



House of Commons
Northern Ireland Affairs
Committee

Devolution and democracy in Northern Ireland – dealing with the deficit

Third Report of Session 2017–19

*Report, together with formal minutes relating
to the report*

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Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

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Publication

Committee reports are published on the Committee's website at www.parliament.uk/niacom and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

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Contents

Timeline	3
Summary	5
The democratic deficit	5
Northern Ireland’s voice on Brexit	5
Levels of intervention	5
Specific policy interventions	6
Policing	6
Scrutiny by committees	7
The Belfast/Good Friday Agreement	7
Conclusion	8
1 Introduction	9
Our inquiry	9
The collapse of the Executive	10
Attempts to reach agreement	10
Current status	11
2 Temporary increased intervention	14
Previous collapses of the Executive	14
Process of talks	14
Calling an election	16
Budgets (2017–2019)	17
Finances for 2017–18	18
Finances in 2018–19	19
Salary of Members of the Legislative Assembly	21
Levels of intervention by Westminster	23
Limited intervention	23
Specific policy interventions	26
Draft Programme for Government	26
The Bengoa Report	28
The Hart Inquiry	29
3 Scrutiny of increased intervention	31
The need for scrutiny	31
Role of Secretary of State and Northern Ireland Office	32
Committees	34

Northern Ireland Affairs Committee	34
Stormont’s Committees	35
The Northern Ireland Assembly	37
British-Irish Intergovernmental Conference (BIIGC)	40
Grass roots accountability	41
Local Government	41
Citizens’ Assembly	43
4 Avoiding future problems	47
Individual reforms	47
Civil Service	47
Northern Ireland Policing Board	48
Petition of Concern	50
Structural reform under the Belfast/Good Friday Agreement	52
The Option of Review	53
Will of the parties	56
Conclusion	58
Conclusions and recommendations	59
Annex 1: Impact of an absent Executive	65
Annex 2: Situation report framework	71
Formal minutes	73
Witnesses	74
Published written evidence	76
List of Reports from the Committee during the current Parliament	78

Timeline

Figure 1: Timeline of collapse of Executive and talks

2016	
5 May	Elections to the Northern Ireland Assembly are held
25 May	The nomination of the first two-party Northern Ireland Executive with Arlene Foster MLA as First Minister and Martin McGuinness as deputy First Minister, with Justice being held by an independent MLA
26 May	The new Executive confirms the agreement of a Draft Programme for Government
13 October	10th anniversary of the St Andrew's Agreement
2017	
9 January	Martin McGuinness of Sinn Féin resigns as deputy First Minister of Northern Ireland
16 January	Sinn Féin declines to re-nominate a successor
4 March	Extraordinary election held in Northern Ireland
13 March	Northern Ireland Assembly forms. First round of talks to form Executive to begin
27 March	Statutory time limit for talks to appoint First and deputy First Ministers, and forming an Executive, passes
1 April	Civil servants authorised to spend 75% of preceding annual budget
3 April	Second round of talks commence
12 April	Second round of talks paused
18 April	Original deadline for talks to end, set by the then Secretary of State, James Brokenshire MP
27 April	Statutory time limit for creating an Executive extended to 108 days
Early May	New deadline for second round of talks set by Secretary of State
8 June	UK General Election held
12 June	Third round of talks commence
26 June	DUP and Conservative Party sign confidence and supply arrangement. Secures £1 billion additional funding for NI
29 June	Deadline for third round of talks not met. Deadline extended
3 July	Extended deadline for third round of talks not met. Talks suspended
31 July	Civil servants authorised to spend 95% of preceding annual budget
22 August	Fourth round of talks announced by Secretary of State
4 September	Secretary of State meets with the five main parties. Intensive talks continue
30 October	Deadline for fourth round of talks set by Secretary of State
1 November	Deadline for fourth round of talks extended but passed without agreement
2 November	Secretary of State announces need for 2017–18 Budget Bill for Northern Ireland
16 November	Northern Ireland Budget Act receives Royal Assent
18 December	Northern Ireland Budgetary Outlook 2018–20 published by NI Department of Finance

2018	
8 January	Secretary of State, James Brokenshire MP, is succeeded by Karen Bradley MP
18 January	Secretary of State announces fifth round of talks involving five main parties
24 January	Fifth round of talks begin
8 February	Date given by Civil Service by which it becomes difficult for them if there is no 2018–19 budget certainty
13 February	UK Prime Minister, Theresa May MP and Irish Taoiseach, Leo Varadkar visit Stormont
14 February	Fifth round of talks collapse
8 March	Secretary of State makes a Written Ministerial Statement on NI finances, including her considerations on Budget allocations for 2018–2019
12 March	Secretary of State makes oral statement regarding Budget
20 March	Northern Ireland Budget (Anticipation and Adjustments) Bill passes through House of Commons
21 March	Northern Ireland Assembly Members (Pay) Bill and Northern Ireland (Regional Rates and Energy) Bill pass through House of Commons
28 March	Northern Ireland Budget (Anticipation and Adjustments) Act, Northern Ireland Assembly Members (Pay) Act and Northern Ireland (Regional Rates and Energy) Act receive Royal Assent
10 April 2018	Twentieth Anniversary of the Belfast/Good Friday Agreement

Summary

The democratic deficit

The Northern Ireland Executive collapsed in January 2017 when the deputy First Minister resigned. Northern Ireland has had neither an Executive nor a functioning Assembly at Stormont for well over a year. During this time, the Northern Ireland Civil Service has governed in the absence of Ministerial direction and decision making. The Committee commends the Northern Ireland Civil Service for trying to manage a very difficult situation over a prolonged period.

We launched our inquiry on 24 November 2017, following the passage in Westminster of emergency budget legislation for Northern Ireland. The aim of our inquiry was not to conduct a post-mortem investigation into how and why the Executive collapsed or to assign blame. Our aim has been to suggest new ways forward and to find routes back to functioning devolved government.

We are deeply disappointed that several rounds of talks between those parties that were involved have failed to produce an agreement to restore democracy and accountability in Northern Ireland. We urge the political parties to restart talks to restore good governance in Northern Ireland. Locally elected politicians should be making decisions on behalf of the people that they represent. The Secretary of State said she had met Northern Ireland's five largest political parties on Thursday 26 April, had reviewed the current position with them and explored how they might achieve the restoration of devolution while ensuring the good governance of Northern Ireland in the interim. We recommend that the Secretary of State restart the active facilitation of talks between all parties. Engagement should be continuous and the Secretary of State and Prime Minister should consider taking a more active role.

The recommendations we make in this report do not detract from the Committee's view that power-sharing devolution is the best governance structure for Northern Ireland and ought to be restored as soon as possible.

Northern Ireland's voice on Brexit

Some stakeholders suggested that the absence of an Executive was undermining the voice of Northern Ireland in relation to Brexit negotiations, in which Scottish and Welsh Ministers are actively engaged. This is despite the uniquely difficult Brexit issues that relate to Northern Ireland. We wrote to the Prime Minister on 24 January setting out our concerns in relation to this issue and recommended that a Minister be given specific responsibility for Northern Ireland's voice on Brexit. We restate that recommendation in this report. We recommend that this Minister spends a significant amount of time in Brussels to assist with advocacy, in a similar way to Welsh and Scottish Ministers.

Levels of intervention

The UK Government has so far declined to increase its role in decision-making in Northern Ireland beyond limited financial legislation and taking modest action on

MLAs' pay. Stakeholders told us that this 'care and maintenance' form of governance was not sustainable. The lack of an Executive and functioning Assembly has created a democratic deficit in Northern Ireland. Ministerial decisions cannot be taken, budgets have not been forecast or set in a timely manner and, as a result, policy direction, legislative change and transformation have not progressed. The Committee accepts that further ministerial intervention will be required on devolved matters. The Committee believes that accountability, oversight and the principles of power-sharing are necessary for good governance in Northern Ireland. The Secretary of State must, before the summer recess, bring forward proposals as to how she will take ministerial decisions whilst adhering to these principles. She should also affirm that ministerial intervention in Northern Ireland will not affect her efforts to restart and sustain talks aimed at restoring the Executive.

Specific policy interventions

Since the collapse, Members of the Legislative Assembly (MLAs) have continued to receive their full salary. The Secretary of State made a determination to halt an automatic £500 increase in MLA salary on 1 April 2018. The Committee recognises that MLAs continue to work hard on behalf of their constituents. However, as many MLAs themselves have noted, if they are not completing their full, legislative, role they cannot expect to receive their full salary. The Committee recommends that the Secretary of State takes action on MLA pay as soon as possible following the conclusion of her consultation with the parties.

The Bengoa report addresses pressing needs felt by the health sector in Northern Ireland, and has received cross-community support. The Committee recommends that the Secretary of State set out what measures she intends the £100m of Confidence and Supply funding to be used for in relation to the Bengoa report. She should also take all necessary steps to implement, consult or legislate on the recommendations made.

The Hart Report, the product of an independent inquiry commissioned by the previous Executive into Historic Institutional Abuse, makes important recommendations which ought to be properly discussed by the devolved institutions in Stormont. In their absence, however, this issue is too serious to delay further. Victims and survivors have already waited too long for redress, with the advancing age of many of the survivors increasing the need for urgency. A victim of abuse has won the right to a judicial review of the Secretary of State's decision not to implement a redress scheme in the absence of an Executive. We recommend that once draft legislation is prepared, and after full pre-legislative scrutiny, the Secretary of State takes a Bill through the UK Parliament without further delay.

Policing

The Northern Ireland Policing Board was established in 2001 to oversee the work of the Chief Constable and the Northern Ireland Police Service. Due to the current impasse, MLA members of the Board cannot be appointed and it is therefore not fully constituted, although the independent members do attend Board meetings. There are many vital functions the Board cannot currently fulfil, including recruitment, appointments of senior staff to the police service and setting a Policing Plan for 2018/19. Policing is both

a vital service and is institutionally hugely significant within Northern Ireland. The Board must be able to function in the absence of an Executive. We recommend that the Secretary of State amends the Police (Northern Ireland) Act 2000 to ensure that the Policing Board can exercise its statutory functions now, and during any devolved but non-sitting periods of the NI Assembly in the future. In the continued absence of the Assembly and Executive, the Secretary of State must be mindful not to allow the Policing Board to become the forum for political agendas to be advanced.

Scrutiny by committees

During this inquiry, we heard that increasing the role of the UK Government in policy and law-making in Northern Ireland would require robust scrutiny. We heard criticisms that in the previous periods of direct rule, scrutiny mechanisms were weak.

In the absence of devolution, we believe this Committee has a particular duty to advance accountability and scrutiny on behalf of the people of Northern Ireland. We have increased the frequency with which we travel to Northern Ireland and take evidence. The Committee is currently exploring how its own role may change in light of the current impasse, while the absence of nationalist MPs representing Northern Ireland on the Committee will be a consideration in relation to any enhanced role.

We believe the most effective method of scrutinising actions taken by the Secretary of State, and Permanent Secretaries, during this period of collapsed devolution would be the Stormont committees. Resurrecting them, however, can only work if they are reflective of the make-up of the Assembly and adhere to the principle of power-sharing which is at the heart of the Belfast Agreement. Nationalist and unionist voices must both be heard and the consent and cooperation of representatives from both sides of the community would be required. We recommend that the Secretary of State take legal and procedural advice, including from the Clerk/Chief Executive of the Northern Ireland Assembly, on how the committee system in Stormont could be reinstated to provide, at a minimum, a scrutiny function for locally elected MLAs. This may be either through the statutory committee system or, if this is not feasible, through ad hoc committees.

The Belfast/Good Friday Agreement

It is 20 years since the Belfast/Good Friday Agreement was signed. The Agreement remains a significant political achievement of all those involved and signalled the end to decades of conflict. Its symbolic and national importance cannot be overstated. The fact that the Agreement resulted in an international treaty between the Irish and British Governments, and was endorsed by referendum, gives its principles and institutions a unique status. It was, however, not intended that the Belfast/Good Friday Agreement should be exempt from review as the situation in Northern Ireland changed. Notwithstanding two decades of relative peace and prosperity, politics in Northern Ireland have not been serving the people well in recent years. The public are becoming disillusioned with politics and disenfranchised.

The Committee recommends that, if the Executive is restored, it should launch a consultation within 6 months. So far as it is compatible with the principles underlying the Agreement, if the Executive is not restored before the autumn, the Secretary of State

should consult with the parties in Northern Ireland and the Irish Government on how a review mechanism could be progressed and what the scope of that review should be. The consultation should be wide-ranging and ensure that both sides of the community are fully heard.

Conclusion

The recommendations in this report form our view on what routes to the restoration of sustainable devolution should now be taken. The most fundamental of these is that talks between the two largest parties should restart.

We intend to track the progress of restored democracy and accountability in Northern Ireland. We will produce a regular situation report tracking measures outlined in this report and others that we may determine, and their progress. The pressure and impetus to reinstate devolution must not be relaxed until democracy has been restored to Stormont.

1 Introduction

1. At the point of publication of this Report, Northern Ireland has had neither an Executive nor a functioning Assembly at Stormont for well over a year. This has had an impact on communities, public services and businesses and delayed legislative and budgetary timetables. It has also meant that Northern Ireland, unlike Scotland and Wales, has not been represented by its Ministers during the UK’s Brexit negotiations.

Our inquiry

2. The Northern Ireland Executive (the Executive) collapsed in January 2017. By October, there had been no devolved government for 10 months and three rounds of talks between the two largest parties, the Democratic Unionist Party and Sinn Féin, had failed. Giving evidence to this Committee, James Brokenshire MP, then Secretary of State for Northern Ireland, said that “without an agreement, we are on a glide path to greater and greater UK government intervention in the day-to-day affairs of Northern Ireland.”¹ No agreement came and, in November, an emergency budget for Northern Ireland was passed in Westminster. We launched our inquiry on 24 November 2017.²

3. The aim of our inquiry was not to conduct a post-mortem investigation into how and why the Executive collapsed or to assign blame. Our aim has been to suggest new ways forward and to find routes back to functioning devolved government. Our inquiry has examined three key areas: what immediate action is required for the governance of Northern Ireland following the collapse; how such actions could be scrutinised in the absence of normal Assembly mechanisms; and what reforms are necessary to reduce the risk and mitigate the effect of a similar collapse in the future.

4. In March 2018, the Secretary of State, Karen Bradley MP said:

I would welcome the views and proposals of the Northern Ireland parties and others on how such arrangements—providing for local decision-making and scrutiny, on a cross-community basis—might be achieved in the continued absence of an Executive. And how any such arrangements might work alongside the other institutions of the [Belfast/Good Friday] Agreement.³

We embrace this invitation. This Report sets out our evidenced views in three chapters. First, it addresses the possibility of increasing the intervention of the UK Government in Northern Ireland in order to make necessary ministerial decisions. Second, it considers how best to scrutinise any such intervention. Finally, it proposes steps to be taken to mitigate the consequences, and chances, of future collapses. In doing so, our report examines the impact that the lack of the Executive has had on communities, public services and businesses. It also considers reforms which we consider are required to make Northern Ireland governance more robust.

1 [Q1](#) [Rt Hon. James Brokenshire MP], Oral Evidence taken on Work of the Secretary of State, 18 October 2017, James Brokenshire MP, [HCWS 185](#), 19 October 2017

2 [Devolution and democracy in Northern Ireland: dealing with the deficit](#), Northern Ireland Affairs Committee, 24 November 2017

3 Secretary of State for Northern Ireland, [Oral Statement: Northern Ireland Finances](#), 12 March 2018

5. Over the course of our inquiry, the Committee took oral evidence from a wide range of stakeholders. This included representatives from the public and private sectors, voluntary and charitable groups, political parties, the Northern Ireland Civil Service, academics, a previous Secretary of State for Northern Ireland, and the current Secretary of State. We invited Sinn Féin to give oral evidence or written evidence to our inquiry but the party declined. The recommendations in this Report are based on evidence submitted to this inquiry, both written and oral, and informed by an engagement event held in Derry/Londonderry with members of the public. We would like to thank everyone who engaged with this inquiry.

The collapse of the Executive

6. Scheduled NI Assembly elections were held on 5 May 2016. An Executive was appointed on 25 May with all the D'Hondt ministerial positions taken for the first time by the Democratic Unionist Party and Sinn Féin, with Rt Hon Arlene Foster MLA as First Minister and Martin McGuinness MLA as deputy First Minister. A draft Programme for Government was announced on 26 May 2016. The Northern Ireland Executive collapsed in January 2017 when the Deputy First Minister, Martin McGuinness, resigned.⁴ Mr McGuinness said this was because of the role of the First Minister, Arlene Foster, in the Renewable Heat Incentive Scheme (RHI) and her refusal to step aside.⁵ Under the power-sharing terms of Northern Ireland's government, if either the First Minister or the deputy First Minister resigns, the other shall also cease to hold office.⁶ Within a period of seven days from the resignation, the two largest parties—the Democratic Unionist Party (DUP) and Sinn Féin—were required to nominate an Assembly member to the positions.⁷ Sinn Féin declined to nominate a replacement deputy First Minister, triggering an election in March.⁸

7. Of 90 seats available in the Northern Ireland Assembly (the Assembly),⁹ the DUP won 28 whilst Sinn Féin won 27, returning them as the two largest parties.¹⁰ The parties failed to form an Executive within the statutory deadline of 14 days after the election.¹¹ This deadline was later extended to 108 days by Parliament to enable power-sharing talks between the two largest parties to be held.¹² This deadline also passed. For a detailed timeline see Figure 1¹³.

Attempts to reach agreement

8. Since the collapse of the Executive there have been five talks processes, two predating the General Election and three afterwards. These talks, involving the main Northern Ireland parties, have been chaired by the UK and Irish governments in line with the three-

4 *Northern Ireland since May 2016: developments*, Briefing Paper [CBP08231](#), House of Commons Library 15 February 2018

5 This is currently the subject of an independent judicial inquiry, which is due to report in the Autumn. *Northern Ireland since May 2016: developments*, Briefing Paper [CBP08231](#), House of Commons Library 15 February 2018

6 *Northern Ireland Act 1998*, [section 16B\(2\)](#) (as amended by the Northern Ireland (St Andrews Agreement) Act 2007)

7 [Northern Ireland Act 1998 sections 16B\(3\)-\(9\)](#)

8 [Northern Ireland Act 1998 sections 16A and 16B](#)

9 Reduced from 108 via [Assembly Members \(Reduction of Numbers\) Act \(Northern Ireland\) 2016](#)

10 [Statistics](#), Northern Ireland Assembly, 2016

11 [Northern Ireland Act 1998 section 16A\(3\)](#)

12 [Northern Ireland \(Ministerial Appointments and Regional Rates\) Act 2017 section 1](#)

13 Page 3

strand approach.¹⁴ All five processes have so far failed to achieve agreement. Faced with no success in the Autumn talks process, the then Secretary of State set a budget as a “necessary measure, taken at the latest possible point, to secure public finances in Northern Ireland”.¹⁵ The Budget Bill was introduced in the House of Commons on 13 November 2017 and completed all stages in both Houses over two days. It received Royal Assent on 16 November, becoming the Northern Ireland Budget Act 2017. The Act authorised NI departments to incur expenditure and use resources for the financial year ending on 31 March 2018.

9. Not long after taking office, Mr Brokenshire’s successor, Karen Bradley MP, announced that “a short, intense set of political talks” would be held on 24 January 2018 between the UK and Irish Governments and five political parties in Northern Ireland.¹⁶ The Secretary of State updated the House of Commons on the progress of the talks on 7 February. She said, “I firmly believe that an agreement in the coming days, while not certain, is achievable.”¹⁷ On 14 February, however, these discussions also broke down, with no imminent plans to restart Government-facilitated talks.¹⁸ Simon Hamilton MLA, a representative of the DUP, who had been involved in the process, told us:

I do not think the prospects of talks in the short term are good. By the short term, I do not mean just in the next week or the next couple of weeks. At this stage, in the next months, certainly this year and maybe even beyond, I do not think the prospects are good.¹⁹

Following the breakdown, the Secretary of State acknowledged that challenging decisions and steps to provide certainty and stability in Northern Ireland would now need to be taken.²⁰

Current status

10. There are currently no Executive Ministers in place to take decisions in Northern Ireland. Stakeholders have described this situation as “unacceptable”,²¹ “a shambles”,²² “urgent”,²³ and “a crisis”.²⁴ Representatives from the public, private and third sectors agreed that they would be “pleased if we get a devolved Government; relieved if we get some sort of Government.”²⁵ Members of the public concurred, expressing frustration at the lack of decision-making and legislation and a sense of worry regarding the future.²⁶ Professor Jonathan Tonge, Professor of Politics at the University of Liverpool suggested that the current status of governance “is the worst option.”²⁷

14 Dealing with the three strands of the Good Friday/Belfast Agreement: the devolved institutions, North-South arrangements, and East-West institutions.

15 Secretary of State’s Oral Statement on the NI Budget Bill, 13 November 2017

16 Secretary of State. [Press Statement](#), 18 January 2018

17 HC Debs, Secretary of State for Northern Ireland, 7 February 2018 [vol 635](#)

18 [Q405](#) [Rt Hon. Karen Bradley MP]

19 [Q663](#) [Simon Hamilton MLA]

20 Secretary of State for Northern Ireland, [Oral Statement: Political Situation in Northern Ireland](#), 20 February 2018

21 [Q37](#) [David Sterling]

22 [Q587](#) [Jim Allister]

23 [Q161](#) [Anne Connolly], [Q166](#) [Gavin Boyd]

24 [Q90](#) [Seamus McAleavey] [Q297](#) [Ruth Taillon]

25 [Q108](#) [Colin Neill]

26 Members of the public at Derry-Londonderry outreach and engagement event ([DDD0040](#))

27 [Q276](#) [Professor Jonathan Tonge]

11. In the absence of Ministers, the Northern Ireland Civil Service has been responsible for the day-to-day running of Northern Ireland. The budgetary legislation taken through the UK Parliament in November 2017, allowed the Civil Service to “keep things ticking over ... so that it can maintain public services and funds can go to education, the health service and other public services.”²⁸ In March 2018, the Northern Ireland Budget (Anticipation and Adjustments) Act was passed to provide for a vote on account. This enables the Civil Service to spend around 45% of the expenditure anticipated for 2018–19 although it does not constitute a 2018–19 budget.²⁹ The NI Civil Service is limited in its actions and cannot take strategic policy decisions.³⁰ David Sterling, Head of the Northern Ireland Civil Service, commented:

I think the position we find ourselves in is unacceptable. It does not become any more acceptable with the passage of time. I never thought we could survive this long.³¹

12. At the time of writing, the UK Government’s interventions have been mainly limited to:

- facilitating talks between the parties;
- setting an interim budget for Northern Ireland in November 2017 based on previous spending decisions made by the Executive;
- commissioning the Reaney review to examine the pay of Members of the Legislative Assembly (MLAs);
- providing a vote on account for 45% of expected expenditure in March 2018;
- extending the cost capping controls on the Renewable Heat Initiative for another year;
- setting the regional rates for 2018–19;
- legislating for the power to reduce MLAs’ pay, and seeking representations from NI parties on the matter; and
- halting an inflationary £500 increase that MLAs’ were due to receive from 1 April 2018.

