdom Cabinet;
  - (d) to have the right to attend the Assembly at their invitation.
28. The Westminster Parliament (whose power to make legislation for Northern Ireland would remain unaffected) will:
- (a) legislate for non-devolved issues, other than where the Assembly legislates with approval of Secretary of State and subject to control of Parliament;
  - (b) to legislate as necessary to ensure United Kingdom's international obligations are met in respect of Northern Ireland;
  - (c) scrutinise, including through the Northern Ireland Grand and Select Committees, the responsibilities of the Secretary of State.
29. A consultative Civic Forum will be established. It will be comprised of representatives of the business, trade union and voluntary sectors, and such other sectors as agreed by the First Secretary/Minister and the Deputy First Secretary/Minister. It will act as a consultative mechanism on social, economic and cultural issues. The First Secretary/Minister and the Deputy First Secretary/Minister will by agreement provide administrative support for the Civic Forum and establish guidelines for the selection of representatives to the Civic Forum.



### **Transitional Arrangements**

30. The Assembly will meet first for the purpose of organisation, without legislative or executive powers, to resolve its standing orders and working practices and make preparations for the effective functioning of the Assembly, the British-Irish Council and the North/South Ministerial Council and associated implementation bodies.

### **Review**

31. After a specified period there will be a review of these arrangements, including the details of electoral arrangements and of the Assembly's procedures, with a view to agreeing any adjustments necessary in the interests of efficiency and fairness.



## **Annex A**

### **Code of Practice for Secretaries**

#### **To pledge:**

- (a) to discharge in good faith all of the duties of office, including appropriate participation in North/South and East/West bodies;
- (b) commitment to non-violence and exclusively peaceful and democratic means;
- (c) to serve all the people of Northern Ireland equally, and to act in accordance with the general obligations on government to promote equality and prevent discrimination;
- (d) to participate with colleagues in the preparation of a programme for government;
- (e) to operate within the framework of that programme when agreed within executive and endorsed by the Assembly;
- (f) to support, and to act in accordance with, all decisions of the Executive Committee.
- (g) to comply with the Ministerial Code of Conduct\*

\* Note - with 2<sup>nd</sup> point amended to refer to "department" rather than "committee" and last point deleted from British Government draft.



## **Annex B**

### **Duties of First and Second Secretaries**

The duties of the First Secretary and Second Secretary shall include responsibility for ensuring good governance, and over-seeing the development and implementation of public policy and legislation, on a basis which secures widespread acceptance.

Their functions will include:-

- a) co-ordination of work of Secretaries and Departments to provide executive coherence;
- b) co-ordination of relations with other arrangements including North-South, East-West, and EU;
- c) overall responsibility for civil service;
- d) general over-sight of budgetary process including arbitration of disputes;
- e) consulting and advising Secretaries of Departments;
- f) convening and presiding at meetings of Secretaries with responsibility to promote consensus and to deem whether there is sufficient consensus for an executive decision;
- g) in consultation with other Secretaries, power to assign further executive responsibility (including appointment to junior ministerial office), within the competence of transferred functions, with the approval of the Assembly;
- h) power to dismiss a Secretary (or others in ministerial office) for failure to comply with the requirements of their office, as set out in the Code of Practice;
- i) presentation of proposals for programme of government and Executive Committee -sponsored legislation to the Assembly;
- j) reporting to the Assembly on the overall discharge of executive responsibilities;
- k) designated public appointments;



- l) **commissioning reports on administrative or policy issues;**
- m) **receiving reports from relevant bodies or persons and acting, or making recommendations on these;**
- n) **a representative role**
- o) **appropriate provision for the consultative civic forum**
- p) **monitoring and, where appropriate, making proposals in relation to the organisation of government departments and their functions.**