

# THE SUNDAY BUSINESS POST

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## Analysis

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### Dance of the ministries

**In the second of four articles, Christopher McCrudden, John McGarry and Brendan O'Leary answer the difficult questions about the institutions and policies proposed in the British-Irish Agreement. This week, they focus on the likely composition of the Executive Committee and assembly committees**

#### How will positions on the Executive and the Assembly committees be decided, and what powers will the executive and committees have?

The new executive has some aspects of a collective presidency rather than a conventional parliamentary cabinet. It also creates strong incentives for executive powersharing and power division but without the necessity of a formal coalition agreement between parties -- in these respects it differs from the Sunningdale Agreement of 1973.

There are two types of members of the executive: (i) the First Minister and the Deputy First Minister, and (ii) what we will call 'other ministers'.

The First Minister and the Deputy First Minister are elected by the cross-community rules discussed above. These rules establish a very strong incentive on the part of each bloc to nominate a candidate acceptable to a majority, or at least 40 per cent, of the other bloc.

This means, for example, that the possibility that Gerry Adams could head the largest nationalist party, and indeed the largest party (if the UUP was to split), would not be enough to ensure his accession to either the First Minister's or Deputy First Minister's office, as that could be opposed by unionists. In a more positive vein, these rules create incentives for pan-nationalist and pan-unionist agreements to rally behind moderate candidates.

In our scenario the First and Deputy First Ministers are likely to be the nominees of the UUP and the SDLP. Once elected, the First and Deputy First Ministers have some presidential characteristics, as it seems very unlikely that the assembly could depose them.

The First and Deputy First Ministers will have identical symbolic and external representative functions, including interactions with the Taoiseach and the North-South Ministerial Council. And they appear to have identical powers. Both, for example, preside over the 'Executive Committee' of ministers. They also have a role in coordinating the work of the executive committee, and for this reason, amongst others, it may make sense for them

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jointly to run the finance and personnel ministry.

The agreement does not make it plain whether the First or Deputy First Ministers will have any of the existing departmental responsibilities -- a separate department might be established to assist them.

However, unlike some presidents, and unlike most prime ministers, neither the First Minister nor the Deputy First Minister will formally appoint the 'other ministers'. The ministries will be allocated to parties in proportion to their strength in the assembly, according to a mechanical rule, the d'Hondt rule.

This rule means that parties get the right to nominate ministers according to their voting strengths. No vote of confidence is required by the assembly. It also means that parties get to choose, in order of their voting strength, their preferred ministries. If an individual minister is deposed from office, by cross-community procedures, then the party that held the relevant ministry will be able to appoint his or her successor. Parties, of course, have the right to refuse to nominate a minister to which they are entitled.

There will be at least six 'other ministers', if the First and Deputy First Ministers do not take any of the existing departments. But there can be up to 10. The number of ministries will presumably have to be decided by cross-community support. It may make sense, for example, to create three ministries out of the present Department of Economic Development, and many parties will want a larger Executive Committee.

In our scenario, the Alliance party is unlikely to win a seat unless there are at least eight ministries and then only if the DUP does not take up its entitlements. The loyalist parties will have to do much better than current projections to stand any chance of winning ministries. Sinn Fein, by contrast, would win one ministry if there are only six ministers, and at least two if there are 10. The more ministries there are, then the more proportional the representation of parties in the executive.

Ministers will have "full executive authority" in their jurisdictions, "within any broad programme agreed by the Executive Committee and endorsed by the assembly as a whole". This means that ministers will enjoy executive powers under existing legislation, and can operate without collective responsibility, save where a broad programme has been agreed by the Executive Committee and assembly, and save where they are obliged to engage in cross-departmental activities. No method of reaching agreement within the Executive Committee is specified, but the programme has to enjoy cross-community support in the assembly.