13. **Since the Belfast Agreement was signed in 1998, Northern Ireland has had sustained periods without devolved government. However, since the St Andrews Agreement there has been a decade of sustained devolution so its collapse for well over a year is a profound backward step. A gross political failure, it cannot be sustained much longer without serious consequences for the people of Northern Ireland. The situation has been unfair on residents, the Northern Ireland Civil Service, public services and businesses. It has been particularly unfortunate since it has meant the voice of Northern Ireland has not been heard in London and Brussels as loudly as that of Scotland and Wales during the Brexit process. We are deeply disappointed that**

28 [Q26](#) [Hugh Widdis]

29 [The Northern Ireland Budget \(Anticipation and Adjustments\) Act 2018](#)

30 [Q129](#) [Seamus McAleavey] [Q26](#) [James Brokenshire], Oral Evidence taken on Work of the Secretary of State, 18 October 2017

31 [Q77](#) [David Sterling]

successive rounds of talks between those parties that were involved have failed to reach agreement. We note the recent response to a written question by the Secretary of State which said she had met Northern Ireland’s five largest political parties on Thursday 26 April, had reviewed the current position with them and explored how they might achieve the restoration of devolution while ensuring the good governance of Northern Ireland in the interim. We urge the political parties to restart talks to restore good governance in Northern Ireland immediately. Locally elected politicians should be making decisions on behalf of the people that they represent. The recommendations we make in this report do not detract from the Committee’s view that power-sharing devolution is the best governance structure for Northern Ireland and ought to be restored as soon as possible.

2 Temporary increased intervention

14. In this Chapter, we examine the actions taken to date by the Secretary of State to restore devolution, and the additional options available. We then look at the current level of intervention by the UK Government in the governance of Northern Ireland, and the case for any increased intervention. Finally, we highlight specific interventions which require Ministerial actions, either through implementation, consultation or legislation on certain policy areas. Increased scrutiny of these interventions is examined in Chapter 3.

Previous collapses of the Executive

15. The Northern Ireland Assembly is the devolved law-making body for Northern Ireland and is constituted of elected Members of the Legislative Assembly (MLAs). The Assembly may legislate on any matter which is not an excepted matter under the Northern Ireland Act 1998.³² The Executive Committee is comprised of Ministers who oversee nine separate departments and is the devolved Government for Northern Ireland.³³

16. Between 2000 and 2007, the Assembly was suspended four times.³⁴ The longest period of suspension, between 2002–2007, resulted in direct rule from the UK Government.³⁵ When devolution was restored with the St Andrews Agreement, the legislative process of suspension was repealed.³⁶ A return to direct rule would require primary legislation by the UK Parliament.³⁷

17. In the current impasse, the UK Government has limited options. The Secretary of State has the legal duty to call an election in Northern Ireland.³⁸ She also retains powers to make primary legislation, which she and her predecessor have exercised regarding the budget and in setting regional rates. Neither the former Secretary of State nor the current Secretary of State have increased intervention much beyond this, although Karen Bradley MP has said that she is “mindful” to reduce MLAs’ pay.³⁹

Process of talks

18. Talks to restore devolution have paused. The talks had been predominantly held between the two largest parties, the DUP and Sinn Féin, supported by the Secretary of State and the Irish Foreign Affairs Minister.⁴⁰ The Secretary of State told the Committee that she “was not in the room” when the parties negotiated with each other.⁴¹ She commented:

These are two political parties. This is about the way devolution works. You would not expect to see the British Government in the room when a coalition agreement was being formed in the Welsh Assembly, for example.⁴²

32 Northern Ireland Act 1998 [Schedule 2](#)

33 [The Assembly & the Executive](#), Northern Ireland Assembly Education Service accessed 21 March 2018

34 Under [Northern Ireland Act 2000 s1](#); Northern Ireland Budget *Bill*, Briefing [CBP8122](#), House of Commons Library, 9 November 2017

35 Northern Ireland Budget Bill, Briefing [CBP8122](#), House of Commons Library, 9 November 2017

36 [Northern Ireland \(St Andrews Agreement\) Act 2006](#)

37 Northern Ireland Act 2000 [Schedule 4](#)

38 [Northern Ireland Act 1998 section 32\(3\)](#)

39 Secretary of State for Northern Ireland, [Oral Statement: Northern Ireland Finances](#), 12 March 2018

40 Secretary of State for Northern Ireland, [Oral Statement: Political Situation in Northern Ireland](#), 20 February 2018

41 [Q403](#) [Karen Bradley]

42 [Q448](#) [Karen Bradley]

Instead, she told us that her role was “to bring people together”⁴³ and to be available “to provide support, if there was a need for technical assistance.”⁴⁴

19. The UK Government has confirmed that it is not currently facilitating talks,⁴⁵ and that there was an agreement for a “time of reflection from both parties”.⁴⁶ Simon Hamilton MLA of the DUP confirmed that the party was not in discussions with Sinn Féin.⁴⁷ He told us, “I do not think there is a prospect of not only getting devolution back, but even getting proper, meaningful talks started in the short term.”⁴⁸ In response to a written question, the Secretary of State said she had met Northern Ireland’s five largest political parties on 26 April, had reviewed the current position with them and explored how they might achieve the restoration of devolution while ensuring the good governance of Northern Ireland in the interim.⁴⁹

20. Lord Murphy of Torfaen was Secretary of State for Northern Ireland during direct rule, between October 2002 and May 2005.⁵⁰ He was also a Minister in the Northern Ireland Office during the negotiation of the Belfast/Good Friday Agreement.⁵¹ He reflected upon the importance of the constant involvement by all parties during a talks process:

We could not do it part time. There has to be constant involvement of the relevant parties—with a small “P” in this case—in all this. That includes Governments. It includes Prime Ministers and Taoiseachs. All those latenight sitins we had over the years—and there were many of them—were necessary.⁵²

21. The Committee was told that all-party talks were valuable, as smaller parties could challenge the positions adopted by “parties from your own side”.⁵³ Lord Murphy commented:

One of the successes of all parties meeting is that lots and lots of ideas were able to be put onto the table, some of which came to fruition and formed the basis of the agreement. It is coming together and talking about these things that is so important, and bringing pressure on the other parties to come to an agreement.⁵⁴

22. In January, the Secretary of State told us that she would conduct “allparty roundtable talks involving all [...] main parties.”⁵⁵ However, we heard that many parties felt excluded from the talks held in February.⁵⁶ Colum Eastwood MLA, the leader of the Social Democratic and Labour Party (SDLP), said: “the other parties, who all have a mandate,

43 [Q445](#) [Karen Bradley]

44 [Q445](#) [Karen Bradley]

45 [Q406](#) [Karen Bradley]

46 [Q407](#) [Karen Bradley]

47 [Q663](#) [Simon Hamilton MLA]

48 [Q666](#) [Simon Hamilton]

49 Written question - 137494

50 [Q373](#) [Lord Murphy] [Biography of Lord Murphy of Torfaen](#), UK Parliament accessed 21 March 2018

51 [Biography of Lord Murphy of Torfaen](#), UK Parliament accessed 21 March 2018

52 [Qq384](#), [Q375](#) [Lord Murphy]

53 [Q386](#) [Lord Murphy]

54 [Q386](#) [Lord Murphy]

55 [Q124](#) [Karen Bradley] Oral Evidence taken on Work of the Secretary of State 2017–19, 31 January 2018

56 [Q320](#) [Colum Eastwood MLA] [Q478](#) [Steven Agnew MLA] [Q542](#) [Robin Swann MLA]

were excluded.”⁵⁷ Robin Swann MLA, leader of the Ulster Unionist Party (UUP), commented that “since January, the five parties have been around a table with her for the grand sum of 50 minutes.”⁵⁸

23. There were indications that the two largest parties almost reached agreement on a resumption of the Executive. A number of suggestions have been made to us about how an agreement could be reached. These included; a more proactive role by the Secretary of State, increased involvement from the Prime Minister and the Taoiseach, the convening of the British-Irish Intergovernmental Conference and the involvement of a third party international mediator.

24. **Effective resolution requires constant engagement with all of those involved. We were disappointed to learn that talks between the two largest parties have been paused. The Secretary of State suggested that smaller parties were to be actively involved in the talks to restore devolution. However, that has not been the experience of some party leaders. We recommend that the Secretary of State restart the active facilitation of talks between all parties. Engagement should be continuous and the Secretary of State should consider taking a more active role, including being part of those conversations rather than risk being perceived as a passive observer. We recommend that the Government indicate within the next month whether they intend to pursue any other options.**

Calling an election

25. By law, if the deadline for forming an Executive passes, the Secretary of State shall propose a new election date.⁵⁹ The Secretary of State and her predecessor have both acknowledged that they are under a legal duty to call an election but have yet to do so.⁶⁰ In 2002 when the Assembly was suspended, the House of Lords, in its then judicial capacity, concluded that Parliament did not impose a temporal limitation on the Secretary of State either proposing or holding an election in such circumstances.⁶¹

26. The Chief Executive of the Northern Ireland Council for Voluntary Action (NICVA), Seamus McAleavey, noted that if an election “is decreed as part of the process, then I think it probably has to be had. We have to exhaust all the opportunities.”⁶² However, a large proportion of witnesses to this inquiry were against holding another election,⁶³ and explained it would most likely produce the same result as the March 2017 election.⁶⁴

27. Some party leaders suggested that calling an election would only “buy time” for the UK Government in postponing the decision to impose direct rule.⁶⁵ Robin Swann MLA said, “I do not think it will change the problems. It may change the numbers, but it will not change the fundamental problems.”⁶⁶ Colum Eastwood MLA, also expressed

57 [Q320](#) [Colum Eastwood MLA]

58 [Q534](#) [Robin Swann]

59 [Northern Ireland Act 1998 section 32\(3\)](#)

60 [Q84](#) [Karen Bradley] Secretary of State for Northern Ireland [Oral Statement to Parliament on the political situation in Northern Ireland](#), 7 July 2017

61 [Robinson v Secretary of State for Northern Ireland and Others](#) [2002] UKHL 32 [15] per Lord Bingham of Cornwall

62 [Q134](#) [Seamus McAleavey]

63 [Qq133–4](#) [Colin Neill, Glyn Roberts, Seamus McAleavey, John Armstrong]; [Q218](#) [Richard Wilford], [Q328](#) [Colum Eastwood] [Q364](#) [Claire Sugden MLA] [Q550](#) [Robin Swann] [Q611](#) [Jim Allister MLA] [Q862](#) [Simon Hamilton]

64 [Q235](#) [Jonathan Tonge] see also [Q116](#) [Seamus McAleavey]

65 [Q550](#) [Robin Swann] [Q611](#) [Jim Allister]

66 [Q550](#) [Robin Swann]

concern that calling an election could harden the views of the two largest parties.⁶⁷ Other witnesses to this inquiry felt that voters were becoming “cynical”⁶⁸ as “they see the same old thing happening again”.⁶⁹

28. Representatives from political parties, academics and individuals representing specific sectoral organisations, all concluded that little would be achieved by holding yet another election. It is likely that the same political parties would be required to form an Executive, and that the same problems would occur in doing so. While we note the legal duty on the Secretary of State, and the temptation to roll the electoral dice again, we agree that both Secretaries of State have been right not to call an election.

Budgets (2017–2019)

29. Without an Executive in place, no budget for either 2017–18 or 2018–19 could be set by the Assembly. Budgets are required to provide departmental certainty for the year ahead.⁷⁰ Without a budget, we heard it would be “impossible for a Government to continue”.⁷¹ Simon Hamilton MLA, a previous Northern Ireland Finance Minister, told us “budgets are not very glamorous, but they are the oil that moves the engine and helps to make it go.”⁷²

30. The main sources of funding for Northern Ireland are: the consolidated fund of Northern Ireland from the block grant given by the UK; regional rates (household and business) and funding from the Fresh Start Agreement for specific projects.⁷³ Since June 2017, there is additional funding available from the DUP’s Confidence and Supply Agreement with the UK Government.⁷⁴ Departments may also receive income from accruing resources, i.e. income received by a department or public body that it is authorised to retain to offset related spending.⁷⁵ These sources may all contribute to the budget.⁷⁶

31. The usual process for setting a budget requires the Minister of Finance to present a draft budget to the Assembly for debate, then agreement and approval.⁷⁷ Supplementary estimates are provided, as is a vote on account.⁷⁸ A department “cannot lawfully spend money until it has been appropriated to it”,⁷⁹ and a letter of appropriation cannot be drafted until a budget is set.⁸⁰ This process is normally done in the Autumn preceding the end of the tax year. In 2017, for example, England had its budget set on 22 November, whilst Scotland and Wales set budgets before Christmas.⁸¹

67 [Q328](#) [Colum Eastwood]

68 [Q132](#) [Seamus McAleavey] [Q133](#) [John Armstrong]

69 [Q132](#) [Seamus McAleavey]

70 [Q670](#) [Simon Hamilton]

71 [Q223](#) [Professor Christopher McCrudden] *see also* [Q479](#) [Steven Agnew]

72 [Q670](#) [Simon Hamilton]

73 *See further* [Stormont House Agreement](#), [A Fresh Start: The Stormont Agreement and Implementation Plan](#), 17 November 2015

74 Northern Ireland Department of Finance, [Briefing on Northern Ireland Budgetary Outlook 2018–20](#), 18 December 2017

75 Northern Ireland Budget Bill, Briefing [CBP8122](#), House of Commons Library, 9 November 2017, 21

76 Northern Ireland Department of Finance, [Briefing on Northern Ireland Budgetary Outlook 2018–20](#), 18 December 2017, 19

77 Northern Ireland Department of Finance, [Briefing on Northern Ireland Budgetary Outlook 2018–20](#), 18 December 2017, p2

78 [Qq3, 30](#) [David Sterling]

79 [Q22](#) [Hugh Widdis]

80 [Q23](#) [Hugh Widdis]

81 [Q15](#) [David Sterling]

32. Various stakeholders told us that their sector had been affected by the lack of budget decisions. For example, Martin Dillon, the Chief Executive of Belfast NHS Trust, told us:

The single biggest impact for us has been in the arena of financial planning and in budget and financial management because in this current financial year, because of the delay in setting a budget for Northern Ireland in the absence of a Finance Minister, our Department of Health did not know with certainty its allocation until some considerable time into the financial year.⁸²

33. In the construction industry, John Armstrong, Managing Director of the Construction Employers Federation expressed concern about the capital budget.⁸³ He explained that the construction sector was heavily dependent on public sector contracts.⁸⁴ Whilst flagship projects had been protected, he told us that:

There is very little certainty about what monies will be available for the vast majority of smaller works on which so many small companies are dependent here in Northern Ireland.⁸⁵

34. In relation to policing, George Hamilton, Chief Constable of the Police Service of Northern Ireland (PSNI), warned us that there was no Minister to sign off either the amount budgeted for the police service, or to approve what it should be spent on.⁸⁶ He said, “uncertainty is as challenging as cuts.”⁸⁷ Further examples of the impact of a lack of a budget are contained at Annex 1.

Finances for 2017–18

35. As authorised by the Northern Ireland Act 1998, if an appropriation Act for setting the budget is not passed at least three working days before the end of a financial year, the NI Civil Service is authorised to spend 75% of the preceding year’s allocated Budget.⁸⁸ This increases to 95% if no Act is passed by the end of July of the same year.⁸⁹ The Civil Service exercised these statutory powers in 2017. They had never been used before and are regarded as an interim measure to continue cash flow for public services and grant some certainty to departments.⁹⁰ Previously agreed capital expenditure commitments, including Executive Flagship Projects, were to be honoured.⁹¹ The powers did not enable new decisions to be made. David Sterling, then Permanent Secretary at the Department of Finance, said that “we are very clear that the prioritisation and allocation of financial resources is a matter for Ministers.”⁹² The powers did not provide for departments to use accruing resources.⁹³

82 [Q173](#) [Martin Dillon]

83 [Q91](#) [John Armstrong]

84 *Ibid*

85 [Q91](#) [John Armstrong]

86 [Q2](#) [George Hamilton] Oral evidence taken in Update from the PSNI, 25 October 2017

87 [Q1](#) [George Hamilton]

88 Northern Ireland Act 1998 [section 59](#); Government Resources and Accounts (Northern Ireland) Act 2001 [section 7](#)

89 Northern Ireland Act 1998 [section 59](#); Government Resources and Accounts (Northern Ireland) Act 2001 [section 7](#)

90 [Department provides Budget clarification](#), Northern Ireland Department of Finance, 28 March 2017

91 [Department provides Budget clarification](#), Northern Ireland Department of Finance, 28 March 2017

92 [Department provides Budget clarification](#), Northern Ireland Department of Finance, 28 March 2017

93 Northern Ireland Budget Bill, Briefing [CBP8122](#), House of Commons Library, 9 November 2017, p21

36. The Northern Ireland Civil Service advised the Secretary of State that November 2017 was the latest point at which a budget for 2017–18 could be set before funds started to run out.⁹⁴ On 16 November 2017, the Government passed emergency legislation to authorise spending in line with the previous year’s budgetary priorities.⁹⁵ The Bill authorised £16bn from the consolidated fund and £18bn of non-accruing resources.⁹⁶ It was intended “as far as is possible to reflect the priorities of the previous Executive—albeit updated to reflect the changed circumstances as far as has been required.”⁹⁷ £20 million of the DUP’s Confidence and Supply Agreement funding was also drawn down for health and education.⁹⁸

37. In anticipation of the need for a 2018–19 budget, in December 2017 the Department of Finance (NI) took the “unusual step”⁹⁹ to publish a briefing paper on the budget for 2018–19, and 2019–20, to inform any incoming Executive about broad strategic issues.¹⁰⁰ The Department of Finance considered that in order for an effective budget to be set and delivered, the budget needed to be agreed in early February 2018.¹⁰¹ It determined that, if departments continued to spend on their current profiles, particularly in health and education, “the available Budget for 2018–19 would be significantly exceeded”.¹⁰² The *Northern Ireland Civil Service Briefing on the Budget Outlook* identified three options for an incoming Executive:

- Cut departmental allocations, leaving it to Departments to manage the consequences;
- Reduce or stop support for some existing services and policies; and/or
- Ask citizens to pay more for the services they receive e.g. through the household rates, perhaps earmarked to fund increasing costs in areas such as health and education.¹⁰³

Finances in 2018–19

38. Due to the length of the budget setting process (paragraph 31), it was the view of the NI Civil Service that an agreed budget for the 2018–19 financial year would be needed by early February.¹⁰⁴ When pressed, David Sterling, in his capacity of Head of the Northern Ireland Civil Service, told us “it will be incredibly difficult for us if we do not have budget

94 Northern Ireland Budget Bill, Briefing [CBP8122](#), House of Commons Library, 9 November 2017, p3

95 [Northern Ireland Budget Act 2017](#), Secretary of State for Northern Ireland, [Oral Statement on the NI Budget Bill](#), 13 November 2017

96 Northern Ireland Budget Bill, Briefing [CBP8122](#), House of Commons Library, 9 November 2017, p3

97 [HC Deb, 13 November 2017, col 66](#)

98 Northern Ireland Department of Finance, [Briefing on Northern Ireland Budgetary Outlook 2018–20](#), 18 December 2017, p23

99 Northern Ireland Department of Finance, [Briefing on Northern Ireland Budgetary Outlook 2018–20](#), 18 December 2017 p2

100 Northern Ireland Department of Finance, [Briefing on Northern Ireland Budgetary Outlook 2018–20](#), 18 December 2017 p2

101 Northern Ireland Department of Finance, [Briefing on Northern Ireland Budgetary Outlook 2018–20](#), 18 December 2017 p7

102 Northern Ireland Department of Finance, [Briefing on Northern Ireland Budgetary Outlook 2018–20](#), 18 December 2017 p7

103 Northern Ireland Department of Finance, [Briefing on Northern Ireland Budgetary Outlook 2018–20](#), 18 December 2017 p 4

104 [Q24](#) [Hugh Widdis]

certainty by 8 February.”¹⁰⁵ Exactly one month later, the Secretary of State announced proposed budget allocations in a written ministerial statement. Simon Hamilton MLA, a former Finance Minister, noted that this was “on the late side.”¹⁰⁶ The proposed budget set out the following:

Figure 2: 2018–2019 proposed budget allocations for Northern Ireland

- £410m from the Confidence and Supply agreement to be spent on:
 - £80m for immediate health and education pressures;
 - £30m for programmes to address issues of mental health and severe deprivation;
 - £100m for ongoing work to transform the health service in line with the broad-based consensus fostered by the Bengoa report;
 - £200m to boost capital spending for key infrastructure projects.
- £100m to be transferred from existing capital funding to address public services resource pressures.
- £4m fund to prepare the ground for transformation (alongside the £100m set out for health transformation).
- Changes to regional rates:
 - 4.5% increase for domestic rates
 - 1.5% increase, in line with inflation, for non-domestic rates
 - Small Business Rate Relief would continue.

Source: Secretary of State for Northern Ireland, [Written Statement](#), 8 March 2017

39. The Secretary of State said that these proposed allocations did not constitute a 2018–19 budget, which would need to be taken through in the summer of 2018. In March 2018, the UK Parliament passed the Northern Ireland Budget (Anticipation and Adjustments) Bill. The Bill included a vote on account, allowing the NI Civil Service to spend around 45% of the amount allocated for the previous financial year. Speaking in a debate on the Bill on 20 March, the Secretary of State said:

To be clear, this is not a budget for the year ahead. The Bill does not seek to set out in legislation the departmental allocations I outlined in my written statement on 8 March. Those will be taken forward via a budget Bill in the summer, exactly as is the case for the United Kingdom finances as a whole. Of course, I hope that this budget Bill will be brought forward by a restored Executive. We must, however, be prepared for the potential that it will again fall to this Parliament to provide budget certainty for the NICS.¹⁰⁷

105 [Q31](#) [David Sterling]

106 [Q670](#) [Simon Hamilton]

107 [HC Debs Karen Bradley 20 March 2018 col197](#)

40. Legislation setting the regional rates was also passed by the UK Parliament and received Royal Assent on 28 March 2018.¹⁰⁸ Prior to this, the Secretary of State told us that she was “being extraordinarily mindful of decisions that were taken before the Executive fell.”¹⁰⁹ The changes to regional rates, however, depart from the Executive’s policy, adopted since 2011, of freezing domestic rates and increasing them only with inflation.¹¹⁰ Further, the Small Business Rate Relief had been planned to be abolished by the previous Executive.¹¹¹

41. The Secretary of State set out budgetary allocations a month after the Head of Civil Service had warned that budget certainty was required. The absence of a budget has caused serious difficulties for the planning of public services and the private and third sectors. The budget is not fully set, it is late and it gives little granularity. It also departs from the previous Executive’s spending decisions in relation to rates, indicating a movement towards making policy decisions.

