

Agreement review could circumvent DUP veto

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Despite 70 per cent support for the Good Friday Agreement, no Executive can be formed in the North. Yet a simple review of the rules for electing the two premiers could break the logjam imposed by the DUP without breaking the spirit of the agreement, write John McGarry and Brendan O'Leary.

Northern Ireland's institutions seem deadlocked after the Assembly elections. The latest impasse is the most recent in a sequence of crises, but it can be resolved.

There are formal possibilities for constructive developments (e.g. the Alliance and the independent from West Tyrone could designate as "unionist", or the DUP and Sinn Féin could support a DUP and SDLP pair of premiers), and there is a strong argument that there should be fresh elections if new premiers cannot be agreed.

But it is very likely that the forthcoming review of the agreement will be the key event.

The lightning rod for all problems has been the positions of First Minister (FM) and Deputy First Minister (DFM). They are elected as a team, and require the support of a concurrent majority of unionists and nationalists in the Assembly. The resignation of one automatically triggers the resignation of the other, and elections within six weeks.

Mr Seamus Mallon first used the weapon of resignation in 1999 in an understandable act of impatience, but set a dangerous precedent.

The suspension of the Assembly and Executive in 2000, 2001, and 2002 arose from Mr David Trimble using the resignation threat. The UK government calculated that he might not be able to secure his re-election, and used and abused its Suspension Act - itself a breach of the agreement.

The present impasse results from the DUP's veto on the election of a FM/DFM team, a veto it holds because it now has a majority of unionist MLAs.

The rule for electing the FM and DFM was established to assure nationalists that there would be no return to the simple majority procedures of the old Stormont, but has now produced the perverse result that pro-agreement MLAs cannot form a government, even though they comprise seven-tenths of the Assembly.

The rule has also come in for sustained criticism from Alliance and the Women's Coalition because it requires MLAs to designate themselves as "nationalists", "unionists" or "others".

It discriminates against the "others" because only the votes of nationalists and unionists are "pivotal": the FM and DFM only need the support of unionist and nationalist MLAs.

How might the review be productive?

The concurrent majority rule is in the agreement, and it would be an undesirable precedent if it were to be replaced. It ensures that the FM/DFM team has substantial support amongst the two primary blocs that have been in conflict. Therefore, it should be kept as the rule of first resort.

But the review must deliver a default rule that facilitates stable government and is in the spirit of the agreement.

Let us first eliminate some options:

1. A default of simple majority rule to elect the premiers is a non-starter. It might lead to an exclusively unionist FM/DFM team now, or, in the future to an exclusively nationalist pair. It is against the spirit of the agreement.

2. A second possibility is a rule that is in the agreement, and used for the passage of key legislation, the "weighted majority" rule: i.e. 60 per cent of the MLAs voting, including 40 per cent of both nationalists and unionists. If this rule was used now it would allow both nationalist parties to team up with the UUP to elect a FM/DFM team, or allow both unionist parties to team up with the SDLP.

This default rule would make it very likely that it would be used, i.e. both unionist parties and both nationalist parties would avoid electing a FM/DFM team under the concurrent majority rule in the expectation that they could find more "reasonable" partners under the default rule. Some may find this option attractive.

We think it is arguably undemocratic and counterproductive. An overriding principle of the agreement is inclusion. As Sinn Féin and the DUP are the largest parties in their blocs, there is a sound democratic case that they should have the opportunity to take up the positions of FM/DFM. Moreover, this possible default rule would not address the concerns of the "others": nationalist and unionist MLAs would still be strongly privileged over the "others".

3. A third possibility would be to elect the FM/DFM by a simple weighted majority, say two-thirds of MLAs. It would treat all MLAs equally. It would allow the current pro-agreement majority in the Assembly to elect a FM/DFM team. But it would not ensure long-run stability. Anti-agreement MLAs could prevent the election of a FM/DFM team if they win more than one-third of the seats. They are currently close to this proportion.

We propose a default rule consistent with the agreement. If the FM/DFM cannot be elected by concurrent majority, they should be chosen by the d'Hondt formula currently used for allocating all the other ministers in the Executive. It provides for ministries to go to parties in close approximation to their number of MLAs.

Using d'Hondt as the default rule would mean that the FM and DFM would first be offered to the two largest parties. If they refused to take the positions, they would then go to the next largest parties and so on.

The use of d'Hondt to allocate other ministries in the Executive explains why the DUP was not able to do with the cabinet what Mr Trimble was able to do with the position of FM and Mr Mallon with the position of DFM. The DUP could not threaten boycotts or resignation to extract concessions because it understood that if it chose not to take its posts its ministries would simply go to other parties.

The use of d'Hondt as the default rule would make it more likely that the DUP would take up the First Ministership. And if it did not, another party, the UUP, would.

But an unqualified d'Hondt rule would now lead to a FM/DFM team that would be exclusively unionist. And, in future, if unionism fragmented again it could lead to an exclusively nationalist team. To prevent these undesirable scenarios, the default rule should specify that the dual premiers must not be from one bloc, but from the two largest parties allowing for this proviso. This would be consistent with the spirit of the agreement.

This changed use of d'Hondt would please the "others". The d'Hondt rule does not require MLAs to designate themselves, and it treats all MLAs equally.

It would allow for the possibility of a FM or DFM from the "others" if they were to increase their

support so that an "other party" comprised the second largest party. This is not possible under the current rules.

In the review the DUP is unlikely to support this proposal. This is because our proposal removes the DUP's current veto over the election of the FM and DFM. But we believe it might acquiesce in its consequences in its own self-interest.

Fortunately, the DUP is unlikely to have a veto over the review. The British and Irish governments will probably accept changes that have the support of a "weighted majority": 60 per cent of the MLAs, including 40 per cent of nationalists and unionists. The DUP does not have a blocking majority of over 60 per cent of unionists, not even if they are joined by Messrs Donaldson and Burnside.

We also believe that the reviewers should go back to the original text of the agreement - and remove the addition made in the 1998 Northern Ireland Act that gave each premier the powerful resignation weapon.

Instead, if a premier or deputy premier resigns the position should be filled by their party, or by the next party entitled to the relevant post under d'Hondt (again subject to the proviso that there cannot be two premiers from the same bloc).

This proposal to make the review productive removes none of the obligations on republicans and loyalists to complete decommissioning, or on the two governments to fulfil their commitments.

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