We assume that unless a method is specified in future negotiations that agreement within the Executive requires both a simple majority and the consensus of the First and Deputy First Ministers. Insert 3 suggests it is unlikely that unionists or nationalists will have a majority on the Executive Committee. Where ministers are not covered by a broad programme, they will have much greater individual executive discretion, subject to existing law and the new

safeguards.

All ministers will take a 'pledge of office', not an oath of allegiance. This pledge requires them to discharge their duties in good faith, to follow exclusively peaceful and democratic politics, to participate in preparing a programme of government, and to support and follow the decisions of the Executive Committee and the assembly. Alleged breaches of the pledge may be testable in the courts.

These duties of office include two important but less noticed features. The requirement to serve all the people equally, to promote equality, and to prevent discrimination, will mean that civil servants will be bound to conduct their ministries in this way in light of the doctrine of ministerial responsibility.

The other requirement is that 'relevant ministers' serve in the North-South Ministerial Council. At first glance, this might appear to suggest that the DUP and other hard-line unionists might agree to serve as ministers in portfolios that do not have a north-south dimension. However, the requirement that ministers must also 'support' and 'act in accordance with all decisions of the Executive Committee and assembly' precludes this possibility, given that these decisions will include north-south policies.

The assembly will have committees scrutinising each of the departments headed by ministers. Committee chairs and deputy chairs will also be allocated according to the d'Hondt rule. Each committee will have to approve any proposed new laws within its jurisdiction tabled by ministers, and indeed the committee can initiate legislative proposals. In consequence, a committee dominated by other parties may block the legislative initiatives of a dynamic minister; and it may indeed initiate legislation not to that minister's liking, though the success of such proposals would be subject to the possibility of cross-community special procedures.

#### **What problems will there be in creating or sustaining the executive or assembly?**

The assembly and its executive committee can work, and become mechanisms for accommodating the diverse peoples of the north. But there are potential difficulties. The assembly could be stalemated if a spirit of accommodation does not develop; and there will be predictable difficulties in agreeing a budget and a broad programme of government.

The rules for nominating the First Minister and Deputy First Minister imply that in conditions of deep polarisation that there could be a stalemate if either bloc vetoes the other's moderate candidate(s) for one of the top two positions. The agreement implies that until these positions are decided no ministries can be allocated.

One sensible improvement might be agreed here which would be consistent with the spirit of the agreement: ministers could be appointed in a caretaker capacity, according to the d'Hondt rule, but without the ability to

initiate legislation, if there is no agreement on the First Minister and the Deputy First Minister. This measure would mean that Northern Ireland would not lack a functioning local executive.

The Executive Committee could also be stalemated if anti-agreement ministers prevent sensible cross-departmental co-operation -- though there are rules to enable such ministers to be dismissed from office.

If there is stalemate the question arises whether the assembly or the Executive can be dissolved. The term of office of the assembly is not specified, but one assumes it will be fixed for four years. A sensible rule that might be agreed would require fresh elections if the assembly were to fail three times to nominate a First Minister and Deputy First Minister.

### **How will the small parties fare?**

The small parties will not do very well. In the Forum elections of June 1996 four parties got all their seats through reserved seats, the PUP, the UDP, the Women's Coalition and Labour. These seats have been abolished in the new system.

In each constituency a party will need to have nearly a quota, or 14.28 per cent of the vote, to have a chance of election. So it is imperative for the success of either the PUP or the UDP that their candidates do not run against one another.

Political scientist Rein Taagepera has developed a formula to approximate the effective threshold for representation in a PR system. It is  $T = 75\% / (M + 1)$ , in which T is the threshold and M the average magnitude of constituencies.

In this case M is six, so for the new assembly system the effective threshold is 10.7 per cent. So parties with regional support levels below this figure may be significantly under-represented -- the APNI, the PUP, the UKUP and the UDP are in this position. This effect can be counteracted if parties have constituency concentrations of support, and this will help the APNI, Robert McCartney of the UKUP and the PUP to win some seats. The UDP, however, looks a likely loser.

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