Salary of Members of the Legislative Assembly

42. Since the collapse of the Executive, Members of the Legislative Assembly (MLAs) have continued to receive their full salary. Claire Sugden MLA, an Independent, and Robin Swann MLA told us that they have “never been busier”¹¹² with constituency work in the absence of an Executive. However, many MLAs acknowledged that they are not performing their Assembly roles.¹¹³ Colum Eastwood MLA said, “people are doing a job, but they are not doing the full job that they were paid to do.”¹¹⁴ As MLA pay is a devolved matter, decisions regarding pay require primary legislation.¹¹⁵

43. Lord Murphy told us that decisions regarding MLAs’ pay were a balance between public opinion and not undermining the political institutions further.¹¹⁶ He recalled paying MLA salaries for three years during direct rule, although commented “that was certainly too long”.¹¹⁷ He did so as he feared that cutting salaries would signal the “beginning of the end” for the institutions.¹¹⁸ Claire Sugden MLA told us that people felt reducing pay may act as an incentive to restore the institutions.¹¹⁹ However Colin Neill, Chief Executive of Hospitality Ulster, said:

I don’t think it is a money issue, to be honest. Saying that “I am going to take X grand off of you a year” is not going to make them say “Oh then I will go”. It is principle and elements of tradition that are tying us down.¹²⁰

108 Northern Ireland (Regional Rates and Energy) Act 2018

109 [Q462](#) [Karen Bradley]

110 Northern Ireland Executive [Budget 2016–2017](#), 13 January 2016

111 Federation of Small Businesses ([DDD0015](#)), Department of Finance, [Statement to the Assembly - A Rates Rethink: Spurring Economic Growth](#), 22 November 2016

112 [Q370](#) [Claire Sugden] [Q526](#) [Robin Swann]

113 [Q333](#) [Colum Eastwood]

114 [Q333](#) [Colum Eastwood]

115 Northern Ireland Budget Bill, Briefing [CBP8122](#), House of Commons Library, 9 November 2017 p12

116 [Q333](#) [Colum Eastwood]; [Q492](#) [Steven Agnew]; [Q569](#) [Robin Swann]; [Q599](#) [Jim Allister]; [Q689](#) [Simon Hamilton]

117 [Q333](#) [Colum Eastwood]; [Q492](#) [Steven Agnew]; [Q569](#) [Robin Swann]; [Q599](#) [Jim Allister]; [Q689](#) [Simon Hamilton]

118 [Q382](#) [Lord Murphy]

119 [Q371](#) [Claire Sugden]

120 [Q121](#) [Colin Neill]

44. On 13 November 2017, James Brokenshire MP commissioned Trevor Reaney, former Assembly Chief Executive, to examine MLAs' pay.¹²¹ Mr Reaney delivered his report, *Advice to the Secretary of State for Northern Ireland: Members of the Northern Ireland Assembly Salaries, Expenses and Allowances* ("the Reaney Review") on 15 December 2017.¹²² On 12 March 2018, the Secretary of State announced that she would "seek to introduce legislation to take a power to vary MLA pay" and that she was "minded to reduce pay in line with the Reaney Review". She said this would follow "full and final representations from the NI parties".¹²³ However, she did not indicate how long this process would last. On 28 March, the Northern Ireland Assembly Members (Pay) Act was passed, which gave the Secretary of State powers to make a determination on MLAs' salaries. This power will cease upon restoration of the Northern Ireland Executive.¹²⁴ The Secretary of State has made a determination to halt an automatic £500 increase in MLA salary due to happen in April 2018.¹²⁵

45. The Reaney Review recommended:

- MLAs' annual salary to be immediately reduced by £7,425 to £42,075.
- In 3 months, to reduce by a further £6,187 to £35,888.¹²⁶
- That reducing staff numbers or budgets would have limited benefits due to "the desirability of retaining the capacity to restore the Assembly as soon as possible."¹²⁷
- However, if there is no prospect of an imminent return of a functioning Assembly by the end of March, the staffing allowance should be reduced by 25% before 1 July 2018.¹²⁸

46. During our Derry/Londonderry engagement event, some members of the public expressed frustration at MLAs continuing to receive their full pay.¹²⁹ This was reflected by witnesses giving evidence to our inquiry. The MLAs who gave oral evidence to us recognised the public anger on this issue and agreed that salaries should be looked at.¹³⁰ Steven Agnew MLA, leader of the Green Party of Northern Ireland said that he had met with Trevor Reaney and accepted the call for salary reduction.¹³¹ Jim Allister MLA, leader of Traditional Unionist Voice (TUV), said he had instructed the finance office in Stormont to not pay a portion of his salary. He had received advice that this would have to be done via the travel element of his salary, which is around £500 per month.¹³²

121 Secretary of State for Northern Ireland, Secretary of State announces advice on MLA pay, 13 December 2017

122 Northern Ireland Office, [Advice to the Secretary of State for Northern Ireland Members of the Northern Ireland Assembly Salaries, Expenses and Allowances](#), December 2017

123 Secretary of State for Northern Ireland, [Oral Statement: Northern Ireland Finances](#), 12 March 2018

124 Northern Ireland Assembly Members (Pay) Bill; HC Debs Karen Bradley 20 March 2018 [col 338](#)

125 Northern Ireland Office, [Secretary of State determination](#), 29 March

126 Trevor Reaney, [Advice to the Secretary of State for Northern Ireland Members of the Northern Ireland Assembly Salaries, Expenses and Allowances](#), 15 December 2017, p6

127 Trevor Reaney, [Advice to the Secretary of State for Northern Ireland Members of the Northern Ireland Assembly Salaries, Expenses and Allowances](#), 15 December 2017, p6

128 Trevor Reaney, [Advice to the Secretary of State for Northern Ireland Members of the Northern Ireland Assembly Salaries, Expenses and Allowances](#), 15 December 2017, p13

129 Members of the public at Derry-Londonderry outreach and engagement event ([DDD0040](#))

130 [Q333](#) [Colum Eastwood]; [Q492](#) [Steven Agnew]; [Q569](#) [Robin Swann]; [Q599](#) [Jim Allister]; [Q689](#) [Simon Hamilton]

131 [Q493](#) [Steven Agnew];

132 [Qq599-601](#) [Jim Allister];

47. **The Committee recognises that MLAs continue to work hard on behalf of their constituents. However, as many MLAs themselves have noted, if they are not completing their full, legislative, role they cannot expect to receive their full salary. *The Committee recommends that the Secretary of State takes action on MLA pay as soon as possible following the conclusion of her consultation with the parties.***

Levels of intervention by Westminster

Limited intervention

48. The UK Government has so far declined to increase its role in decision-making in Northern Ireland beyond limited financial legislation and taking modest action on MLAs pay.¹³³ It has maintained that these actions to date do not amount to direct rule.¹³⁴ James Brokenshire MP told us:

It is relatively straightforward to get into [direct rule], to pass legislation to do that, to set up the systems and all that sort of stuff. It is very, very hard to then get out of it.¹³⁵

49. The current Secretary of State said, “undermining the devolved settlement when there is a possibility of devolved government being restored is not something I want to do.”¹³⁶ Professor Richard Wilford, Emeritus Professor of Politics at Queen’s University suggested that the Secretary of State would make minimal interventions over the period of collapsed devolution whilst “cajoling the parties” back into talks.¹³⁷ He suggested that “she would be extremely reluctant” to take strategic decisions, particularly about potentially divisive social issues.¹³⁸ However, stakeholders expressed concern regarding a low level of governance in Northern Ireland.¹³⁹ Glyn Roberts, Chief Executive of Retail Northern Ireland said:

My worry about if we have direct rule is that it will not be the full-fat direct rule that we have had in the past. It will be more current maintenance. They will probably fill a few public appointments. They will probably address some of the budgetary issues, but I don’t see much more than that because I think they are conscious that they don’t want to do too much because the whole focus will be to get this place back.¹⁴⁰

Stakeholders told the Committee that the current level of intervention, described as “direct rule-lite”,¹⁴¹ or “care and maintenance” governance,¹⁴² was not sustainable. Whilst almost all stakeholders stated that their strong preference was for devolved Government,¹⁴³ as David Sterling summarised:

133 [Northern Ireland Budget Act 2017](#); Northern Ireland Budget (Anticipation and Adjustments) Act 2018

134 [Q16](#) [James Brokenshire], Oral Evidence taken on Work of the Secretary of State, 18 October 2017

135 [Q64](#) [James Brokenshire], Oral Evidence taken on Work of the Secretary of State, 18 October 2017

136 [Q428](#) [Karen Bradley]

137 [Q278](#) [Professor Richard Wilford]

138 [Q278](#) [Richard Wilford]

139 [Q108](#) [Colin Neill]

140 [Q102](#) [Glyn Roberts] [Q108](#) [Colin Neill]

141 [Q278](#) [Richard Wilford]

142 [Q94](#) [Colin Neill] [Q102](#) [Glyn Roberts]

143 For example [Q1](#) [David Sterling] [Q90](#) [Seamus McAleavey] [Q92](#) [Glyn Roberts] [Q93](#) [Colin Neill] [Q96](#) [John Armstrong] [Q305](#) [Paul Braithwaite] [Q306](#) [Derek McCallan] however see [Q306](#) [Jamie Bryson]

Without Ministers, we have no one with a democratic mandate to set new policies. Without a functioning Assembly, we have no one to make laws or immediately hold public bodies to account.¹⁴⁴

50. The Committee heard that this lack of policy-making, law-making and accountability has negatively affected work and strategic planning across Northern Ireland. For instance, John Armstrong of the Construction Employers Federation commented:

Across the construction industry, there is a strong and united view that the political impasse locally has gone on for far too long [...] there is a significant and increasingly harmful lack of governance within Northern Ireland [...]. Decisions having been put off, some projects stalled, and there has been confusion around the expenditure of elements of the capital budget.¹⁴⁵

Seamus McAleavey, of the Northern Ireland Council for Voluntary Action told us:

The voluntary and community sector makes significant use of government funding to deliver its services and activities, but in the current climate many organisations are wary of starting new projects, or hiring new staff and are therefore becoming less able to respond to social problems that require new strategies, leading to potential stagnation in this sector.¹⁴⁶

51. The Committee heard that transformation within many sectors and policy areas throughout Northern Ireland was required. For instance, Gavin Boyd, Chief Executive of the Education Authority, said the education sector was “in urgent need of transformation, looking at what we do and how we do it.”¹⁴⁷ He explained:

We are not saying that we don’t have enough money to educate 340,000 children. What we are saying very clearly is that we don’t have enough money to educate 340,000 children the way that we currently do.¹⁴⁸

52. Without Ministers in place, decisions on transformation cannot be made. We heard that, in departments, these key decisions, as well as day-to-day decisions, are “building up.”¹⁴⁹ Seamus McAleavey said:

Our members are very pro-devolution and would like to see a resolution of the current impasse. They would like to see a return to an Assembly in Northern Ireland. Like others, they do feel that the status that has existed in the last year has left us treading water but getting worse. The feeling is we are going under with a lack of decision-making.¹⁵⁰

144 [Q1](#) [David Sterling]

145 Construction Employers’ Federation ([DDD0001](#)), ([DDD0034](#))

146 Northern Ireland Council for Voluntary Action ([DDD0025](#))

147 [Q166](#) [Gavin Boyd]

148 [Q135](#) [Gavin Boyd]

149 [Q648](#) [Simon Hamilton]

150 [Q90](#) [Seamus McAleavey]

Derek McCallan, Chief Executive of the Northern Ireland Local Government Association (NILGA), said that people had become impatient at waiting.¹⁵¹ Colin Neill of Hospitality Ulster went further and warned us that without increased governmental decisions, “we cannot survive.”¹⁵²

53. Transformation must be undertaken under the direction, and political leadership, of a Minister.¹⁵³ Professor Christopher McCrudden, Professor of Human Rights and Equality Law at Queen’s University noted that increasing intervention would:

Address, at least to a degree, the current ministerial-deficit, accountability-deficit, and the good-governance deficit, by enabling decisions on new policies to be implemented.¹⁵⁴

Lord Murphy agreed that decisions need to be taken at a political level:

Someone has to take them. I do not think that decisions should be left to civil servants, if that is what you mean. That is wrong, and it puts a terrible burden on the shoulders of civil servants, to try to work out what the political consequences of their decisions would be. They can let it tick over for a short time. No, in a democracy, it has to be done by elected people.¹⁵⁵

54. On 14 May, the High Court ruled that a department had acted unlawfully in granting approval for a waste incinerator in Mallusk.¹⁵⁶ The Permanent Secretary for the Department of Infrastructure, Mr Peter May, had approved planning permission for the facility in September 2017. Mrs Justice Keegan said that the department did not have the power to approve planning permission without a Minister and that parliament could not have intended “such decision-making would continue in Northern Ireland in the absence of ministers without the protection of democratic accountability”.¹⁵⁷ She added that in Northern Ireland there was a protracted vacuum in existence pending the restoration of executive and legislative institutions in Northern Ireland or direct rule.¹⁵⁸

55. The Committee heard that talks to restore devolution could continue alongside increased intervention. Professor Wilford said, “I do not think it is either/or: we have direct rule instead of talks.”¹⁵⁹ Lord Murphy confirmed that he continued holding bilateral meetings with the Irish Government regarding the restoration of devolution “every couple of weeks”¹⁶⁰ throughout his five years as a direct rule Minister.

56. The lack of an Executive and functioning Assembly has created a democratic deficit in Northern Ireland. Ministerial decisions cannot be taken, budgets have not been forecast or set in a timely manner and, as a result, policy direction, legislative change and transformation have not progressed. While care and maintenance may have been appropriate in the short term, allowing Northern Ireland departments to operate without Ministerial direction for well over a year is unacceptable. In the absence

151 [Q301](#) [Derek McCallan]

152 [Q95](#) [Colin Neill]

153 [Q1](#) [David Sterling] [Q97](#) [Seamus McAleavey]

154 Professor Christopher McCrudden ([DDD0038](#))

155 [Q398](#) [Lord Murphy]

156 The Times, [Planning approval for incinerator deemed unlawful](#), 15 May 2018

157 BBC, [Court ruling could have huge implications for NI government](#), 14 May 2018

158 Belfast Telegraph, [Hightown incinerator decision ‘unlawful’ - victory for Northern Ireland campaigners](#), 14 May

159 [Q278](#) [Richard Wilford]

160 [Q388](#) [Lord Murphy]

of devolution, and following the recent High Court decision, important ministerial decisions must now be made in the interest of people in Northern Ireland. Examples of these are set out in Annex 1. The Committee accepts that further ministerial intervention will be required on devolved matters. The Committee believes that accountability, oversight and the principles of power-sharing are necessary for good governance in Northern Ireland. *The Secretary of State must, before the summer recess, bring forward proposals as to how she will take ministerial decisions whilst adhering to these principles. She should also affirm that ministerial intervention in Northern Ireland will not affect her efforts to restart and sustain talks aimed at restoring the Executive.*

Specific policy interventions

57. The remainder of this Chapter considers specific policy interventions that the Secretary of State should take. Throughout our inquiry, the Committee was referred to various policy areas that require a Ministerial decision. A list of those raised with us is contained at Annex 1. Three policies, however, were mentioned frequently: the draft Programme for Government (PfG), the Bengoa Report and the Hart Inquiry. At the point of the collapse of the Executive, measures in these policy areas had received public, cross-community and/or political support. We therefore consider them as specific interventions for the UK Government to focus upon. The progress of Brexit, which will also require action, in our view, is discussed in the next Chapter.

Draft Programme for Government

58. Northern Ireland’s draft Programme for Government (PfG) is the key strategic document for Government and sets out the key priorities for the Assembly.¹⁶¹ In 2016, the Northern Ireland Executive published a new draft PfG, which set out a new outcome-based approach with cross-departmental working.¹⁶² We heard the new PfG represented a significant change to previous plans,¹⁶³ that it was developed through extensive public engagement,¹⁶⁴ and received “overwhelming support” during its initial consultation.¹⁶⁵

59. The PfG had not been formally agreed by the point that the Executive had broken down. In the absence of the Executive, the Northern Ireland Civil Service has continued this work based on draft plans contained in the PfG.¹⁶⁶ The Federation of Small Businesses (FSB) said that there were 49 delivery plans currently on the Executive’s website, but that they did not know if and when they would be implemented, or whether further opportunity to comment on them would be possible.¹⁶⁷

60. The PfG was described as “positive”¹⁶⁸ and “a very good aspirational Programme for Government”.¹⁶⁹ David Sterling of the Northern Ireland Civil Service said:

161 [Programme for Government](#), Northern Ireland Executive accessed 16 March 2018

162 Northern Ireland Executive, [Programme for Government Consultation Document](#), 28 October 2016.

163 Chartered Institute of Environmental Health ([DDD0019](#))

164 Chartered Institute of Environmental Health ([DDD0019](#))

165 Northern Ireland Executive, [Programme for Government Consultation Document](#), 28 October 2016 p3

166 Chartered Institute of Environmental Health ([DDD0019](#)), Northern Ireland Executive, [Programme for Government Consultation Document](#), 28 October 2016 p5

167 Federation of Small Businesses ([DDD0015](#))

168 Chartered Institute of Environmental Health ([DDD0019](#))

169 [Q136](#) [Gavin Boyd]

One of the things that we find frustrating is that, when the Executive collapsed, a lot of work had gone into providing a draft Programme for Government, which is outcome-focused. Following consultation with the community at large, we had identified 12 outcomes, and, indeed, these were endorsed by the parties. People said, “These are the things that we really want government to provide for us”. There was a huge wave of enthusiasm behind the Programme for Government and the new outcomes-based approach, focusing very much on what works and what will make a difference to people’s lives. If we get an Executive back and they pick up that Programme for Government and run with it, we could make a positive difference to people’s lives in Northern Ireland. It will be difficult and challenging. There will be some tough choices to be made along the way, but there is a prize worth pursuing.¹⁷⁰

61. However, we heard that without an Assembly or Executive, the opportunities and aspirations in the draft PfG may not be realised.¹⁷¹ Seamus McAleavey commented:

The problem is that we just got to the stage where—like the eureka moment—here is a new way that we are going to try to do things, and there was agreement between the political parties around it but, since then, nothing has happened. It requires political leadership. It requires decisions to be taken that cannot be taken by civil servants to begin that transformation.¹⁷²

Members of the public at our Derry/Londonderry engagement event also questioned what would happen to the PfG without an Executive.¹⁷³

62. The PfG provides some guidance to the UK Government on the previous Executive’s priorities, and may provide a steer on what decisions the UK Government should take. Emma Little-Pengelly, MP for Belfast South, said in the House of Commons, “what we can agree on was contained in the last Programme for Government and that is what we should be doing and implementing.”¹⁷⁴

63. The draft Programme for Government and associated delivery plans provide a useful framework from which important Ministerial decisions may be made. It provides a mandate of sorts, with support from the political parties and the public, for certain actions and decisions to be taken by the relevant Minister. *The Committee recommends that the Secretary of State takes the necessary steps to continue to implement, consult or legislate on policies and areas marked within the draft Programme for Government by the previous Executive. This should be undertaken in partnership with representative bodies and political representatives.*

170 [Q81](#) [David Sterling]

171 [Q213](#) [Amanda Stewart] see also Chartered Institute of Environmental Health ([DDD0019](#))

172 [Q97](#) [Seamus McAleavey] see also Chartered Institute of Environmental Health ([DDD0019](#))

173 Members of the public at Derry-Londonderry outreach and engagement event ([DDD0040](#))

174 HC Debs, Emma Little-Pengelly, 20 March 2018, [col 228](#)

The Bengoa Report

64. In October 2016, former Health Minister, Michelle O’Neill MLA, set out her “clear”¹⁷⁵ and “ambitious”¹⁷⁶ 10-year vision to transform the healthcare system. This followed on from the *Systems, not Structures: Changing Health & Social Care* (known as the *Bengoa*) report.¹⁷⁷ Such transformation was regarded as necessary to address the “extreme pressures” within the Northern Ireland health system “in terms of waiting lists, shortage in staffing, cuts to domiciliary care, lack of beds and A&E breaches”.¹⁷⁸ Martin Dillon, Belfast NHS Trust, told us that the case for change in the health service was compelling.¹⁷⁹ Witnesses told us that they supported the implementation of the healthcare transformation plan.¹⁸⁰

65. We heard that reform has stalled due to the lack of Ministerial leadership in redirecting funding towards new policies and bringing forward legislation.¹⁸¹ David Sterling told the Committee that, due to the need to take decisions, health was the area that had most been affected by the lack of an Executive.¹⁸² He said that decisions were needed on a new suicide prevention strategy and reform of community pharmacy services.¹⁸³ The two previous Northern Ireland Health Ministers had agreed that the Health and Social Care Board should be closed.¹⁸⁴ Some of the more difficult decisions, we heard, could involve “consolidating or rationalising hospital services”.¹⁸⁵ Hugh Widdis, Permanent Secretary for the Department of Finance, warned us of the consequence of delaying these decisions:

A lot of governmental actions or decisions do not have an immediate impact. If a hospital is going to be closed tomorrow, what happens instead is that we put off transformation decisions that might make health or education more suited to the needs of the 21st century in three or four years’ time. Those are decisions that you really need to get on and take now.¹⁸⁶

Lord Murphy undertook similar decisions during his tenure as Minister:

The reconfiguration of hospitals in Northern Ireland had to be done. It was done by direct rule Ministers—by the Health Minister, in this case—and then agreed by me.¹⁸⁷

Health services were a frequently raised issue at our Derry/Londonderry event with members of the public.¹⁸⁸

66. In the budget passed in November 2017, the health sector was given £50 million over two years, with £20 million drawn down from the Confidence and Supply deal to alleviate

175 [Q174](#) [Martin Dillon]

176 [Q187](#) [Martin Dillon]

177 Department of Health, [Health and Wellbeing 2026 - Delivering Together](#), 25 October 2016, [Systems not Structures: Changing Health and Social Care](#), Expert Panel Report, 25 October 2016,

178 Northern Ireland Council for Voluntary Action ([DDD0025](#))

179 [Q190](#) [Martin Dillon]

180 [Q321](#) [Colum Eastwood] [Q649](#) [Simon Hamilton]

181 Alliance Party of Northern Ireland ([DDD0020](#)) see also Northern Ireland Council for Voluntary Action ([DDD0025](#))

182 [Q64](#) [David Sterling]

183 [Q64](#) [David Sterling]

184 [Q64](#) [David Sterling]

185 [Q189](#) [Martin Dillon]

186 [Q64](#) [Hugh Widdis]

187 [Q374](#) [Lord Murphy]

188 Members of the public at Derry-Londonderry outreach and engagement event ([DDD0040](#))

existing pressures.¹⁸⁹ Health bodies, including the Department of Health and the Health Board, have continued to develop proposals as to how to apportion money within the transformation agenda, “should the money start to flow”.¹⁹⁰ Martin Dillon told us:

We are getting to the point in the next financial year where we will need ministerial clearance to go to a full formal public consultation and, indeed, ministerial decisions on a number of these issues.¹⁹¹

In the March 2018 budgetary allocation, the Secretary of State proposed £100m funding would be provided in the budget for “ongoing work to transform the health service in line with the broad-based consensus fostered by the Bengoa report”.¹⁹² She did not make any further statements as to how this would be achieved.

67. The Bengoa report addresses pressing needs felt by the health sector in Northern Ireland, and has received cross-community support. *The Committee recommends that the Secretary of State set out what measures she intends the £100m funding to be used for in relation to the Bengoa report. She should also take all necessary steps to implement, consult or legislate on the recommendations made. This should be undertaken in partnership with stakeholder organisations and political representatives.*

The Hart Inquiry

68. The Hart Inquiry into Historic Institutional Abuse (1922 to 1995) was an independent inquiry, commissioned by the previous Executive, to investigate the abuse of children in 22 institutions in Northern Ireland. It also examined the circumstances of sending child migrants from Northern Ireland to Australia, the activities of Father Brendan Smyth, and issues of finance and governance.¹⁹³

69. The Inquiry published its report on 20 January 2017, after the Executive collapsed.¹⁹⁴ Its recommendations were therefore not discussed by the previous Executive. The Inquiry “found systemic failings and widespread abuse” during the period investigated.¹⁹⁵ It made recommendations on reparations and apologies to victims, and the provision of victim support services.¹⁹⁶ It stated that a financial redress mechanism should be established quickly, due to the age and ill-health of the survivors.¹⁹⁷

70. Concerns were raised as part of this inquiry regarding the State’s liability for paying compensation, as opposed to the perpetrators being liable for compensation.¹⁹⁸ However, Steven Agnew MLA commented:

189 [Q12](#) [David Sterling] [Q210](#) [Martin Dillon]

190 [Q210](#) [Martin Dillon]

191 [Q188](#) [Martin Dillon]

192 Secretary of State for Northern Ireland, [Northern Ireland Finances: Written statement](#), 8 March 2018

193 [HIA Inquiry](#) Historical Institutional Abuse Inquiry accessed 21 March 2018

194 The Panel of Experts on Redress ([DDD0030](#)), Sir Anthony Hart, [Report of the Historical Institutional Abuse Inquiry](#), 20 January 2017

195 The Panel of Experts on Redress ([DDD0030](#))

196 The Panel of Experts on Redress ([DDD0030](#)), Sir Anthony Hart, [Report of the Historical Institutional Abuse Inquiry: Recommendations](#), 20 January 2017

197 The Panel of Experts on Redress ([DDD0030](#)), Sir Anthony Hart, [Report of the Historical Institutional Abuse Inquiry: Recommendations](#), 20 January 2017

198 [Qq119, 120](#) [Karen Bradley]

Why do we pay taxes? We pay for public goods, and compensation for the victims of historical child abuse is a public good that needs to be paid. If there is a way of recouping that money from the culprits, I would most certainly be supportive of that, but it would be adding further delay to people who have already faced an unacceptable amount of delay.¹⁹⁹

A year has passed since the report was published, and the Panel of Experts on Redress—a group of survivors, human rights organisations, academics and members of the legal profession—told us that “delayed justice has the potential to further re-traumatise this vulnerable group of people who feel let down after giving evidence to the Inquiry.”²⁰⁰ We heard that, due to the passage of time since the Hart Report was published, people have “literally died waiting for redress.”²⁰¹

71. The Civil Service is preparing draft legislation that it has indicated will be ready by the summer. The legislation would have the effect of implementing the recommendations of the Inquiry in full.²⁰² The Secretary of State told us that she was mindful of the issues contained in the Inquiry, but that, as the recommendations had not been considered by the Executive, it was difficult “to try to secondguess what the response to the recommendations would be”.²⁰³ A victim of abuse has won the right to a judicial review of the Secretary of State’s decision not to implement a redress scheme in the absence of an Executive.²⁰⁴

72. The Committee recognises that the Hart Report makes important recommendations which ought to be properly discussed by the devolved institutions in Stormont. In their absence, however, this issue is too serious to delay further. Victims and survivors have already waited too long for redress, with the advancing age of many of the survivors increasing the need for urgency. We recommend that once draft legislation is prepared, and after full pre-legislative scrutiny, the Secretary of State takes a Bill through the UK Parliament without further delay.

199 [Q504](#) [Steven Agnew]

200 The Panel of Experts on Redress ([DDD0030](#))

201 [Q478](#) [Steven Agnew]

202 [Qq52, 56](#) [David Sterling]

203 [Q421](#) [Karen Bradley]

204 BBC, Institutional abuse victim wins judicial review case, 12 April 2018

3 Scrutiny of increased intervention

73. The recommendations made in the previous Chapter require the UK Government to increase its intervention in the governance of Northern Ireland. In this Chapter, we identify the different bodies that could be used to hold the Government to account. We first look at increased roles for Westminster institutions, including the roles of the Secretary of State and this Committee. We then consider the potential for an increased role for Stormont's committees, the Assembly and local government. Finally, we consider additional roles for institutions contained in the Belfast/Good Friday Agreement.

The need for scrutiny

74. The Committee was told that increasing the role of the UK Government in policy and law-making in Northern Ireland would bring challenges. First, we were told it is easier to connect with a locally elected MLA than with Ministers in Westminster.²⁰⁵ Lord Murphy commented that this “is the great tragedy of the current situation: locally elected politicians are not taking those decisions.”²⁰⁶ Second, the Irish Government, and some Northern Ireland politicians, are resistant to the principle of increased intervention by the UK Government.²⁰⁷ Colum Eastwood MLA, leader of the SDLP, was concerned that the DUP is supporting the UK Government through its Confidence and Supply agreement, and any intervention would therefore not be “any old direct rule”.²⁰⁸ Third, that increased intervention did not involve the level of accountability or scrutiny provided by devolved institutions.²⁰⁹

75. When the Assembly is functioning, normal scrutiny mechanisms are available; questioning Ministers and their decisions, amending and developing legislation and the work of Assembly Committees.²¹⁰ Without the Assembly, UK Parliamentary scrutiny mechanisms would apply to decisions made by the UK Government concerning Northern Ireland. However, we heard criticisms that in the previous periods of direct rule, scrutiny mechanisms were weak.²¹¹ Professor Christopher McCrudden said:

During the last period of direct rule, we had much of Northern Ireland legislation passed by Order in Council, and the legislation was very hard to amend. There wasn't the scrutiny and a lot of Northern Ireland legislation issues would have been at 11 o'clock at night to an empty House of Commons Chamber. You never got the detailed scrutiny of Northern Ireland legislation that you did get in Stormont.²¹²

76. Orders in Council, statutory measures issued by the Privy Council, were used to legislate on devolved matters that would normally pass through the Assembly.²¹³ Procedurally,

205 [Qq93, 95](#) [Colin Neill]

206 [Q373](#) [Lord Murphy]

207 Professor Christopher McCrudden ([DDD0038](#))

208 [Q334](#) [Colum Eastwood]

209 Professor Richard Wilford ([DDD0037](#))

210 [Scrutinising the Executive Committee](#), Northern Ireland Assembly Education Service accessed 16 March 2018

211 Professor Christopher McCrudden ([DDD0038](#))

212 [Q108](#) [Glyn Roberts]

213 If the issue was not urgent, it would require approval by each House of Parliament, subject to the affirmative procedures. If the matter was urgent, no prior parliamentary process would occur. Instead, it would need approval by both Houses of Parliament within 40 days of being made or it would cease to have effect. See further Statutory Instruments, [Briefing Paper 06509](#), House of Commons Library, 16 December 2016 p22

they were treated as secondary legislation²¹⁴ and were therefore subject to a more limited parliamentary scrutiny process than primary legislation.²¹⁵ The Government’s practice was to process Orders on then reserved matters, which avoided consultation and removed the opportunity to amend the Order once formally laid.²¹⁶ Following a report by the Northern Ireland Affairs Committee, the Government agreed that:

In general, we would hope to permit twelve weeks for such consultation, as well as giving the [Northern Ireland Affairs] Committee advance warning of forthcoming legislation through our six weekly “Core Tasks” returns.²¹⁷

We heard that “the heavy reliance on Orders in Council is rarely entirely satisfactory given that Orders cannot be amended.”²¹⁸ Professor Tonge stated that:

We cannot go back to the days in the 1980s of undemocratic Orders in Council, half of which were not even debated at Westminster. The average length of debate on an Order in Council was 90 minutes. There was a huge democratic deficit.²¹⁹

77. Professor McCrudden told us that this weaker level of parliamentary scrutiny had led to criticisms that Northern Ireland was “being governed in a quasi-colonial fashion.”²²⁰ The Committee heard that there therefore needs to be a higher level of scrutiny of legislative processes and decisions than has operated in the past.²²¹ The following sections set out how different methods of enhancing scrutiny of increased intervention may achieve these aims, from both a Westminster and Stormont perspective.

Role of Secretary of State and Northern Ireland Office

78. In the 2002–2007 direct rule period, the then Secretary of State discharged the functions of the First Minister, deputy First Minister, and other Ministers who were not in charge of a department.²²² Over this period, there were ten departments staffed by the Northern Ireland Civil Service, headed by four junior Ministers from Westminster.²²³

79. The Northern Ireland Office (NIO) currently has three Ministers: the Secretary of State and two Parliamentary Under-Secretaries—one in the Commons and one in the Lords (the Lords Parliamentary Under-Secretary is also a Parliamentary Under-Secretary for Scotland). They are supported by civil servants, headed by Sir Jonathan Stephens, the Permanent Secretary. It has a headcount of 100 staff,²²⁴ and a resource budget of £25.9m.²²⁵

214 Statutory Instruments, [Briefing Paper 06509](#), House of Commons Library, 16 December 2016 p22

215 Northern Ireland Budget Bill, Briefing [CBP8122](#), House of Commons Library, 9 November 2017 p18

216 Fourth Report of the Northern Ireland Affairs Committee 2004–5, *The work of the Committee in 2004–5*, HC (2004–5) [262](#) p11. Reserved matters’ under the Northern Ireland Act 1998 are policy areas which are currently retained by the government for handling at Westminster but which it expects to devolve to the Assembly at a future date; at the time this included criminal justice and policing.

217 Second Special Report of the Northern Ireland Affairs Committee, *Work of the Committee in 2003:*

Government’s Response to the Committee’s First Report of Session 2003–04 HC (2003–4) [510](#) Appendix

218 Professor Richard Wilford ([DDD0037](#))

219 [Q218](#) [Jonathan Tonge]

220 Professor Christopher McCrudden ([DDD0038](#))

221 [Q218](#) [Richard Wilford]; [Q218](#) [Jonathan Tonge]

222 Northern Ireland Act 2000 [Schedule 1](#)

223 Northern Ireland Budget Bill, Briefing [CBP8122](#), House of Commons Library, 9 November 2017

224 ONS [Public Sector Employment Data](#) (Table 9) Q4 2017, 21 March 2018

225 Northern Ireland Office, Main Estimate Memorandum 2018–19, Section 3

The Secretary of State has overall responsibility for the Northern Ireland Office, and her role is to advance UK Government interests in Northern Ireland and represent Northern Ireland interests in the UK Cabinet.²²⁶ The Secretary of State told us that her fellow Secretaries of State in other territorial offices are focused on promoting their respective countries.²²⁷ She said, “that is what the Northern Ireland Office should be doing. We should not be having to broker talks around devolved government.”²²⁸

80. Sir Jonathan Stephens told us that, since starting in the Northern Ireland Office 34 years ago, the core of the work had not changed.²²⁹ He said it was bigger in the past, although not significantly, as it had access to the Northern Ireland Civil Service and Northern Ireland departments.²³⁰ He also told us that the Northern Ireland Office had been increasing its staff levels and had been given additional budget to work on the preparations for exiting the EU.²³¹ He also accepted that further resources may be needed if further intervention into Northern Ireland’s governance are required:

In the event that we had to take on wider responsibilities, that would also come with wider budget, the Northern Ireland block [grant], and the support of the Northern Ireland Civil Service.²³²

81. The Committee recognises the enormous challenges ahead for the Northern Ireland Office in the light of the collapse of devolution. If the Northern Ireland Office continues to take on additional responsibilities, there may be a need for increased staff and financial resources. The Committee recommends that the Treasury consults with the Northern Ireland Office and makes any necessary additional resources available without delay.

82. Some stakeholders suggested that the absence of an Executive was undermining the voice of Northern Ireland in relation to Brexit negotiations, in which Scottish and Welsh Ministers are actively engaged. This, despite the uniquely difficult Brexit issues that related to Northern Ireland. Ruth Taillon, Director of the Centre for Cross Border Studies, told us that there was “a lack of voice for Northern Ireland not only in Brexit negotiations but in deciding upon the future of UK devolution arrangements.”²³³ David Sterling told the Committee:

We will have about 500 pieces of legislation to process on the back of the EU (Withdrawal) Bill. Much of that legislation will require regulations by affirmative resolution, which will obviously require a resolution by the Assembly.²³⁴

Without an Executive in place, it is unclear how such regulations will be dealt with by Westminster and what mechanisms might be used.

226 UK Parliament [Secretary of State for Northern Ireland](#) accessed 28 March 2018

227 [Q127](#)[Karen Bradley]

228 [Q127](#)[Karen Bradley]

229 [Q11](#) [Sir Jonathan Stephens] Oral Evidence taken on Work of the Secretary of State, 18 October 2017

230 [Q11](#) [Sir Jonathan Stephens] Oral Evidence taken on Work of the Secretary of State, 18 October 2017

231 [Q9](#) [Sir Jonathan Stephens] Oral Evidence taken on Work of the Secretary of State, 18 October 2017

232 [Q9](#) [Sir Jonathan Stephens] Oral Evidence taken on Work of the Secretary of State, 18 October 2017

233 The Centre for Cross Border Studies ([DDD0003](#))see also [Q90](#) [Glyn Roberts] [Q130](#) [Seamus McAleavey] [Q287](#) [Derek McCallan] Northern Ireland Local Government Association ([DDD0035](#)), Northern Ireland Council for Voluntary Action ([DDD0025](#)); Mid and East Antrim Borough Council ([DDD0023](#)), Chartered Institute of Environmental Health ([DDD0019](#)), Federation of Small Businesses ([DDD0015](#)),

234 [Q3](#) [David Sterling]

83. The Secretary of State told us that, due to Northern Ireland’s unique circumstances, officials from the Northern Ireland Office “feed into and are part of the discussions about our future relationship” with the EU.²³⁵ However, there is no Northern Ireland Minister who can travel to Brussels and advocate on behalf of Northern Ireland.

84. We wrote to the Prime Minister on 24 January setting out our concerns in relation to a lack of voice for Northern Ireland in Brexit negotiations.²³⁶ on 22 February, the Prime Minister responded, reiterating the need for devolved government to be established.²³⁷ She commented that Government Ministers have been meeting with the leaders of Northern Ireland’s political parties to discuss Brexit.²³⁸ Officials had also been engaged with their counterparts in the Northern Ireland Civil Service.²³⁹ No further details of these meetings were provided in the letter.

85. The Prime Minister reports that meetings to discuss Northern Ireland’s interests in Brexit have been taking place and involve Northern Ireland officials. However, there is little clarity relating to these discussions and it is not clear what is being achieved. In the absence of an Executive, greater transparency would increase reassurance that Northern Ireland’s voice is being heard on Brexit alongside those of Scotland and Wales. *The Committee recommends the Secretary of State and the Northern Ireland Office publish details of the meetings held that are referenced in the Prime Minister’s letter to us. This should include information on the individuals involved in those meetings, the frequency of meetings and matters discussed.*

86. *The Committee restates its recommendation that a Minister be given specific responsibility for Northern Ireland’s voice on Brexit. We recommend that this Minister spends a significant amount of time in Brussels to assist with advocacy, in a similar way to Welsh and Scottish Ministers.*

Committees

Northern Ireland Affairs Committee

87. This Committee scrutinises the work of the Northern Ireland Office and therefore undertakes work on non-devolved matters.²⁴⁰ In the direct rule period of 2002–2007, the work of the Northern Ireland Affairs Committee included scrutiny of the departments of the Northern Ireland Executive. Initially this was conducted by correspondence with departments.²⁴¹ However, the Committee felt that this lacked the impact of full committee scrutiny.²⁴² In early 2004, a sub-committee was created to undertake inquiries into matters that had previously fallen within the remit of the Northern Ireland Assembly.²⁴³ When selecting inquiries, the Northern Ireland Affairs sub-committee attempted to reflect the

235 Q74 [Karen Bradley]

236 Andrew Murrison, [Letter to Rt Hon Theresa May MP](#), 24 January 2018

237 Prime Minister, [Letter to Northern Ireland Affairs Committee](#), 22 February 2018

238 Prime Minister, [Letter to Northern Ireland Affairs Committee](#), 22 February 2018

239 Prime Minister, [Letter to Northern Ireland Affairs Committee](#), 22 February 2018

240 [Role - Northern Ireland Affairs Committee](#), UK Parliament accessed 16 March 2018

241 Fourth Report of the Northern Ireland Affairs Committee 2004–5, *The work of the Committee in 2004–5*, HC (2004–5) [262](#) p3

242 Fourth Report of the Northern Ireland Affairs Committee 2004–5, *The work of the Committee in 2004–5*, HC (2004–5) [262](#) p3

243 Fourth Report of the Northern Ireland Affairs Committee 2004–5, *The work of the Committee in 2004–5*, HC (2004–5) [262](#) p3

priorities of the previous Assembly.²⁴⁴ The sub-committee also pursued questions through written correspondence and produced memoranda on budgets and resources.²⁴⁵ Overall, members concluded:

The appointment of a Northern Ireland Affairs sub-committee has enabled us to scrutinise devolved government in Northern Ireland more effectively than before. We consider that the results achieved by it in systematic and targeted scrutiny of Northern Ireland Departments has justified the decision to set it up.²⁴⁶

88. Giving evidence to us, some academics suggested a similar approach may be worth consideration now. Professor Wilford suggested that a sub-committee would “lighten the load on the full Committee, to try to make direct rule more effectively scrutinised.”²⁴⁷ He said that increasing the Committee to 15 members could also “afford a more manageable workload”.²⁴⁸ This Committee is comprised mainly of politicians from non-Northern Ireland constituencies; it is representative of Parliament, not Stormont. In addition, due to the outcome of the last Northern Ireland election, and with Sinn Féin declining to take their seats in Westminster, the Committee does not have the same nationalist representation it has enjoyed in previous Parliaments. Consequently, it was suggested that our work should dovetail with the Northern Ireland Grand Committee to engage in pre-legislative scrutiny²⁴⁹ or link with “some kind of representative bodies within Northern Ireland.”²⁵⁰

89. In the absence of devolution, the Northern Ireland Affairs Committee believes it has a particular duty to advance accountability and scrutiny on behalf of the people of Northern Ireland. We have increased the frequency with which we travel to Northern Ireland and take evidence. The Committee is currently exploring how its own role may change in light of the current impasse, while the absence of nationalist MPs representing Northern Ireland on the Committee will be a consideration in relation to any enhanced role. As far as possible, this should reflect the work of the Secretary of State and the Northern Ireland Office.

Stormont’s Committees

90. The Assembly, when sitting, has nine statutory committees which scrutinise the work of their respective departments. Statutory committees have the powers to consider and advise on departmental budgets, consider secondary legislation and committee stages of primary legislation, conduct inquiries and consider and advise on matters brought to them by the Minister.²⁵¹ It also has seven standing committees which are permanent

244 Fourth Report of the Northern Ireland Affairs Committee 2004–5, *The work of the Committee in 2004–5*, HC (2004–5) 262 p3

245 As in Fourth Report of the Northern Ireland Affairs Committee 2004–5, *The work of the Committee in 2004–5*, HC (2004–5) 262, Second Special Report of the Northern Ireland Affairs Committee, *Work of the Committee in 2003: Government’s Response to the Committee’s First Report of Session 2003–04* HC (2003–4) 510 Appendix

246 Fourth Report of the Northern Ireland Affairs Committee 2004–5, *The work of the Committee in 2004–5*, HC (2004–5) 262 p4

247 Q218 [Richard Wilford]

248 Professor Richard Wilford (DDD0037)

249 Q219 [Jonathan Tonge]

250 Q239 [Richard Wilford]

251 [The work of the Assembly](#) Northern Ireland Assembly Education Service, accessed 16 March 2018

committees that undertake specific roles regarding the running of the Assembly.²⁵² Most committees have 11 members, including a Chair and deputy-Chair,²⁵³ who are selected by the nominating officers of the main political parties. The remaining members are allocated proportionally, so that the committee is reflective of the Assembly.²⁵⁴

91. One important committee example that has been raised with us concerns the impact of the lack of the Public Accounts Committee (PAC) on work of the Northern Ireland Audit Office. The Northern Ireland Audit Office told us that they produce nine Value for Money reports per year.²⁵⁵ These are usually considered by the PAC, a standing committee established to scrutinise the use of resources by departments and government agencies.²⁵⁶ Reports have been completed by the NI Audit Office but, in the absence of an Executive, there is no committee to scrutinise them. Parliamentary Under-Secretary of State, Shailesh Vara, said:

Arrangements are in place to allow the reports of the *Northern Ireland Audit Office* and Northern Ireland departmental responses to be placed in the Libraries of both Houses when they concern audit or value for money issues.²⁵⁷

Kieran Donnelly, Comptroller and Auditor General of National Ireland Audit Office told us that he has had “no direct contact with the Northern Ireland Office”.²⁵⁸ Professor Wilford suggested that:

In the absence of an Executive, the Assembly’s statutory committees could be resuscitated to enhance departmental scrutiny (such a measure could also include some of the standing committees, notably the PAC).²⁵⁹

92. In the absence of devolved government, Assembly committees would not be able to table legislation. However, they could engage in pre-legislative scrutiny of Westminster legislation. Professor Wilford suggested that they could link with the Northern Ireland Affairs Committee, which could provide experience and administrative capacity to facilitate their work.²⁶⁰ Simon Hamilton MLA told us that a committee-based approach was adopted in the previous suspension of devolution, where different committees were formed of a cross-section of Assembly members which examined issues, produced reports and made recommendations.²⁶¹

93. Although the statutory deadline for the appointment of Ministers has passed, the Assembly has not been dissolved. It could, in theory, therefore meet and carry out limited business if it wished. Under section 39 of the Northern Ireland Act 1998, the first item of

252 Northern Ireland Act 1998 [section 29](#); [Committees formed during the 2016–2017 mandate](#) Northern Ireland Assembly accessed 16 March 2018; [The work of the Assembly](#) Northern Ireland Assembly Education Service, accessed 16 March 2018

253 [Guide for Witnesses appearing before Assembly Committees](#), Northern Ireland Assembly, accessed 16 March 2018

254 [The Northern Ireland Assembly](#) Northern Ireland Assembly Education Service, accessed 16 March 2018

255 [Letter from Kieran Donnelly](#), C&AG for NI, March 2018

256 [Audit \(Northern Ireland\) Order 1987; Committees](#) Northern Ireland Assembly Education Service, accessed 16 March 2018

257 HC Debs The Parliamentary Under-Secretary of State for Northern Ireland (Mr Shailesh Vara) [col 244](#)

258 Letter

259 Professor Richard Wilford ([DDD0037](#))

260 Professor Richard Wilford ([DDD0037](#))

261 [Q651](#) [Simon Hamilton], Professor Richard Wilford ([DDD0037](#))

business that has to be conducted would be the election, with cross-community support, of a Speaker and deputy Speakers.²⁶² In relation to committees, Assembly Standing Order 47 states that “The number of statutory committees established and their membership shall be determined by the Assembly after —(a) all Ministerial offices have been filled following the election of the Assembly”.²⁶³ Section 29 of the Northern Ireland Act 1998 provides that the function of statutory committees is “To advise and assist each Northern Ireland Minister in the formulation of policy with respect to matters within his responsibilities as a Minister”.²⁶⁴ The most effective option may therefore be to explore the possibility of establishing time-bound ad hoc committees with terms of reference set by the Assembly. These committees could look at specific policy areas where the Assembly determines local scrutiny is required.

94. Stormont’s committees provide a useful forum for scrutiny of decisions. Resurrecting them, however, can only work if they are reflective of the make-up of the Assembly and adhere to the principle of power-sharing which is at the heart of the Belfast Agreement. Nationalist and unionist voices must both be heard and the consent and cooperation of representatives from both sides of the community would be required. We recommend that the Secretary of State take legal and procedural advice, including from the Clerk/Chief Executive of the Northern Ireland Assembly, on how the committee system in Stormont could be reinstated to provide, at a minimum, a scrutiny function for locally elected MLAs. This may be either through the statutory committee system or, if this is not feasible, through ad hoc committees. This would allow local politicians to have a formal and transparent input into any Ministerial decisions or legislation undertaken in Westminster, albeit limited.

The Northern Ireland Assembly

95. Along with the involvement of committees, we took evidence on the potential for a shadow Assembly to undertake scrutiny work. The Assembly could only function in a limited capacity without an Executive. The Secretary of State has invited views on what different arrangements may be made to provide “for local decision-making and scrutiny, on a cross-community basis” and their relationship with other institutions set out in the Belfast/Good Friday Agreement.²⁶⁵

96. Some stakeholders told us that any increased intervention from Westminster should be supported by a role for the Northern Ireland Assembly to ensure local scrutiny and accountability.²⁶⁶ Professor Tonge suggested that keeping the Assembly as a serious scrutiny body would make increased intervention “a more palatable proposition, although far from perfect.”²⁶⁷ Simon Hamilton MLA commented:

There is merit in looking at what role could be given to the Assembly. It has been elected by the people of Northern Ireland and represents the

262 [Northern Ireland Act 1998](#), section 39

263 Northern Ireland Assembly Standing Orders, No. 47 - Statutory Committees

264 [Northern Ireland Act 1998](#), section 39

265 Secretary of State for Northern Ireland, [Oral Statement: Northern Ireland Finances](#), 12 March 2018

266 [Q218](#) [Jonathan Tonge; Richard Wilford] Professor Christopher McCrudden ([DDD0038](#))

267 [Q218](#) [Jonathan Tonge; Richard Wilford] Professor Christopher McCrudden ([DDD0038](#))

people of Northern Ireland in that sense, and there may be a role through a committee-style system or something like that for input, some measure of accountability and some role or function for the Assembly to have.²⁶⁸

We heard that the Assembly could adopt various models, such as a consultative role for MLAs in committees and departmental work or devolving administrative power. In a consultative role, the Assembly could input into decisions and advise Ministers and the Secretary of State.²⁶⁹ It could also make recommendations on a range of issues, such as the budget, and the health and education reforms.²⁷⁰

97. Concerns were raised by witnesses that such an Assembly would “produce nothing” and may “only fire mud”,²⁷¹ which could further undermine devolution. In addition, some party leaders commented that the Assembly could become a 90-strong permanent opposition to the decisions of the UK Government without having to take responsibility.²⁷² A shadow Assembly would also be reliant on the parties agreeing to participate. Professor Wilford pointed out:

Why would a party or parties that were reluctant to participate in an Executive be prepared to participate in an Assembly? Administratively, one can imagine a variety of measures that could be taken, but the brutal political reality is that it will be very difficult, if not legally impossible, to have a freestanding Assembly with no Executive. The key issue is a political one, rather than an administrative one.²⁷³

98. The leaders of the Green Party and Ulster Unionist Party, and the DUP’s representative, indicated that they may participate in a shadow Assembly.²⁷⁴ Michelle O’Neill MLA, Sinn Féin’s leader in Northern Ireland, has reportedly rejected the idea of a shadow Assembly, commenting that it would be a “Mickey Mouse” affair.²⁷⁵ Colum Eastwood MLA, leader of the SDLP, did not comment on whether his party would join a shadow Assembly or not. However, he did observe “that we are better having an Assembly than not having one.”²⁷⁶

99. In March 2018, the Alliance Party published proposals for the steps it feels should be taken during the impasse. It recommended that “Assembly committees could undertake the functions of scrutinising budgets and providing political advice and guidance on key policy decisions”.²⁷⁷ This, Alliance suggested, would provide local input into decision making and avoiding the political issues of either joint authority or a form of direct rule.²⁷⁸

100. Many other witnesses saw merit in considering a role for the Assembly, particularly if it was a temporary measure. Lord Murphy said, “as long as there is agreement that you

268 [Q678](#) [Simon Hamilton]

269 [Q651](#) [Simon Hamilton]

270 [Q229](#) [Jonathan Tonge] [Q651](#) [Simon Hamilton]

271 [Q482](#) Steven Agnew

272 [Q478](#) [Steven Agnew] [Q533](#) [Robin Swann] [Q651](#) [Simon Hamilton]

273 [Q219](#) [Richard Wilford]

274 [Q481](#) [Steven Agnew] [Q534](#) [Robin Swann] [Q651](#) [Simon Hamilton]

275 [Sinn Féin’s northern leader rejects ‘Mickey Mouse’ assembly](#) BBC News 26 March 2018

276 [Q351](#) [Colum Eastwood]

277 Alliance Party, [Next steps forward](#) March 2018

278 Alliance Party, [Next steps forward](#) March 2018

would eventually move away from it, I see nothing wrong with that”.²⁷⁹ Simon Hamilton MLA also suggested that the committee-based system could be less oppositional as there would be an active attempt to reach consensus.²⁸⁰

101. One option we have taken evidence on is the Welsh Assembly model. The Welsh Assembly was initially established as a body corporate,²⁸¹ with devolved administrative powers. While Westminster retained primary legislative and fiscal powers, the Assembly could pass secondary legislation and scrutinise those to whom functions had been delegated.²⁸² This structure was “intended to reflect and promote the principles of inclusiveness and power-sharing in the new Assembly.”²⁸³ During the passage of the bill setting a budget for Northern Ireland in November 2017, Lord Trimble said:

The problem at present is the inability to form an Executive. Are an Executive absolutely necessary? [...] I look to what happened with the first phase of devolution in Wales, where there was a corporate Assembly without an Executive that functioned reasonably effectively.²⁸⁴

Lord Murphy told us:

The Welsh example is interesting, because it was originally the idea of devolution in Wales to have a sort of committee system, a big county council, which would have made the Assembly very different from what it is now [...]. It would at least allow the elected Members of the Northern Ireland Assembly to question Ministers and to involve themselves in the government of Northern Ireland in a way that they are not now.²⁸⁵

102. Assuming the parties in Northern Ireland agree to attend, having a shadow Assembly would bring them together. Lord Murphy summarised:

Then, hopefully, because you start meeting again, you start talking to your colleagues in the Assembly from all different parties, and the business of contact and of talking, from my experience over the years in Northern Ireland, helps enormously. Bringing people together in Stormont for whatever type of Assembly it might be would, in itself, be a good thing. Yes, it is worth a try. It would need legislation for that to happen, but if that is the way ahead it is better than nothing happening in Northern Ireland, which is the case at the moment.²⁸⁶

Simon Hamilton MLA recognised “that type of environment might be helpful in building that good working relationship again, which has been sorely absent over the last little while.”²⁸⁷ Steven Agnew MLA pointed out that it would also ensure that there was an Assembly in some form ready to be resurrected.²⁸⁸

279 [Q378](#) [Lord Murphy]

280 [Q651](#) [Simon Hamilton]

281 Government of Wales Act 1998 [section 1](#) (now repealed)

282 ‘Executive’ devolution (1998–2007), Welsh Government accessed 16 March 2018

283 [Report of the Richard Commission](#), Commission on the Powers and Electoral Arrangements of the National Assembly for Wales, Spring 2004) 50

284 HL Deb, Lord Trimble, 26 April 2017, [vol.782](#)

285 [Q372](#) [Lord Murphy]

286 [Q372](#) [Lord Murphy]

287 [Q651](#) [Simon Hamilton]

288 [Q481](#) [Steven Agnew]

103. Lord Murphy explained to us that, while he was the Finance Minister, he went to the Assembly, addressed it on the budget and was questioned by MLAs.²⁸⁹ Whilst he accepted that he was under no duty to consider the opinions of the MLAs, he told us:

I would be a very foolish direct rule Minister if I did not take any notice of what the Members of that shadow Assembly were telling me. In fact, I would be completely off my head if I did not take notice of it.²⁹⁰

104. **There is an important scrutiny role for all MLAs, who have been given a mandate by the people of Northern Ireland to represent them. We would urge all parties to engage with any process that allows for dialogue and collaboration. *The Committee recommends that a consultation with all MLAs is undertaken to explore their role in some form of Assembly structure. This should be launched within a month of the publication of this report and conclude before the summer. Any shadow Assembly must be reflective of the parties who would be participating in the fully functioning devolved Assembly and must adhere to the principle of power-sharing which is at the heart of the Belfast Agreement. Nationalist and unionist voices must both be heard and the consent and cooperation of representatives from both sides of the community would be required. Options that should be considered are the Welsh Assembly model, and a consultative model which includes a role for MLAs in Committee and Departmental work. It is the view of this Committee that the committee system would be the most effective method of scrutinising actions taken by the Secretary of State and Permanent Secretaries during this period of collapsed devolution.***

British-Irish Intergovernmental Conference (BIIGC)

105. The BIIGC is limited to consideration of non-devolved (i.e. reserved and excepted) matters, which require co-operation between the UK and Irish Governments.²⁹¹ These include matters such as security, rights, equality and implementation of existing agreements.²⁹²

106. Colum Eastwood MLA has called for the UK and Irish Governments to convene the BIIGC.²⁹³ Lord Murphy said:

I see no problem with the BIIGC meeting in order to talk as two Governments together, to try to get solutions to overcome the problems that we have now. There is nothing wrong with that, and it should happen anyway.

107. While it is an established part of the structures contained within the Belfast/Good Friday Agreement, we heard that the BIIGC “was never meant to be a governing institution.”²⁹⁴ Professor McCrudden said he believed that the BIIGC was envisaged to operate alongside the other institutions, not as a replacement for them when they are

289 [Q390](#) [Lord Murphy]

290 [Q390](#) [Lord Murphy]

291 Belfast Agreement [Strand 3 paras 5 and 6](#); Professor Richard Wilford ([DDD0037](#))

292 Northern Ireland Act 1998 [Schedules 2 and 3](#)

293 [Q334](#) [Colum Eastwood]

294 [Q376](#) [Lord Murphy]

suspended.²⁹⁵ He further commented that the “Irish Government has shown no signs of wanting to be so deeply involved in the day-to-day operation of government in Northern Ireland”.²⁹⁶

108. The Belfast/Good Friday Agreement acknowledges the importance of the effective operation of its institutions, including those in Strand Three, such as the British-Irish Intergovernmental Conference, during the current political impasse in Northern Ireland. The Committee notes that the British-Irish Intergovernmental Conference involves no derogation from the sovereignty of either Government. While the Committee recognises the ongoing involvement of the Irish Government as per the Belfast/Good Friday Agreement, there needs to be clarity on what constructive role the British-Irish Intergovernmental Conference could have in resolving the current impasse. Clarity is also required on the role it plays in the absence of an Executive.

Grass roots accountability

109. Various stakeholders considered there to be a democratic deficit pre-dating the collapse of Stormont due to the “systematic failure to engage the public in decision making at all levels of Government”.²⁹⁷ The remainder of this chapter examines the potential for a more localised level of accountability in Northern Ireland alongside devolved institutions.

Local Government

110. In April 2015, following the *Review of Public Administration*, Northern Ireland’s local councils were reduced from 26 to 11.²⁹⁸ Certain powers relating to planning, economic development and the public realm were also transferred from central to local government.²⁹⁹ However, stakeholders told us that Northern Ireland’s local authorities still have fewer powers and resources than their counterparts in England, Scotland and Wales.³⁰⁰ At the time of the review, the then Secretary of State for Northern Ireland, Peter Hain, had a target of increasing public expenditure from 3% to 10% of local authorities’ overall funding.³⁰¹ We heard that, currently, Northern Ireland’s local government has 4% of Northern Ireland’s overall funding, compared to 27% for both Wales and Scotland (see Figure 2).³⁰²

295 Professor Christopher McCrudden ([DDD0038](#))

296 Professor Christopher McCrudden ([DDD0038](#))

297 [Q289](#) (Paul Braithwaite); [Q296](#) (Ruth Taillon); Professor John Garry and James Pow ([DDD0022](#)); see also [Q105](#) [Glyn Roberts]

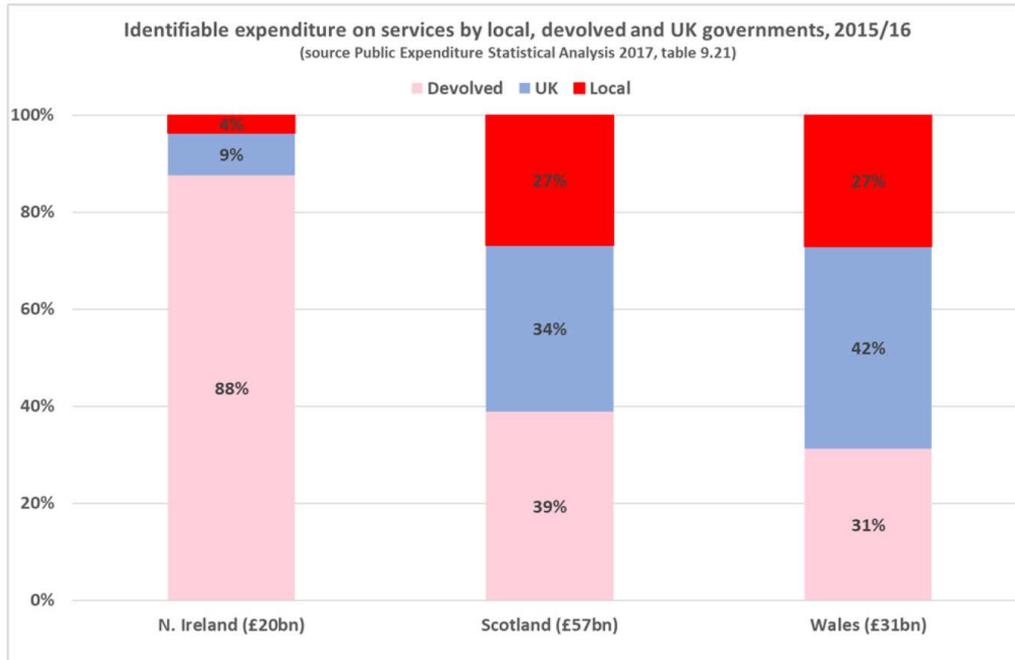
298 [Local Government \(Boundaries\) Order \(Northern Ireland\) 2012](#)

299 [Q285](#) [Derek McCallan]

300 [Q106](#) [Seamus McAleavey] [Q285](#) Derek McCallan, Northern Ireland Local Government Association ([DDD0035](#))

301 [Q106](#) [Seamus McAleavey]

302 [Q285](#) [Derek McCallan]

Figure 2: Proportion of expenditure spent by local councils in devolved governments

Source: Northern Ireland Local Government Association ([DDD0035](#))

111. The Committee was told that, in the absence of the Executive, local councils “have been upping their game”.³⁰³ It was suggested by Mid and East Antrim Borough Council that increasing devolved powers to local government could be “a compelling alternative to full-blown direct rule, with Councils delivering some of those services currently provided by regional departments.”³⁰⁴ We heard that enhancing powers could address the problem of local accountability,³⁰⁵ whilst bringing Northern Ireland in line with other regions’ local governments.³⁰⁶

112. Industry stakeholders in Northern Ireland and Robin Swann MLA of the Ulster Unionist Party expressed support for increasing local councils’ powers.³⁰⁷ For example, Glyn Roberts of Retail NI said, “whether we have Stormont in place or not, there is a still a very strong argument to enhance the powers of our local councils.”³⁰⁸ Others, however, raised concerns that this would not be effective. Professor Tonge said that “there is a risk with that; there may be 11 mini Stormonts with the same rows just transferred to local level.”³⁰⁹ Colin Neill of Hospitality Ulster was concerned that if councils were granted further powers, there was a risk that different regulations, or interpretations of regulations, could emerge between council areas.³¹⁰ When asked about these risks, Derek McCallan, Chief Executive of Northern Ireland Local Government Association (NILGA) said:

303 [Q105](#) [Colin Neill]

304 Mid and East Antrim Borough Council ([DDD0023](#))

305 Mid and East Antrim Borough Council ([DDD0023](#))

306 [Q285](#) [Derek McCallan]

307 [Q105](#) [Glyn Roberts] [Q106](#) John Armstrong [Q287](#) [Derek McCallan] [Q551–553](#) [Robin Swann]

308 [Q105](#) [Glyn Roberts]

309 [Q255](#) [Jonathan Tonge]

310 [Q106](#) [Colin Neill]

I would contest that view based on direct knowledge through experience. If I am a citizen and a ratepayer in Dungannon, I expect, broadly speaking, the same portfolio of services delivered by the same portfolio of bodies and agencies as a citizen in Dumfries and Galloway.³¹¹

There was also concern that, as councils were relatively new, “the problem is they are not mandated with the skills and stuff to do it.”³¹² Derek McCallan accepted that there was a challenge for councils to build their competencies and ethical standards.³¹³ Consequently, he told us that “a big conversation is needed in Northern Ireland. No one knows exactly the practical services that need to be delivered by local government yet”.³¹⁴ He therefore suggested setting up an all-party group to develop a strategic review of local government’s development and investment.³¹⁵ He suggested that this group could examine local Government’s roles, development and investment in Northern Ireland and could include MLAs and council members.³¹⁶

113. We have heard differing views on the appropriate level of funding and powers to devolve to local councils. An increased role for local government might help improve democracy and make governance in Northern Ireland more robust in the future. When the Executive is restored, the Committee recommends that an Assembly committee be set up to review local government finances and devolved powers. If the Executive is not formed within 12 months of the publication of this report, an independent review should be commissioned by the Secretary of State.

Citizens’ Assembly

114. Respondents to our inquiry suggested that there could be an increased role for civic voices in Northern Ireland government, in both the current impasse and during normal devolved government.³¹⁷ John Garry, Professor of Political Behaviour, and James Pow, Research Fellow, Queen’s University, said “in the absence of a functioning Assembly and Executive at Stormont, it is arguably all the more imperative to listen to the views of ordinary citizens themselves.”³¹⁸

115. The Belfast/Good Friday Agreement provided for a Civic Forum, which consisted of a chairman and 60 representatives from across business, trade unions and the voluntary sector as a consultative forum on social, economic and cultural issues.³¹⁹ The First and deputy First Minister were jointly responsible for making arrangements to establish the

311 [Q286](#) [Derek McCallan]

312 [Q106](#) [Colin Neill]

313 [Q286](#) [Derek McCallan]

314 [Q295](#) [Derek McCallan]

315 [Q285](#) [Derek McCallan]

316 Northern Ireland Local Government Association ([DDD0035](#))

317 NIEL Brexit Coalition ([DDD0014](#)), Building Change Trust ([DDD0009](#)); Friends of the Earth Northern Ireland ([DDD0027](#)); Northern Ireland Council for Voluntary Action ([DDD0025](#)), The Centre for Cross Border Studies ([DDD0003](#))

318 Professor John Garry and James Pow ([DDD0022](#));

319 Belfast/Good Friday Agreement 1998 [Strand One](#); [The Civic Forum](#) Northern Ireland Assembly Research and Information Service Research Paper, 5 September 2013, Paper 109/13 p7

Civic Forum.³²⁰ Nominations were required to adhere to balance in gender, community background, age and geographic spread, and were apportioned on the basis set out in figure 3.³²¹

Figure 3: Civic Forum split of representatives

- Voluntary/Community (18 representatives)
- Business (7 representatives)
- Trade Union (7 representatives)
- Churches (5 representatives)
- Arts & Sports (4 representatives)
- Culture (4 representatives)
- Agriculture & Fisheries (3 representatives)
- Community Relations (2 representatives)
- Education (2 representatives)
- Victims (2 representatives)
- The First Minister and Deputy First Minister were also to be responsible for three personal nominations each.

Source: [The Civic Forum](#) Northern Ireland Assembly Research and Information Service Research Paper, 5 September 2013, Paper 109/13 p8–9

The Civic Forum operated between 2000 and 2002, until the devolved institutions were suspended. It was not restarted when devolution was restored.³²² The Forum was criticised regarding its representativeness,³²³ and Steven Agnew MLA told us that it failed to deliver sufficiently considering its cost.³²⁴

116. The Stormont House and Fresh Start Agreements subsequently suggested the creation of a smaller 6-member civic advisory panel to consider social, cultural and economic issues and issues relevant to the draft Programme for Government.³²⁵ This panel would advise and report back to the Executive.³²⁶ Ruth Taillon, Director of the Centre of Cross Border Studies, told us that a 6-person civic panel could limit engagement of citizens.³²⁷

117. Citizens' Assemblies were suggested to us as an alternative mechanism for civic engagement. Such Assemblies are comprised of a random but representative sample of

320 Northern Ireland Act 1998 [section 56](#)

321 Report from the First Minister (Designate) & Deputy First Minister (Designate), 15 February 1999 approved by Assembly, [Official Report](#), 16 February 1999; [The Civic Forum](#) Northern Ireland Assembly Research and Information Service Research Paper, 5 September 2013, Paper 109/13 p9

322 [The Civic Forum](#) Northern Ireland Assembly Research and Information Service Research Paper, 5 September 2013, Paper 109/13 p7

323 Professor Christopher McCrudden ([DDD0038](#)); Building Change Trust ([DDD0009](#))

324 [Q496](#) [Steven Agnew]

325 [Stormont House Agreement 2014 para 67](#); [Fresh Start Agreement 2015 para 67](#)

326 [Stormont House Agreement 2014 para 67](#); [Fresh Start Agreement 2015 para 67](#)

327 [Q311](#) [Ruth Taillon]

citizens, modelled for age, gender, income, educational background and, in Northern Ireland, community background.³²⁸ If a person who is selected does not wish to participate, they would be replaced by someone from the same demographic. Usually Citizens Assemblies' have around 100 people, with some having just citizens and others having a mixture of politicians and citizens.³²⁹ Comparisons were drawn between this selection method and jury duty.³³⁰

118. Building Change Trust, a charity established by the Big Lottery Fund, is supporting a pilot scheme of the Citizens' Assembly in Northern Ireland. Paul Braithwaite, Programme Leader of Building Change Trust, and Steven Agnew MLA told us that a Citizens' Assembly could deliberate on questions set by the Government (either the Executive or possibly the Secretary of State) over a weekend and around once a month.³³¹ The focus could be on specific questions for which there is no existing political agreement, thereby complementing the existing political structures.³³² Paul Braithwaite, commented:

We think there is a strong body of evidence that these are effective ways of unlocking fresh thinking and providing consensual solutions to difficult issues, where traditional decision-making processes have not been able to come to agreement.³³³

119. Supporters of the Citizens' Assembly suggested that increased civic participation could assist with addressing future political deadlock thereby supporting institutional stability.³³⁴ For example, Citizens' Assemblies can be used to test the public mood and debate difficult issues.³³⁵ They have been used in other jurisdictions, such as the Republic of Ireland, where various social changes have been implemented following a Citizens' Assembly decision which politicians may not have felt empowered to make without it.³³⁶ Steven Agnew MLA preferred these Assemblies to referenda for the purpose of gauging public opinion as they were deliberative spaces. He said:

People simply discuss, change their mind and form an opinion. No one wins; no one loses. A vote is taken as necessary, but it does not have that same animosity that you get with referenda.³³⁷

120. Members of the public at our Derry/Londonderry event said that a Citizens' Assembly could add another layer to the governance structure to redistribute accountability.³³⁸ However, Simon Hamilton MLA expressed reservations, as previously civic engagement did not "plug the gap" but added only "a veneer of democracy".³³⁹ Professor Garry and Research Fellow James Pow told us:

Survey evidence suggests that if a Citizens' Assembly were established in Northern Ireland, MLAs would not support it making final decisions,

328 [Q291](#) [Paul Braithwaite] [Q519](#) [Steven Agnew]

329 [Qq291, 303](#) [Paul Braithwaite] [Q520](#) [Steven Agnew]

330 [Q289](#) [Paul Braithwaite] [Q519](#) [Steven Agnew]

331 [Q291](#) [Paul Braithwaite] [Q521](#) [Steven Agnew]

332 [Q289](#) [Paul Braithwaite] [Q521](#) [Steven Agnew]

333 [Q289](#) [Paul Braithwaite]

334 [Qq290, 303](#) [Paul Braithwaite]

335 [Q505](#) [Steven Agnew]

336 [Q289](#) [Paul Braithwaite] [Q478](#) [Steven Agnew]

337 [Q489](#) [Steven Agnew]

338 Members of the public at Derry-Londonderry outreach and engagement event ([DDD0040](#))

339 [Q678](#) [Simon Hamilton]

but would be broadly supportive of it having the power to make recommendations. In the absence of a fully functioning Executive, or in a direct rule situation, Citizens' Assemblies could perform a scrutiny role.³⁴⁰

Paul Braithwaite acknowledged that after the Building Change Trust pilot is completed, it will be for "others to judge how successful that has been and whether that could be put on a statutory footing."³⁴¹

121. The Committee agrees that increasing civic participation could enhance Northern Ireland's governance in both the current impasse and the future. Citizens' Assemblies remain one option to increase civic engagement at a time where citizens are becoming increasingly dissatisfied with Northern Ireland's politics. We look forward to the publication of the pilot study to see whether it would be a suitable forum for Northern Ireland.

340 Professor John Garry and James Pow ([DDD0022](#))

341 [Q289](#) [Paul Braithwaite]

4 Avoiding future problems

122. Along with the possibility of increased intervention by the UK Government, and increased scrutiny of such intervention, the Committee took evidence on how to avoid similar collapses of the Executive in the future. This final Chapter considers both individual and structural reforms needed to allow good governance and to make institutions in Northern Ireland more robust. The first part looks at specific reforms around providing guidance for the civil service and addressing the legal constitution of the Northern Ireland Policing Board. We then consider potential reforms to the petition of concern mechanism. These are intended to reduce the impact and likelihood of collapses in the future. The second part examines the potential for the Belfast/Good Friday Agreement to be developed to better meet the needs of a sustainable government in Northern Ireland.

Individual reforms

Civil Service

123. Since the Belfast/Good Friday Agreement, Northern Ireland has experienced two forms of government: direct rule and devolved. The current impasse has operated somewhere between the two, where government is devolved but non-sitting, a space referred to by some as “limbo-land”. The situation is unprecedented and not provided for in existing legislation. As David Sterling, Head of the Northern Ireland Civil Service, told us:

We have had periods of devolution interspersed with direct rule before, but this is unique. We have never had a period of one year with no Ministers at all.³⁴²

124. The Northern Ireland Civil Service has managed the running of Northern Ireland since the collapse of the Executive. Power normally flows from the Assembly to a department, subject to Ministerial direction and control.³⁴³ Without Ministers, Permanent Secretaries can implement previous Ministerial decisions but they cannot take new decisions. David Sterling told us:

Where it is clear that a new decision that is needed would be in line with the decisions of the previous Executive or Ministers [we can proceed]. If something different needs to be done, we do not have the power to do that. Indeed, we would be open to the risk of challenge if we tried to introduce new policies. There have been some instances of that. We are at a stage now where we quickly need Ministers in place to take decisions.³⁴⁴

125. Some witnesses said there needed to be greater clarity on the scope of the Northern Ireland Civil Service’s decision-making, for instance more detail on what constitutes a new/strategic policy decision, or whether a decision is taken within the public interest.³⁴⁵ One political representative, Claire Sugden MLA, told us that she had found representing her constituents harder:

342 [Q37](#) [David Sterling]

343 [Q10](#) [David Sterling] [Q38](#) [Hugh Widdis]

344 [Q66](#) [David Sterling]

345 Construction Employers’ Federation ([DDD0001](#)), ([DDD0034](#)) Federation of Small Businesses ([DDD0015](#)), NIEL Brexit Coalition ([DDD0014](#)), Northern Ireland Environment Link ([DDD0018](#))

You get that awful letter back from the permanent secretaries that says, ‘Without a Minister in place, we cannot do anything’. They pick and choose when they send that letter.³⁴⁶

New challenges have arisen over the period of the collapse and differences between the agreed position and the current situation have become more apparent. David Sterling noted:

Context changes with the passage of time. Circumstances change. Policy should adjust in line with those changes in context. We are missing that at the moment. We have not had Ministers who can give advice, direction and guidance as circumstances change. We have not reached a shutdown point, but the reality is that public services are suffering as a consequence of this because we are not getting the direction that we need. We are not getting the transformation decisions that we need across a whole range of services.³⁴⁷

As a consequence, a number of important projects have been put on hold. These are outlined further in Annex 1.

126. Many stakeholders recognised that “civil servants are in an invidious position”.³⁴⁸ Professor McCrudden noted that “civil servants are increasingly exposed”, which is not only unfair on them but also increases the chance of judicial review.³⁴⁹ Jim Allister MLA, who is also a QC, commented that the powers of Permanent Secretaries needed to be “tightened” to protect them from judicial review.³⁵⁰ He noted that there was a “grey area” which required clarity to be brought to the regulations which govern the Civil Service.³⁵¹

127. The Committee commends the Northern Ireland Civil Service for trying to manage a very difficult situation over a prolonged period. As time has passed, governance has become increasingly challenging, with the boundary between a new policy decision and the implementation of the previous Executive’s mandate becoming progressively blurred. When an Executive is formed, we recommend that the Assembly and the Northern Ireland Office produce clear guidance, and take forward any necessary legislative changes, on what decisions the Northern Ireland Civil Service may take should this situation occur again.

Northern Ireland Policing Board

128. The Northern Ireland Policing Board (“the Board”) was established in 2001 to oversee the work of the Chief Constable and the Northern Ireland Police Service (PSNI).³⁵² Created following the publication of *A New Beginning: Policing in Northern Ireland* Report (known as the *Patten Report*),³⁵³ the Board is designed to ensure accountability and transparency of the police service.³⁵⁴ During devolved government, the Board is constituted of nine

346 [Q371](#) [Claire Sugden]

347 [Q39](#) [David Sterling]

348 [Q91](#) [John Armstrong] see also [Q92](#) [Glyn Roberts]

349 [Q223](#) [Christopher McCrudden]

350 [Q644](#) [Jim Allister]

351 [Q643](#) [Jim Allister]

352 Police (Northern Ireland) Act 2000 [section 2](#)

353 Rt Hon. Christopher Patten, *A New Beginning: Policing in Northern Ireland*, September 1999 28

354 Northern Ireland Policing Board, Written Evidence; <https://www.nipolicingboard.org.uk/northern-ireland-policing-board-roles-and-responsibilities>

independent members and ten elected MLAs.³⁵⁵ Following invitation from the Minister of Justice, MLAs are selected following nomination from their parties.³⁵⁶ When devolved government is suspended, the Secretary of State appoints between 14 and 19 members who are representative of the community.³⁵⁷ There is no provision for the current period of a non-functioning devolved government, meaning the Board is not legally constituted.³⁵⁸ Consequently, Anne Connolly, Chair of the Board, told us that:

We are in limbo with 50 statutory functions. There are probably about 500 non-statutory functions, which we can still continue to do, but the statutory functions of the Policing Board, which are set out clearly in the legislation, cannot be fulfilled.³⁵⁹

129. Statutory public meetings of the Board have not been held.³⁶⁰ Voluntary meetings have been held, between the Chief Constable and his senior team, independent members and invited MLAs who were nominated by their parties.³⁶¹ However, these are held informally and so “there is no mechanism for getting that out to the wider public” thus “accountability is no longer in the public domain”.³⁶² George Hamilton, Chief Constable of PSNI, highlighted to us that “accountability through a fully functioning Northern Ireland Policing Board is critical to confidence in policing.”³⁶³

130. The statutory functions that the Board have been unable to perform include recruitment, appointments to the police service (from Chief Superintendent level upwards and senior civilian staff)³⁶⁴ and setting a Policing Plan for 2018/19.³⁶⁵ The Board also draws down approximately £10 million per week for the Police Service of Northern Ireland (PSNI), yet without an agreed budget this money cannot be spent.³⁶⁶ As Amanda Stewart, the Board’s Chief Executive, told us:

That means that, come 1 April, I will not be in a position, as the accounting officer in the Board, to allow payments and cash drawdowns to PSNI, because there is no Board to agree the budget.³⁶⁷

131. In the current impasse, no one has the power to appoint MLAs to the Board. Legislation would be required to allow the Secretary of State to appoint MLAs, both in the present and in the future, to allow the Board to perform its statutory functions.³⁶⁸ Without such legislation, there remains the potential for a similar situation to occur again in the future. Anne Connolly commented:

355 Police (Northern Ireland) Act 2000 [section 6\(1\)](#)

356 [Q163](#) [Anne Connolly]

357 Police (Northern Ireland) Act 2000 [Schedule 1 section 3\(1\)](#)

358 Northern Ireland Policing Board ([DDD0011](#))

359 [Q139](#) [Anne Connolly]

360 Police (Northern Ireland) Act 2000 [section 19](#)

361 [Qq140, 165](#) [Anne Connolly]

362 [Q140](#) [Anne Connolly]

363 George Hamilton, Oral Evidence, 25 October 2017 Q1

364 [Northern Ireland \(Police\) Act 2000 sections 4\(2\), 35, 77](#); [Qq149, Q163; Q202](#) [Anne Connolly, Amanda Stewart]

365 [Q138](#) [Anne Connolly] Northern Ireland Policing Board ([DDD0011](#))

366 [Q153](#) [Anne Connolly]

367 [Q154](#) [Amanda Stewart]

368 Northern Ireland Policing Board ([DDD0011](#))

If we get an Assembly back and it is 10 MLAs, then we are back again at the mercy of the Assembly. That is my only worry. If the Assembly is up and running, then it works very well, but the way it is at the minute, then every time this happens we are back into that limbo situation.³⁶⁹

132. The *Patten Report* recommended the majority membership of MLAs, with independent members, “to command respect and credibility”.³⁷⁰ Anne Connolly had a similar view, commenting that politicians “add a little bit of gravity to the board”.³⁷¹ The Alliance Party has recently called for the reconstitution of the Board and urged the Secretary of State to appoint political nominees without delay.³⁷²

133. We agree that MLAs form an important part of the Northern Ireland Policing Board. Policing is both a vital service and is institutionally hugely significant within Northern Ireland. Above all UK constabularies, it demands sensitivity, accountability and transparency and must be free from political agenda. The Board must be able to function in the absence of an Executive. We recommend that the Secretary of State amends the Police (Northern Ireland) Act 2000 to ensure that the Policing Board can exercise its statutory functions now, and during any devolved but non-sitting periods of the NI Assembly in the future. The amendment should include taking the power to, if an Executive has not been formed after a statutory period, permit the Secretary of State to fulfil the appointment functions of the Minister of Justice in relation to the appointment of the Board’s members. In the continued absence of the Assembly and Executive, the Secretary of State must be mindful not to allow the Policing Board to become the forum for political agendas to be advanced.

Petition of Concern

134. Northern Ireland’s government is consociational, with power to be shared between unionists and nationalists.³⁷³ Amongst the main features of this model are voting arrangements which give minority groups the powers of veto.³⁷⁴ Certain Assembly decisions therefore require cross-community support, which requires:

- majority support including a majority of designated nationalists and designated unionists, or,
- support of 60 per cent of the voting Assembly with 40 per cent of designated nationalists and designated unionists agreeing.³⁷⁵

Decisions that require cross-community support are those which relate to standing orders and electing presiding officers, or excluding Ministers from office.³⁷⁶ The petition of concern is effectively a veto mechanism. If 30 MLAs lodge a petition on a decision, it must

369 [Q216](#) [Anne Connolly]

370 Rt Hon. Christopher Patten, [A New Beginning: Policing in Northern Ireland](#), September 1999 p30

371 [Q211](#) [Anne Connolly]

372 Alliance Party, [Next steps forward](#) March 2018

373 Dr Alex Schwartz, [Petitions of Concern](#) Northern Ireland Assembly, Knowledge Exchange Seminar Series, 20 March 2014. Consociational models of democracy involve power-sharing and the system has particular features in Northern Ireland such as cross-community power sharing at Executive level and special voting arrangements

374 [Power-sharing](#), Northern Ireland Assembly Education Service accessed 19 March 2018

375 Northern Ireland Act 1998 [section 4\(5\)](#)

376 Northern Ireland Act 1998 sections [17](#), [30](#), [39](#), [41](#)

be taken on a cross-community basis as described above.³⁷⁷ The mechanism was intended to be a “safeguard to ensure that all sections of the community can participate and work together”.³⁷⁸

135. Stakeholders expressed concern that the petition of concern “has been misused, even abused”,³⁷⁹ in giving MLAs “limitless latitude”³⁸⁰ to veto decisions. The Alliance Party commented:

The Assembly cannot function as a proper scrutinising and legislating chamber for as long as the petition of concern is abused. The Petition skews Assembly voting hugely to the advantage of parties wishing to impede progress (including on what some would describe as “rights issues”). It is heavily weighted towards those who are content with the status quo: the Petition cannot be used to force change, only to block change.³⁸¹

The petition of concern has been used more than 100 times³⁸² and has been used to block a number of reform decisions, including marriage equality,³⁸³ planning bills and welfare reform bills.³⁸⁴

136. Various stakeholders told us that reform of the petition of concern was necessary. Colum Eastwood MLA said:

There was a lost opportunity around the petition of concern. There is no reason why that cannot be looked at again whenever we finally get back to forming a Government. We should not continue to have a petition of concern as a dead-end veto.³⁸⁵

This view was echoed in oral evidence by the leaders of the Green Party and Ulster Unionist Party, and independent MLA Claire Sugden.³⁸⁶ Professor Tonge told us that, whilst it may have been misused in the past, with the current configuration of the Assembly ensuring that no one party had enough MLAs to use the mechanism, instances of misuse would diminish.³⁸⁷ However, if the current configuration of the Assembly changes, the conditions allowing a single party to use the petition could occur again.

137. Reform to the petition of concern mechanism was agreed as part of the Stormont House Agreement.³⁸⁸ A subsequent review found that, while there was cross-party support for changing the mechanism to either a weighted-majority vote or limiting its use

377 Northern Ireland Act 1998 [section 42](#)

378 Belfast Agreement [para 5](#)

379 Professor Richard Wilford ([DDD0037](#))

380 Friends of the Earth Northern Ireland ([DDD0027](#))

381 Alliance Party of Northern Ireland ([DDD0020](#))

382 [Sinn Féin would like petition of concern changes](#), BBC, 31 January 2018

383 [Q322](#) [Colum Eastwood]

384 [Q511](#) [Steven Agnew]

385 [Q323](#) [Colum Eastwood]

386 [Q363](#) [Claire Sugden] [Q484](#) [Steven Agnew] [Q555](#) [Robin Swann]

387 [Q218](#) [Jonathan Tonge]

388 Stormont House Agreement 2015 [para 58](#)

to key areas, there was no consensus.³⁸⁹ As part of the Fresh Start Agreement, the parties did agree that “petitions of concern should only be tabled in exceptional circumstances”³⁹⁰ although there was no detail provided on what would constitute this test.³⁹¹

138. We heard of three reforms that could be made to the petition of concern mechanism. First, increasing the number of signatures required to meet the threshold as the “low veto threshold makes gridlock a routine possibility”.³⁹² Claire Sugden MLA told us:

I do not see how a minority can hold the rest of the Assembly to account. The Northern Ireland Assembly, in my mind, is a representative body. If 30 signatures can veto any decision by a majority of 60, that to me is not democracy.³⁹³

139. Second, replacing community designation with a weighted-majority vote, two-thirds for example.³⁹⁴ Those MLAs who designate as “other” do not have their votes counted in a cross-community vote.³⁹⁵ Steven Agnew MLA, of the Green Party, told us that as he does not designate, his constituents are less well served.³⁹⁶ A weighted-majority vote would likely demand cross-community input without having the effect of creating “two tribes”.³⁹⁷

140. Third, we heard that the petition had been used “as a blocking mechanism for issues beyond its originally intended purpose”.³⁹⁸ Instead, we heard that it should be limited to “fundamental issues and not on every social reform”.³⁹⁹ It was suggested that the grounds “should be evidence based” and shown “demonstrably to adversely affect one or another community’s interests”.⁴⁰⁰ The Alliance Party suggested that it should be limited to issues of culture, legacy and the institutions themselves.⁴⁰¹

141. We were consistently told that the petition of concern mechanism had been abused in the past. Instead of addressing a power imbalance, this veto mechanism has seemingly strengthened the imbalance. In doing so, it has stifled legislative progress. Reform to the petition of concern mechanism is long overdue. *The Committee recommends that reforms to the petition of concern process are agreed as part of any negotiations to reform the Assembly and brought into force as soon as possible once the Assembly reconvenes.*

Structural reform under the Belfast/Good Friday Agreement

142. The remainder of this chapter examines the potential scope for reforming the institutional structures within Northern Ireland. The Belfast/Good Friday Agreement (“the Agreement”) sets out the power-sharing arrangements in Northern Ireland. It

389 Northern Ireland Assembly and Executive Review Committee [Review of Petition of Concern](#) 25 March 2014, p1

390 [Stormont House Agreement 2015 para 57](#)

391 Professor Richard Wilford ([DDD0037](#))

392 Professor John Garry and James Pow ([DDD0022](#));

393 [Q363](#) [Claire Sugden]

394 [Q512](#) [Steven Agnew]

395 [Q484](#) [Steven Agnew]

396 [Q484](#) [Steven Agnew]

397 [Qq484](#), [512](#) [Steven Agnew]

398 Building Change Trust ([DDD0009](#))

399 Northern Ireland Open Government Network ([DDD0010](#))

400 Professor Richard Wilford ([DDD0037](#))

401 Alliance Party of Northern Ireland ([DDD0020](#))

has both international and constitutional status,⁴⁰² and is enshrined in UK law by the Northern Ireland Act 1998.⁴⁰³ It established both the Assembly and its Executive, with the following mechanisms:

- Assembly to be responsible for all devolved responsibilities on a cross-community basis;
- MLAs to be elected by proportional representation through single transferable voting procedures;
- MLAs are to be designated by community on the first meeting of the Assembly;
- The First and deputy First Ministers to be jointly elected; and
- Ministers to be elected using the D'Hondt election process.⁴⁰⁴

143. Northern Ireland's government operates as a mandatory coalition. The basic principles are power-sharing founded on "parity of esteem, equality between communities and governance for all".⁴⁰⁵ Consent and consensus are thus fundamental to the Agreement.⁴⁰⁶ On 22 May 1998, when the Agreement was put to the people of Northern Ireland in a referendum, 71.12% voted in favour.⁴⁰⁷

The Option of Review

144. The UK Government has maintained its commitment to the Agreement, both throughout this inquiry⁴⁰⁸ and in the context of Brexit negotiations.⁴⁰⁹ Concerns were expressed to us that alternatives to the Agreement would be "both dangerous and unlikely to succeed."⁴¹⁰ We heard that the Agreement retains an ongoing symbolic importance: "the Good Friday Agreement, at its very core, represents peace."⁴¹¹ Some stakeholders were therefore concerned that any change to the existing political process described by the Agreement could undermine the fragile peace process to which it is linked.⁴¹² Colum Eastwood MLA told us:

People remember what it was like before the Good Friday Agreement. People remember the work that was put in to getting our two communities to come together, to work together and to begin to govern our place together. They know that if you mess with that, first, you have no right to mess with it, and, secondly, it is a very dangerous thing to do.⁴¹³

402 [Robinson v Secretary of State for Northern Ireland and Others \[2002\] UKHL 32](#) per Lord Bingham of Cornwall at [11], Lord Hoffman at [25], [35]; affirmed in [Re McCord's Application \[2016\] NIQB 85](#) per Maguire J at [44]; [Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland \(Treaty Series No. 50, 2000.\) CM4705](#)

403 [Belfast/Good Friday Agreement 1998, Northern Ireland Act 1998](#)

404 Belfast/Good Friday Agreement 1998 [Strand One](#) paras 2–4 and 6 -25

405 [Q334](#) [Conor McGinn] [Q378](#), [Q395](#) [Lord Murphy]

406 [Q372](#) [Lord Murphy] [Q401](#) [Karen Bradley]

407 [Good Friday Agreement](#), BBC History accessed 19 March 2018

408 [Q401](#) [Karen Bradley]

409 [Q311](#) [Ruth Taillon]

410 Professor Christopher McCrudden ([DDD0038](#))

411 [Q354](#) [Colum Eastwood]

412 [Q246](#) [Professor McCrudden]

413 [Q334](#) [Colum Eastwood]

Consequently, witnesses stated that “any attempt to undermine, destroy or replace it is playing with fire”⁴¹⁴ and “should be avoided at all costs.”⁴¹⁵

145. Due to the current impasse, however, some stakeholders have raised the possibility of revisiting the institutional structures. The Agreement itself contains the following review mechanism within it (Figure 4):

Figure 4: Review procedures following implementation

5. Each institution [created by the Agreement] may, at any time, review any problems that may arise in its operation and, where no other institution is affected, take remedial action in consultation as necessary with the relevant Government or Governments. It will be for each institution to determine its own procedures for review.
6. If there are difficulties in the operation of a particular institution, which have implications for another institution, they may review their operations separately and jointly and agree on remedial action to be taken under their respective authorities.
7. If difficulties arise which require remedial action across the range of institutions, or otherwise require amendment of the British-Irish Agreement or relevant legislation, the process of review will fall to the two Governments in consultation with the parties in the Assembly. Each Government will be responsible for action in its own jurisdiction.

Source: Belfast Agreement 1998 [paras 5–7](#)

The Act has been amended, most notably by the St Andrews Agreement in 2006 following the period of direct rule 2002–2007.⁴¹⁶ It has not, however, been reviewed within the context of the provisions above.⁴¹⁷

146. Some stakeholders commented that it is the political desire of parties in Northern Ireland that needs to change, not institutional reform; “it is not a case of tinkering with the Assembly rules; it is ultimately a question of political will.”⁴¹⁸ A common theme amongst stakeholders was that willingness and trust had now broken down between the two largest parties.⁴¹⁹ As Professor Wilford summarised:

It does not matter how elegantly you design the architecture, how consociationally adept it is, unless the spirit that animates the institutions is one of accommodation. That is what matters, so it is not the institutions, in and of themselves; it is the manner and behavioural tropes of some people and parties, not the structures. It is the agencies that inhabit them. If they are not disposed to be accommodating, anything we design is going to falter.⁴²⁰

147. Others, however, said that the Agreement should be revisited. Northern Ireland Open Government Network, a collective of civil society representatives, commented:

414 [Q221](#) [Professor Mc Crudden] [Q223](#) [Richard Wilford]

415 The Centre for Cross Border Studies ([DDD0003](#))

416 [St Andrews Agreement](#); [Northern Ireland \(St Andrews Agreement\) Act 2006](#)

417 [Q251](#) [Richard Wilford]

418 [Q218](#) [Jonathan Tonge]

419 Alliance Party of Northern Ireland ([DDD0020](#)); [Q650](#) [Simon Hamilton]

420 [Q245](#) [Richard Wilford]

The Good Friday Agreement facilitated the transition from sectarian conflict to a more peaceful society. However, what was necessary and appropriate for confidence building in 1998 may no longer be appropriate. And it may be time to design structures that facilitate progress. When important political disputes cannot be resolved within the existing constitutional framework, it's time to rebuild that framework, or risk a constitutional crisis.⁴²¹

148. We have heard that the Agreement is not “writ in stone”.⁴²² Professor Wilford told us that the Agreement was not “a straitjacket”,⁴²³ neither was it “cast in marble” but “cast in aspic”, and therefore was “reformable.”⁴²⁴ Others suggested that it could be “tweaked”.⁴²⁵ However, stakeholders reiterated the importance of obtaining consent prior to any alterations.⁴²⁶ Lord Murphy told us:

The whole basis of the Good Friday agreement and subsequent agreements, and the whole basis of the process in Northern Ireland, is about general agreement among the parties.⁴²⁷

Professor McCrudden agreed:

There is always the opportunity to renegotiate the agreement. That renegotiation depends on consent.⁴²⁸

149. Other witnesses referred to the need for the Agreement to grow over time. For example, Colin Neill, of Hospitality Ulster, commented “I think it is a work-in-progress, an evolution.”⁴²⁹ Lord Murphy told us:

There is provision in the Agreement for it to be reviewed from time to time. After all, the 20th anniversary comes up in a couple of weeks’ time. Two decades is a long time in politics.⁴³⁰

Steven Agnew MLA told us that he supported the Belfast/Good Friday Agreement, but felt “it needs to be brought up to date for now. The context of 20 years on is different from 1998.”⁴³¹ Ruth Taillon, Director of the Centre of Cross Border Studies, highlighted that her centre had been waiting for a review of Strand Two since 2008, in relation to potential additional areas of co-operation.⁴³² Simon Hamilton MLA, of the DUP, added that with the current collapse of Stormont, there is now “the space, the time and the opportunity to look at it”.⁴³³

150. We were told that any review of the Agreement does not mean that it had, in any way, failed. Claire Sugden MLA, told us:

421 Northern Ireland Open Government Network ([DDD0010](#))

422 [Q378](#) (Lord Murphy)

423 Professor Richard Wilford ([DDD0037](#))

424 [Q239](#) [Richard Wilford]

425 [Q311](#) [Ruth Taillon] [Q220](#) [Richard Wilford]

426 [Qq231](#), [247–249](#) [Christopher McCrudden] [Qq 254](#), [282](#) [Richard Wilford] [Q297](#) [Ruth Taillon] [Qq377–378](#) [Lord Murphy] [Qq401](#), [413](#) [Karen Bradley]

427 [Q377](#) [Lord Murphy]

428 [Q221](#) [Christopher McCrudden]

429 [Q114](#) [Colin Neill] see also [Q110](#) [Seamus McAleavey]

430 [Q378](#) [Lord Murphy]

431 [Q525](#) [Steven Agnew]

432 [Q315](#) [Ruth Taillon]

433 [Q679](#) [Simon Hamilton]

I know there has been a bit of debate around the Good Friday agreement and whether it has served its purpose. Absolutely it has, because it stopped the violence, so to say that it failed is wrong, but I would say that it was of its time. Perhaps there is another phase that we need to implement of the Good Friday agreement, which brings people genuinely together.⁴³⁴

Professor Tonge also remarked:

It was always going to be optimistic to expect the institutions to function smoothly. From my point of view, the miracle is that we have had productive periods of devolved Government.⁴³⁵

151. The institutional mechanisms in Northern Ireland had already started to evolve prior to the collapse. For example, following the 2016 election, the Assembly introduced an official Opposition.⁴³⁶ This move suggested that “a voluntary coalition arrangement might replace the enforced power-sharing now in place.”⁴³⁷ We heard the introduction of an Opposition was an important step towards normalising politics within Northern Ireland.⁴³⁸ Seamus McAleavey told us:

An Opposition in a democracy is a good thing. The system could evolve. In terms of the Good Friday Agreement, we have to ensure that all the protections are still there, but there is an opportunity for cross-community coalitions on a voluntary basis to come forward where people out there can go to the opposition and all of that. You would hope that that could evolve in the political discussions over time and we will start to make the changes as one politician pertained, referring to that ugly scaffolding that was the political arrangements that were here.⁴³⁹

152. The following ideas have been raised with us as worth considering as part of any review:

- Changes to the appointment of First Minister/deputy First Minister.⁴⁴⁰
- Alternative options to mandatory coalition, including voluntary coalition (or coalition of the willing) and any changes to voting procedures.⁴⁴¹
- Removal of community designation within the Assembly.⁴⁴²

Will of the parties

153. Many party representatives indicated that they would consider consenting to a review, within the confines of the Agreement itself. Steven Agnew MLA of the Green Party said,

434 [Q367](#) [Claire Sugden]

435 [Q246](#) [Jonathan Tonge]

436 8th Report of the Assembly and Executive Review Committee [Report into the Assembly & Executive Reform \(Assembly Opposition\) Bill](#) Northern Ireland Assembly 299/11–16

437 Dr Stefanie Lehner and Dr Cillian McGrattan ([DDD0007](#))

438 [Q245](#) [Richard Wilford] [Q362](#) [Claire Sugden] [Q110](#) [Seamus McAleavey] [Qq 680, 681](#) [Simon Hamilton]

439 [Q110](#) [Seamus McAleavey]

440 Alliance Party of Northern Ireland ([DDD0020](#))

441 [Q282](#) [Jonathan Tonge] Professor Richard Wilford ([DDD0037](#)) Northern Ireland Open Government Network ([DDD0010](#))

442 [Q282](#) [Jonathan Tonge] Northern Ireland Open Government Network ([DDD0010](#))

“if we do not review it and reform it we will face continual crises.”⁴⁴³ Jim Allister MLA of the Traditional Unionist Voice told us, “the seed of the destruction lies within the structures constructed out of the Belfast Agreement.”⁴⁴⁴ The Alliance Party stated that:

The Good Friday Agreement remains the template for the political institutions in Northern Ireland but was not intended to remain static, and was instead intended to evolve according to the needs of a changing Northern Ireland, whilst remaining true to the spirit of the Agreement.⁴⁴⁵

154. Stakeholders said that “it is a matter for people in Northern Ireland to decide how to change the structures that result from them.”⁴⁴⁶ We heard this is because the Agreement “is owned by the people of Ireland, north and south, not anybody else.”⁴⁴⁷ Steven Agnew MLA commented:

We have had tinkering and toying with the Good Friday Agreement, and we have never gone back to the people for their consent to those changes.⁴⁴⁸

He added that a review would not necessarily lead to institutional changes; “if the review says that no changes need to be made, I will accept that”.⁴⁴⁹ During our Derry/Londonderry engagement event, members of the public agreed that maybe it was time for review.⁴⁵⁰

155. The Government has not indicated that it would consider a review. However, the Secretary of State stated:

We are committed to that principle of consent. If it was the will of the people of Northern Ireland in both communities that amendments should be made, we would of course look at that.

156. It is 20 years since the Belfast/Good Friday Agreement was signed. The Agreement remains a significant political achievement of all those involved and signalled the end to decades of conflict. Its symbolic and national importance cannot be overstated. The fact that the Agreement resulted in an international treaty between the British and Irish Governments and was endorsed by referendum gives its principles and institutions a unique status. It was, however, not intended that the Belfast/Good Friday Agreement should be exempt from review as the situation in Northern Ireland changed. Indeed, after the last period of direct rule it was necessary to have the St Andrews Agreement. The key is the consent from both sides of the community to any proposed changes. Notwithstanding two decades of relative peace and prosperity, politics in Northern Ireland have not been serving the people well in recent years. The public are becoming disillusioned with politics and disenfranchised.

157. *The Committee recommends that, if the Executive is restored, it should launch a consultation within 6 months. So far as it is compatible with the principles underlying the Agreement, if the Executive is not restored before the autumn, the Secretary of State*

443 [Q505](#) [Steven Agnew]

444 [Q581](#) [Jim Allister]

445 Alliance Party of Northern Ireland ([DDD0020](#))

446 [Q395](#) [Lord Murphy]

447 [Q331](#) [Colum Eastwood]

448 [Q484](#) [Steven Agnew]

449 [Q505](#) [Steven Agnew]

450 Members of the public at Derry-Londonderry outreach and engagement event ([DDD0040](#))

should consult with the parties in Northern Ireland and the Irish Government on how a review mechanism could be progressed and what the scope of that review should be. The consultation should be wide-ranging and ensure that both sides of the community are fully heard. This could include:

- *what matters should be the subject of review;*
- *whether changes are needed to the current power-sharing arrangements;*
- *what those changes should be; and*
- *what other institutional changes could be brought in.*

If the result of the consultation is to review the Agreement, the review must be taken with the consent of all parties to the Agreement. As soon as devolution is restored, we recommend that the UK Government engages with the Irish Government and the Northern Ireland Assembly to launch the review on the basis of the consultation responses.

Conclusion

158. The collapse of the Executive and its subsequent absence for well over a year is deeply disappointing. The last two decades have seen relative peace and stability in Northern Ireland and the country has thrived as a result. The current impasse represents a big step backwards and it must be rectified as soon as possible. The recommendations in this report form our view on what routes to the restoration of sustainable devolution should now be taken. The most fundamental of these is that talks between the two largest parties should restart.

159. We intend to track the progress of restored democracy and accountability in Northern Ireland. We will produce a regular situation report tracking measures outlined in this report and others that we may determine, and their progress. The framework for the situation report is given at Annex 2. The pressure and impetus to reinstate devolution must not be relaxed until democracy has been restored to Stormont.

Conclusions and recommendations

Introduction

1. Since the Belfast Agreement was signed in 1998, Northern Ireland has had sustained periods without devolved government. However, since the St Andrews Agreement there has been a decade of sustained devolution so its collapse for well over a year is a profound backward step. A gross political failure, it cannot be sustained much longer without serious consequences for the people of Northern Ireland. The situation has been unfair on residents, the Northern Ireland Civil Service, public services and businesses. It has been particularly unfortunate since it has meant the voice of Northern Ireland has not been heard in London and Brussels as loudly as that of Scotland and Wales during the Brexit process. We are deeply disappointed that successive rounds of talks between those parties that were involved have failed to reach agreement. We note the recent response to a written question by the Secretary of State which said she had met Northern Ireland's five largest political parties on Thursday 26 April, had reviewed the current position with them and explored how they might achieve the restoration of devolution while ensuring the good governance of Northern Ireland in the interim. We urge the political parties to restart talks to restore good governance in Northern Ireland immediately. Locally elected politicians should be making decisions on behalf of the people that they represent. The recommendations we make in this report do not detract from the Committee's view that power-sharing devolution is the best governance structure for Northern Ireland and ought to be restored as soon as possible. (Paragraph 13)

Temporary increased intervention

2. Effective resolution requires constant engagement with all of those involved. We were disappointed to learn that talks between the two largest parties have been paused. The Secretary of State suggested that smaller parties were to be actively involved in the talks to restore devolution. However, that has not been the experience of some party leaders. *We recommend that the Secretary of State restart the active facilitation of talks between all parties. Engagement should be continuous and the Secretary of State should consider taking a more active role, including being part of those conversations rather than risk being perceived as a passive observer. We recommend that the Government indicate within the next month whether they intend to pursue any other options.* (Paragraph 24)
3. Representatives from political parties, academics and individuals representing specific sectoral organisations, all concluded that little would be achieved by holding yet another election. It is likely that the same political parties would be required to form an Executive, and that the same problems would occur in doing so. While we note the legal duty on the Secretary of State, and the temptation to roll the electoral dice again, we agree that both Secretaries of State have been right not to call an election. (Paragraph 28)
4. The Secretary of State set out budgetary allocations a month after the Head of Civil Service had warned that budget certainty was required. The absence of a budget has

caused serious difficulties for the planning of public services and the private and third sectors. The budget is not fully set, it is late and it gives little granularity. It also departs from the previous Executive's spending decisions in relation to rates, indicating a movement towards making policy decisions (Paragraph 41)

5. The Committee recognises that MLAs continue to work hard on behalf of their constituents. However, as many MLAs themselves have noted, if they are not completing their full, legislative, role they cannot expect to receive their full salary. *The Committee recommends that the Secretary of State takes action on MLA pay as soon as possible following the conclusion of her consultation with the parties.* (Paragraph 47)
6. The lack of an Executive and functioning Assembly has created a democratic deficit in Northern Ireland. Ministerial decisions cannot be taken, budgets have not been forecast or set in a timely manner and, as a result, policy direction, legislative change and transformation have not progressed. While care and maintenance may have been appropriate in the short term, allowing Northern Ireland departments to operate without Ministerial direction for well over a year is unacceptable. In the absence of devolution, and following the recent High Court decision, important ministerial decisions must now be made in the interest of people in Northern Ireland. Examples of these are set out in Annex 1. The Committee accepts that further ministerial intervention will be required on devolved matters. The Committee believes that accountability, oversight and the principles of power-sharing are necessary for good governance in Northern Ireland. *The Secretary of State must, before the summer recess, bring forward proposals as to how she will take ministerial decisions whilst adhering to these principles. She should also affirm that ministerial intervention in Northern Ireland will not affect her efforts to restart and sustain talks aimed at restoring the Executive.* (Paragraph 56)
7. The draft Programme for Government and associated delivery plans provide a useful framework from which important Ministerial decisions may be made. It provides a mandate of sorts, with support from the political parties and the public, for certain actions and decisions to be taken by the relevant Minister. *The Committee recommends that the Secretary of State takes the necessary steps to continue to implement, consult or legislate on policies and areas marked within the draft Programme for Government by the previous Executive. This should be undertaken in partnership with representative bodies and political representatives.* (Paragraph 63)
8. The Bengoa report addresses pressing needs felt by the health sector in Northern Ireland, and has received cross-community support. *The Committee recommends that the Secretary of State set out what measures she intends the £100m funding to be used for in relation to the Bengoa report. She should also take all necessary steps to implement, consult or legislate on the recommendations made. This should be undertaken in partnership with stakeholder organisations and political representatives.* (Paragraph 67)
9. The Committee recognises that the Hart Report makes important recommendations which ought to be properly discussed by the devolved institutions in Stormont. In their absence, however, this issue is too serious to delay further. Victims and survivors have already waited too long for redress, with the advancing age of many

of the survivors increasing the need for urgency. *We recommend that once draft legislation is prepared, and after full pre-legislative scrutiny, the Secretary of State takes a Bill through the UK Parliament without further delay.* (Paragraph 72)

Scrutiny of increased intervention

10. The Committee recognises the enormous challenges ahead for the Northern Ireland Office in the light of the collapse of devolution. If the Northern Ireland Office continues to take on additional responsibilities, there may be a need for increased staff and financial resources. *The Committee recommends that the Treasury consults with the Northern Ireland Office and makes any necessary additional resources available without delay.* (Paragraph 81)
11. The Prime Minister reports that meetings to discuss Northern Ireland's interests in Brexit have been taking place and involve Northern Ireland officials. However, there is little clarity relating to these discussions and it is not clear what is being achieved. In the absence of an Executive, greater transparency would increase reassurance that Northern Ireland's voice is being heard on Brexit alongside those of Scotland and Wales. *The Committee recommends the Secretary of State and the Northern Ireland Office publish details of the meetings held that are referenced in the Prime Minister's letter to us. This should include information on the individuals involved in those meetings, the frequency of meetings and matters discussed.* (Paragraph 85)
12. *The Committee restates its recommendation that a Minister be given specific responsibility for Northern Ireland's voice on Brexit. We recommend that this Minister spends a significant amount of time in Brussels to assist with advocacy, in a similar way to Welsh and Scottish Ministers.* (Paragraph 86)
13. In the absence of devolution, the Northern Ireland Affairs Committee believes it has a particular duty to advance accountability and scrutiny on behalf of the people of Northern Ireland. We have increased the frequency with which we travel to Northern Ireland and take evidence. The Committee is currently exploring how its own role may change in light of the current impasse, while the absence of nationalist MPs representing Northern Ireland on the Committee will be a consideration in relation to any enhanced role. As far as possible, this should reflect the work of the Secretary of State and the Northern Ireland Office. (Paragraph 89)
14. Stormont's committees provide a useful forum for scrutiny of decisions. Resurrecting them, however, can only work if they are reflective of the make-up of the Assembly and adhere to the principle of power-sharing which is at the heart of the Belfast Agreement. Nationalist and unionist voices must both be heard and the consent and cooperation of representatives from both sides of the community would be required. *We recommend that the Secretary of State take legal and procedural advice, including from the Clerk/Chief Executive of the Northern Ireland Assembly, on how the committee system in Stormont could be reinstated to provide, at a minimum, a scrutiny function for locally elected MLAs. This may be either through the statutory committee system or, if this is not feasible, through ad hoc committees. This would allow local politicians to have a formal and transparent input into any Ministerial decisions or legislation undertaken in Westminster, albeit limited.* (Paragraph 94)

15. There is an important scrutiny role for all MLAs, who have been given a mandate by the people of Northern Ireland to represent them. We would urge all parties to engage with any process that allows for dialogue and collaboration. *The Committee recommends that a consultation with all MLAs is undertaken to explore their role in some form of Assembly structure. This should be launched within a month of the publication of this report and conclude before the summer. Any shadow Assembly must be reflective of the parties who would be participating in the fully functioning devolved Assembly and must adhere to the principle of power-sharing which is at the heart of the Belfast Agreement. Nationalist and unionist voices must both be heard and the consent and cooperation of representatives from both sides of the community would be required. Options that should be considered are the Welsh Assembly model, and a consultative model which includes a role for MLAs in Committee and Departmental work. It is the view of this Committee that the committee system would be the most effective method of scrutinising actions taken by the Secretary of State and Permanent Secretaries during this period of collapsed devolution.* (Paragraph 104)
16. The Belfast/Good Friday Agreement acknowledges the importance of the effective operation of its institutions, including those in Strand Three, such as the British-Irish Intergovernmental Conference, during the current political impasse in Northern Ireland. The Committee notes that the British-Irish Intergovernmental Conference involves no derogation from the sovereignty of either Government. While the Committee recognises the ongoing involvement of the Irish Government as per the Belfast/Good Friday Agreement, there needs to be clarity on what constructive role the British-Irish Intergovernmental Conference could have in resolving the current impasse. Clarity is also required on the role it plays in the absence of an Executive. (Paragraph 108)
17. We have heard differing views on the appropriate level of funding and powers to devolve to local councils. An increased role for local government might help improve democracy and make governance in Northern Ireland more robust in the future. *When the Executive is restored, the Committee recommends that an Assembly committee be set up to review local government finances and devolved powers. If the Executive is not formed within 12 months of the publication of this report, an independent review should be commissioned by the Secretary of State.* (Paragraph 113)
18. The Committee agrees that increasing civic participation could enhance Northern Ireland's governance in both the current impasse and the future. Citizens' Assemblies remain one option to increase civic engagement at a time where citizens are becoming increasingly dissatisfied with Northern Ireland's politics. We look forward to the publication of the pilot study to see whether it would be a suitable forum for Northern Ireland. (Paragraph 121)

Avoiding future problems

19. The Committee commends the Northern Ireland Civil Service for trying to manage a very difficult situation over a prolonged period. As time has passed, governance has become increasingly challenging, with the boundary between a new policy decision and the implementation of the previous Executive's mandate becoming progressively blurred. *When an Executive is formed, we recommend that the Assembly and the*

Northern Ireland Office produce clear guidance, and take forward any necessary legislative changes, on what decisions the Northern Ireland Civil Service may take should this situation occur again. (Paragraph 127)

20. We agree that MLAs form an important part of the Northern Ireland Policing Board. Policing is both a vital service and is institutionally hugely significant within Northern Ireland. Above all UK constabularies, it demands sensitivity, accountability and transparency and must be free from political agenda. The Board must be able to function in the absence of an Executive. *We recommend that the Secretary of State amends the Police (Northern Ireland) Act 2000 to ensure that the Policing Board can exercise its statutory functions now, and during any devolved but non-sitting periods of the NI Assembly in the future. The amendment should include taking the power to, if an Executive has not been formed after a statutory period, permit the Secretary of State to fulfil the appointment functions of the Minister of Justice in relation to the appointment of the Board's members. In the continued absence of the Assembly and Executive, the Secretary of State must be mindful not to allow the Policing Board to become the forum for political agendas to be advanced. (Paragraph 133)*
21. We were consistently told that the petition of concern mechanism had been abused in the past. Instead of addressing a power imbalance, this veto mechanism has seemingly strengthened the imbalance. In doing so, it has stifled legislative progress. Reform to the petition of concern mechanism is long overdue. *The Committee recommends that reforms to the petition of concern process are agreed as part of any negotiations to reform the Assembly and brought into force as soon as possible once the Assembly reconvenes. (Paragraph 141)*
22. It is 20 years since the Belfast/Good Friday Agreement was signed. The Agreement remains a significant political achievement of all those involved and signalled the end to decades of conflict. Its symbolic and national importance cannot be overstated. The fact that the Agreement resulted in an international treaty between the British and Irish Governments and was endorsed by referendum gives its principles and institutions a unique status. It was, however, not intended that the Belfast/Good Friday Agreement should be exempt from review as the situation in Northern Ireland changed. Indeed, after the last period of direct rule it was necessary to have the St Andrews Agreement. The key is the consent from both sides of the community to any proposed changes. Notwithstanding two decades of relative peace and prosperity, politics in Northern Ireland have not been serving the people well in recent years. The public are becoming disillusioned with politics and disenfranchised. (Paragraph 156)
23. *The Committee recommends that, if the Executive is restored, it should launch a consultation within 6 months. So far as it is compatible with the principles underlying the Agreement, if the Executive is not restored before the autumn, the Secretary of State should consult with the parties in Northern Ireland and the Irish Government on how a review mechanism could be progressed and what the scope of that review should be. The consultation should be wide-ranging and ensure that both sides of the community are fully heard. This could include:*
 - *what matters should be the subject of review;*

- *whether changes are needed to the current power-sharing arrangements;*
- *what those changes should be; and*
- *what other institutional changes could be brought in.*

If the result of the consultation is to review the Agreement, the review must be taken with the consent of all parties to the Agreement. As soon as devolution is restored, we recommend that the UK Government engages with the Irish Government and the Northern Ireland Assembly to launch the review on the basis of the consultation responses. (Paragraph 157)

Conclusion

24. The collapse of the Executive and its subsequent absence for well over a year is deeply disappointing. The last two decades have seen relative peace and stability in Northern Ireland and the country has thrived as a result. The current impasse represents a big step backwards and it must be rectified as soon as possible. The recommendations in this report form our view on what routes to the restoration of sustainable devolution should now be taken. The most fundamental of these is that talks between the two largest parties should restart. (Paragraph 158)
25. We intend to track the progress of restored democracy and accountability in Northern Ireland. We will produce a regular situation report tracking measures outlined in this report and others that we may determine, and their progress. The framework for the situation report is given at Annex 2. The pressure and impetus to reinstate devolution must not be relaxed until democracy has been restored to Stormont. (Paragraph 159)

Annex 1: Impact of an absent Executive

Table 1: Examples of problems given by those who submitted evidence

Project / Area	Problem
Economy and Business	
Industrial Strategy ¹	Consultation closed 25 April 2017, no Executive to consider.
Small Business Rates Relief ²	Report on the 2016 consultation exercise has not been published.
Setting Regional Rates ³	Delay disrupted the annual cash flow of small businesses.
Apprenticeship Levy ⁴	Consultation closed 23 December 2016. Funding not being redirected into skills training.
<i>Securing our Success: Northern Ireland Strategy on Apprenticeships</i> ⁵	Not fully implemented before collapse.
Better Regulation: An Action Plan for Reform ⁶	Not been fully progressed.
Gender Pay Reporting Requirement ⁷	Power contained in Employment (NI) Act 2016, but not subject to usual scrutiny. Regulations were intended to follow and be subject to consultation, but this has not happened.
Licensing and Registration of Clubs (Amendment) Bill ⁸	At committee stage prior to collapse.
Entertainment Licensing Legislation ⁹	Entertainment Licensing Review Group made recommendations which were in development.
<i>Building a Prosperous and United Community</i> ¹⁰	Joint NI Executive/UK Government initiative not been able to continue progressing.
Minimum Unit Price for Alcohol (MUP) ¹¹	NI Assembly and the Irish Government planned to introduce in conjunction, following a consultation in Northern Ireland, which has not been held.
Hunter Review in Tourism ¹²	10 recommendations not yet implemented.
Tourism Strategy ¹³	Draft developed by Tourism Northern Ireland and presented to the Department of the Economy.
Tourism VAT ¹⁴	Consultation now launched by UK Government. If this is then devolved by UK Government, implementation would stall.
Air Passenger Duty ¹⁵	Consultation now launched by UK Government. If this is then devolved by UK Government, implementation would stall.
Fisheries	
Kilkeel Harbour development ¹⁶	The lack of a Minister has caused plans for Kilkeel Harbour to halt.
Construction	
York Street Interchange ¹⁷	Project paused due to legal challenge. Substantial scheme which would usually have ministerial accountability.

Project / Area	Problem
North South Interconnector ¹⁸	Planning permission granted following independent report prepared by Planning Appeals Commission. Decision made by civil service in absence of Minister as in public interest.
Maintenance work ¹⁹	No Minister to decide how to apportion budgetary spend outside of capital/flagship projects.
Skills shortage in sector ²⁰	Skills shortage has been identified and was a subject of a panel event with MLAs just before the collapse.
New Capital projects ²¹	In absence of Minister, zero-based approach taken. No Capital funding is assumed and capital projects funded on a priority basis existing contractual, health and safety and Executive commitments being funded first.
A5 scheme ²²	Project paused due to legal challenge. Substantial scheme which would usually have ministerial accountability.
Belfast Streets Ahead ²³	Phase 3 Procurement was suspended in August due to absence of Ministerial or Executive endorsement
School Enhancement Programme 2021/22 ²⁴	Next phase delayed.
Strule Shared Education Campus ²⁵	Now funded from Capital pot from Department. Now has affordability risk. Procurement since suspended.
School building schemes ²⁶	10 schemes currently at design or feasibility stage not pursued.
Tender prices increasing ²⁷	Projects stalling as, due to the fall in the pound, prices have now become higher than original estimates.
Housing shortfall ²⁸	Addressing shortfall in new build homes require policy interventions.
Justice	
Access to Justice 1 and 2 report ²⁹	Reform programmes completed including consultation. Minister was considering proposals when Assembly fell.
Gillen Review of Civil and Family Justice ³⁰	Review completed. Ministers were considering recommendations.
Legal aid ³¹	Minister was planning to bring forward an updated strategy for legal aid
Policing	
Policing Board	Not currently properly constituted as MLA members require Ministerial appointment. Number of statutory functions cannot be fulfilled. See paragraphs 126–130
Education	
Domestic abuse offence ³²	Already exists in England & Wales under the Serious Crime Act 2015. Department of Justice had developed new legislation which was waiting Executive endorsement.

Project / Area	Problem
Personal Injury Discount Rate ³³	Joint consultation with Scotland and UK Governments on whether to reduce was published 30 March 2017. The rest of the UK has reduced the rate to 0.75%, while it remains at 2.5%, In Northern Ireland.
Legal Aid in the Family Courts ³⁴	New standardised fee structure proposed, with Minister finalising proposals when Assembly fell.
Northern Ireland Graduate Entry Medical School ³⁵	Ulster University had cross-community support to build new medical school to address recruitment shortage. Waiting approval on business plan.
Education sector ³⁶	Sector unsustainable, with 80% schools indicating that they will not be able to live within their budget allocations for 2017/18. In need of transformation.
Health and social care	
Cancer services ³⁷	Current strategy urgently needs review, with waiting times worst in the UK.
Bureaucracy in social work ³⁸	Audit to establish the number of unpaid hours worked by staff needed.
Multidisciplinary Primary Care Teams ³⁹	Northern Ireland Assembly Health Committee launched inquiry which has since been paused.
Social work workload ⁴⁰	Department of Health Workforce Strategy Steering Group developing strategic policy.
Universal Credit "Rape Clause" ⁴¹	Two-child limit on claiming universal credit unless a woman can show she was raped was passed in Westminster during this collapse. In NI, it is also an offence to not report a crime. At the time, both Sinn Féin and the DUP spoke out against the policy.
Adoption and Children Bill ⁴²	The Department of Health had also consulted on the draft Adoption and Children (Northern Ireland) Bill, to bring the legal framework into line with Scotland, England and Wales.
Power to People: proposals to reboot adult care and support in NI Report ⁴³	Published in December 2017. They recommended an urgent radical overhaul of the system.
Abortion (Fatal Foetal Abnormality) Bill ⁴⁴	Introduced to Assembly (first stage). Bill fell at collapse.
Environment and Energy	
Environmental NGOs ⁴⁵	Difficult to plan organisational budgets and work programmes.
Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017. ⁴⁶	Consultation on draft version closed on 9 February 2017.
NI Renewables Obligation ⁴⁷	Closure of the scheme in April 2017 has left a policy gap.
Renewable Energy Development ⁴⁸	Minister-ordered research conducted, but unable to translate this work into new policies.
Sustainable Development in the Countryside ⁴⁹	Minister-ordered research conducted, but unable to translate this work into new policies.
NI Environmental Agency ⁵⁰	Minister signalled intention to appoint independent members to the NI Environment Agency Board but had not happened at the time of collapse.

Project / Area	Problem
Living with Water programme ⁵¹	Implementation action plan for long-term strategy not being progressed.
Air Quality ⁵²	New legislative strategy being consulted upon.
Fuel Poverty ⁵³	Affordable Warmth Scheme public consultation ended Feb 2018.
Energy efficiency ⁵⁴	Policy developments, e.g. EnergyWise have stalled.
Incinerator in Mallusk ⁵⁵	A High Court ruling has determined that civil servants do not have the power to approve planning for the waste incinerator and that the decision must be made by a Minister. This could have a significant impact on other projects.
Legacy	
Commission on Flags, Identity, Culture and Tradition ⁵⁶	Due to report in Autumn but without Executive it will be unable to progress.
Inquests ⁵⁷	In February 2016, the Lord Chief Justice of Northern Ireland set out a 5-year plan for the delivery of legacy inquests. Executive has not implemented and Assembly has not endorsed.
Public and community sector	
Public sector pay ⁵⁸	Delay in making awards.
Community Relations Council ⁵⁹	Requires annual business plan not be approved.
Short-termism ⁶⁰	Projects limited to reacting to current issues. Longer term decisions unable to be made.
NI Social Value Act ⁶¹	Only administration in UK without a similar Act which address procurement processes. Finance Minister had pledged to bring Act forward to the Assembly.
Local Government (NI) Act 2014 ⁶²	Secondary legislation required under s.127 incomplete. This means many sections of the Act have not taken effect, e.g. Local Government (Standing Orders) Regulations (Northern Ireland) 2015 have not been agreed
Local Government Partnership Panel ⁶³	Panel composed of local and central government representatives. Not meeting as no Ministers to join.
Civil marriage equality ⁶⁴	Arguments for reform discussed in Assembly and subject of disagreement in talks. Matter to be raised in Westminster
Governance	
Delivery Plans (PfG) ⁶⁵	Consultation reports produced but not actioned.
Northern Ireland Audit Office ⁶⁶	No Public Accounts Committee in Stormont to scrutinise audit reports.

Source: Evidence submitted to this Committee. See [publications page](#) on the Committee's website

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- 1 Department for the Economy (NI) [Industrial Strategy for Northern Ireland](#) 25 April 2017
 - 2 Department of Finance (NI) [Small Business Rate Relief - Discussion Paper](#) 13 May 2016
 - 3 Department of Finance (NI) [Latest developments in rating policy](#)
 - 4 Department for the Economy (NI) [Apprenticeship Levy](#) 23 December 2016
 - 5 Department for the Economy (NI) [Securing our Success - the Northern Ireland strategy on apprenticeships](#) 24 June 2014, due September 2017: NI Assembly Minister for Employment and Learning [9 Feb 2016](#)
 - 6 Department for the Economy (NI) [Better Regulation: An Action Plan for Reform](#) 25 March 2016
 - 7 NI Assembly Minister for Employment and Learning [1 Mar 2016](#)
 - 8 [Primary Legislation - Bills that fell due to the dissolution of the Assembly](#) Northern Ireland Assembly accessed 23 March 2018
 - 9 Department for Communities (NI) [Entertainment Licensing Review: Synopsis](#) 1 February 2016 NI Assembly Minister for Environment [26 Jan 2016](#)
 - 10 Northern Ireland Executive [Building a Prosperous and United Community](#) 14 June 2013; Northern Ireland Office [Building a Prosperous and United Community: 2016 Progress Report](#) March 2016
 - 11 Alcohol Action Ireland [Minimum Pricing](#) accessed 23 March 2018
 - 12 Department of the Economy (NI) [Tourism](#) accessed 23 March 2018
 - 13 Department of the Economy (NI) [Tourism](#) accessed 23 March 2018
 - 14 HM Treasury [VAT, Air Passenger Duty and Tourism in Northern Ireland](#) 13 March 2018
 - 15 HM Treasury [VAT, Air Passenger Duty and Tourism in Northern Ireland](#) 13 March 2018
 - 16 Oral evidence: Brexit and Northern Ireland: Fisheries, HC 878, [Q121](#)
 - 17 Department for Infrastructure [York Street Interchange](#) 28 June 2017
 - 18 Department for Infrastructure [Planning permission granted for North South electricity interconnector](#) 23 January 2018
 - 19 Northern Ireland Department of Finance, [Briefing on Northern Ireland Budgetary Outlook 2018–20](#), 18 December 2017 p.103
 - 20 Federation of Master Builders, [Apprenticeships and Skills](#) accessed 23 March 2018; Construction Industry Training Board NI, [Skills' crisis the subject of Stormont event](#) 4 November 2016
 - 21 Northern Ireland Department of Finance, [Briefing on Northern Ireland Budgetary Outlook 2018–20](#), 18 December 2017 p.127
 - 22 [A5 Scheme Update January 2018](#), A5 WTC accessed 23 March 2018
 - 23 [Stormont deadlock 'puts construction jobs at risk'](#) BBC News 1 November 2017, Construction Employers' Federation (DDD0001), (DDD0034)
 - 24 Department of Education [School Enhancement Programme - Second Call Protocol for selection](#) 25 January 2017; Northern Ireland Department of Finance, [Briefing on Northern Ireland Budgetary Outlook 2018–20](#), 18 December 2017 p.119
 - 25 Northern Ireland Department of Finance, [Briefing on Northern Ireland Budgetary Outlook 2018–20](#), 18 December 2017 p.120
 - 26 NI Assembly [Written Ministerial Statement](#), Minister of Education, 15 March 2016
 - 27 Construction Employers' Federation (DDD0001), (DDD0034)
 - 28 Northern Ireland Department of Finance, [Briefing on Northern Ireland Budgetary Outlook 2018–20](#), 18 December 2017 p.27; Northern Ireland Executive [4 Delivery Plan: Indicators 8 and 48](#) 9 December 2016
 - 29 NI Assembly [Claire Sugden MLA](#) 17 January 2017
 - 30 NI Assembly [Claire Sugden MLA](#) 17 January 2017
 - 31 NI Assembly [Claire Sugden MLA](#) 17 January 2017
 - 32 Department of Justice [Sugden urges public to report domestic and sexual violence and abuse](#) 22 January 2017
 - 33 Ministry of Justice [Damages Act 1996: the discount rate: review of the legal framework](#) 30 March 2017
 - 34 NI Assembly [Claire Sugden MLA](#) 17 January 2017
 - 35 Ulster University [A Graduate Entry Medical School for Northern Ireland at Ulster University](#) accessed 23 March 2018
 - 36 Education Authority (DDD0036)
 - 37 Dr Lesley-Ann Black and Keara McKay [Cancer: Northern Ireland](#) Paper 32/17 28 June 2017
 - 38 Northern Ireland Assembly Committee of Health, [Official Report: Minutes of Evidence](#) Northern Ireland Association of Social Workers 1 December 2016
 - 39 The Northern Ireland Association of Social Workers (DDD0005);
 - 40 Northern Ireland Assembly Committee of Health, [Official Report: Minutes of Evidence](#) Northern Ireland Association of Social Workers 1 December 2016
 - 41 The Northern Ireland Association of Social Workers (DDD0005); The Guardian [Labour sounds alarm over rollout of universal credit rape clause into N Ireland](#) 23 July 2017
 - 42 Department of Health [Minister O'Neill launches public consultation on the draft Adoption and Children Bill](#) 16 January 2017

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- 43 Expert Advisory Panel Report, [Power to People: proposals to reboot adult care and support in NI](#) 11 December 2017
- 44 [Primary Legislation - Bills that fell due to the dissolution of the Assembly](#) Northern Ireland Assembly accessed 23 March 2018
- 45 NIEL Brexit Coalition ([DDD0014](#)),
- 46 Department for Infrastructure [Consultation on The Planning \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017](#) 9 February 2017
- 47 Department for the [Economy Onshore Renewable Electricity Action Plan](#) publication 22 January 2018
- 48 Department for Infrastructure, [Hazzard announces planning review on renewable energy and countryside development](#) Date published: 27 September 2016
- 49 Department for Infrastructure, [Hazzard announces planning review on renewable energy and countryside development](#) Date published: 27 September 2016
- 50 NI Assembly [Michelle McIlveen](#) 25 October 2016
- 51 Department for Infrastructure [Long-term Water Strategy - Implementation action plan](#) 22 November 2017
- 52 Northern Ireland Assembly Oral Answers to Questions Agriculture, Environment and Rural Affairs, [5th December 2016](#).
- 53 Department for Consultation [Changes to the Affordable Warmth Scheme](#) 16 February 2018
- 54 Department for the Economy [The EnergyWise Scheme](#) consultation closed May 2016
- 55 The Times, [Planning approval for incinerator deemed unlawful](#), 15 May 2018
- 56 Commission on Flags, Identity, Culture and Tradition, [Commission on Flags, Identity, Culture and Tradition](#), accessed 23 March 2018
- 57 Northern Ireland Assembly [Ending All Forms of Paramilitarism—Legacy Inquests](#) 8 November 2016
- 58 Department of Finance, [2017 pay bulletin 1/2017](#) 25 September 2017
- 59 Community Relations Council, [Governance](#), accessed 26 March 2018
- 60 Community Relations Council Written Evidence ([DDD0039](#))
- 61 Bryson Charitable Group [One Step Closer to Social Value Act in Northern Ireland](#) 30 November 2016
- 62 Northern Ireland Assembly [Local Government \(Standing Orders\) Regulations \(Northern Ireland\) 2015](#) 24 February 2015; Northern Ireland Assembly Local Government Regulations Oral Answers to Questions (Environment) [9 March 2015](#)
- 63 Local Government (NI) Act 2014 [section 103](#); Northern Ireland Local Government Association [Minutes of Partnership Panel Meeting](#) 12 October 2016
- 64 UK Parliament [What's On in Parliament](#) accessed 26 March 2018
- 65 Northern Ireland Executive [Programme for Government Delivery Plans](#) 20 October 2016
- 66 Letter from National Audit Office

Annex 2: Situation report framework

Measure	Status
Restoration of devolved institutions in Northern Ireland	
Northern Ireland Executive in place	Northern Ireland Executive still to be re-established. (Red since January 2017)
Talks between NI political parties aimed at restoring the devolved institutions of Northern Ireland	Talks collapsed in February 2018. Secretary of State has asked parties to reflect . Secretary of State met separately with parties on 26 April (Red since February 2018)
Talks involve all political parties	Not applicable.
Maintenance of public services in Northern Ireland	
Provisions made for the 2018/19 budget for Northern Ireland	Vote on account passed in March. Budget allocations detailed in a written statement in March. Main budget still needs to be approved. (Amber since 28 March 2018)
Police (Northern Ireland) Act 2000 amended to enable the Policing Board to exercise its statutory functions	UK Government is awaiting restoration of Executive. (Red since January 2017)
Other activity by the Northern Ireland Office	
Northern Ireland Office has set out the role of the UK Government in relation to public policy in Northern Ireland during the period in which there is no Northern Ireland Executive	UK Government is awaiting restoration of Executive. (Red since January 2017)
Provisions put in place for representation of Northern Ireland's interests in relation to Brexit	Secretary of State for Northern Ireland attends Cabinet Committees on Brexit. No Northern Ireland representation in Brussels. (Amber since February 2018)

Hart report on Historical Institutional Abuse implemented	UK Government is awaiting restoration of Executive. (Red since November 2017)
Action taken on MLA pay	Secretary of State stopped automatic £500 increase in pay, but has not reduced MLA pay. (Amber since March 2018)

Key

Green: Issue resolved	Amber: Some progress, but further action necessary	Red: No progress	Grey: Not applicable/not clear
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Formal minutes

Wednesday 9 May 2018

Members present:

Dr Andrew Murrison, in the Chair

Mr Gregory Campbell Conor McGinn

Mr Robert Goodwill Nigel Mills

John Grogan Ian Paisley

Mr Stephen Hepburn Jim Shannon

Lady Hermon Bob Stewart

Kate Hoey

Devolution and democracy in Northern Ireland—dealing with the deficit

The Committee considered this matter.

[Adjourned till Tuesday 15 May 2018 at 2.00pm]

Tuesday 15 May 2018

Members present:

Dr Andrew Murrison, in the Chair

Mr Gregory Campbell Jack Lopresti

Mr Robert Goodwill Conor McGinn

Mr Stephen Hepburn Nigel Mills

Lady Hermon Ian Paisley

Kate Hoey Jim Shannon

Draft Report (*Devolution and democracy in Northern Ireland—dealing with the deficit*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 159 read and agreed to.

Annexes and Summary agreed to.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 16 May 2018 at 9.15am]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Wednesday 24 January 2018

David Sterling, Head of the Northern Ireland Civil Service, **Hugh Widdis**, Permanent Secretary of the Department of Finance, Northern Ireland Executive

[Q1–89](#)

Thursday 1 February 2018

Seamus McAleavey, Chief Executive, Northern Ireland Council for Voluntary Action, **John Armstrong**, Managing Director, Construction Employers Federation, **Colin Neill**, Chief Executive, Hospitality Ulster, and **Glyn Roberts**, Chief Executive, Retail NI

[Q90–134](#)

Gavin Boyd, Chief Executive, Education Authority, **Anne Connolly**, Chair, Northern Ireland Policing Board, **Amanda Stewart**, Chief Executive, Northern Ireland Policing Board, and **Martin Dillon**, Chief Executive, Belfast Health and Social Care Trust

[Q135–217](#)

Wednesday 7 February 2018

Professor Christopher McCrudden, Professor of Human Rights and Equality Law, Queen's University Belfast, **Professor Jonathan Tonge**, Professor of Politics, University of Liverpool, **Professor Richard Wilford**, Professor of Politics, Queen's University Belfast

[Q218–283](#)

Wednesday 21 February 2018

Paul Braithwaite, Programme Leader, Building Change Trust, **Jamie Bryson**, Unionist Voice Policy Studies, **Derek McCallan**, Chief Executive, Northern Ireland Local Government Association, **Ruth Taillon**, Director, Centre for Cross-Border Studies

[Q284–317](#)

Colum Eastwood MLA, Leader of the Social Democratic and Labour Party

[Q318–356](#)

Claire Sugden MLA

[Q3517–371](#)

Wednesday 28 February 2018

Rt Hon. the Lord Murphy of Torfaen

[Q372–399](#)

Rt Hon Karen Bradley MP, Secretary of State for Northern Ireland, **Sir Jonathan Stephens KCB**, Permanent Secretary, Northern Ireland Office

[Q400–477](#)

Tuesday 6 March 2018

Steven Agnew MLA, Leader of the Green Party in Northern Ireland [Q478–530](#)

Robin Swann MLA, Leader of the Ulster Unionist Party [Q531–580](#)

Jim Allister QC MLA, Leader of Traditional Unionist Voice [Q581–646](#)

Wednesday 7 March 2018

Simon Hamilton MLA [Q647–697](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

DDD numbers are generated by the evidence processing system and so may not be complete.

- 1 Alliance Party of Northern Ireland ([DDD0020](#))
- 2 Amnesty International UK ([DDD0029](#))
- 3 Amnesty International UK and Family Planning Association ([DDD0032](#))
- 4 Bryson Charitable Group ([DDD0026](#))
- 5 Building Change Trust ([DDD0009](#))
- 6 Centre for Cross Border Studies ([DDD0003](#))
- 7 Chartered Institute of Environmental Health ([DDD0019](#))
- 8 Construction Employers Federation ([DDD0001](#))
- 9 Construction Employers Federation ([DDD0034](#))
- 10 Dr Cillian McGrattan ([DDD0007](#))
- 11 Dr Edward Cooke ([DDD0002](#))
- 12 Dr Edward Cooke ([DDD0004](#))
- 13 Dr Shaun McDaid ([DDD0017](#))
- 14 Education Authority ([DDD0036](#))
- 15 Federation of Small Businesses ([DDD0015](#))
- 16 Friends of the Earth ([DDD0027](#))
- 17 Green Party Northern Ireland ([DDD0041](#))
- 18 Hospitality Ulster & Retail NI ([DDD0033](#))
- 19 Landscape Institute Northern Ireland ([DDD0023](#))
- 20 Love Equality ([DDD0031](#))
- 21 Macmillan Cancer Support ([DDD0006](#))
- 22 Mid and East Antrim Borough Council ([DDD0021](#))
- 23 Mr Colm McGinn ([DDD0008](#))
- 24 NI Open Government Network ([DDD0010](#))
- 25 NIEL Brexit Coalition ([DDD0014](#))
- 26 NILGA ([DDD0035](#))
- 27 Northern Ireland Association of Social Workers ([DDD0005](#))
- 28 Northern Ireland Community Relations Council ([DDD0039](#))
- 29 Northern Ireland Council on Voluntary Action ([DDD0025](#))
- 30 Northern Ireland Environment Link ([DDD0018](#))
- 31 Northern Ireland Policing Board ([DDD0011](#))
- 32 Outreach and Engagement event: Derry-Londonderry ([DDD0040](#))
- 33 Panel of Experts on Redress ([DDD0030](#))

- 34 Professor Christopher McCrudden ([DDD0038](#))
- 35 Professor Jonathan Tonge ([DDD0016](#))
- 36 Professor Richard Wilford ([DDD0037](#))
- 37 Queen's University Belfast ([DDD0022](#))
- 38 The Bar of Northern Ireland ([DDD0013](#))
- 39 Ulster University ([DDD0012](#))
- 40 Unionist Voice Policy Studies ([DDD0028](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Bombardier	HC 533
Second Report	The land border between Northern Ireland and Ireland	HC 329
First Special Report	HM Government support for UK victims of IRA attacks that used Gaddafi-supplied Semtex and weapons: Government Response to the Committee's Fourth Report of Session 2016–17	HC 331
Second Special Report	Electricity sector in Northern Ireland: Government Response to the Committee's Third Report of Session 2016–17	HC 921