

# Governing without ministers

Northern Ireland since the fall of the  
power-sharing executive



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## About this report

This report looks at how Northern Ireland has functioned without ministers for nearly 1,000 days. It provides an analysis of the history of power-sharing, how Northern Ireland has operated since the collapse of the executive in 2017, the consequences of these arrangements, and how a future executive could be supported once restored.

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# Summary

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**Northern Ireland is a divided post-conflict society; it faces unique governance challenges. The 1998 Belfast/Good Friday Agreement brought an end to decades of violence, and introduced bespoke political institutions based on mandatory power-sharing between communities.**

These arrangements are arguably necessary for the very existence of devolved government in Northern Ireland, but the stability of such a government is heavily reliant on good relationships between political parties and leaders. These are not always present.

The history of power-sharing since 1999 has been rocky. The executive has collapsed several times, with the longest period lasting for five years between 2002 and 2007. Previously, during these periods the UK government has suspended devolution and imposed direct rule from Westminster, but following the most recent collapse, in 2017, it has not done so, preferring to maintain the pressure on the Northern Ireland parties to return to government. But that has not proved a sufficient incentive. As a result, Northern Ireland has been stuck in limbo – by mid-October 2019 it will have been without ministers for 1,000 days.

In the absence of an executive, the Northern Ireland Civil Service (NICS) has been responsible for the day-to-day running of the country, without ministerial direction. Senior officials have continued to carry out departmental functions and run public services, operating within the scope of the policy direction set by ministers before the collapse. They have also had to manage preparations for Brexit, working closely with the UK government, providing advice and information on the implications for Northern Ireland.

Westminster has legislated occasionally in devolved areas, but only when unavoidable – to pass budgets, set essential rates and extend the period for executive formation – and often at the last minute. More substantive policy changes, namely those on same-sex marriage and abortion, have been the result of backbench amendments rather than UK government strategy.

Everyone we spoke to in the process of researching this report agreed that the current situation was both unacceptable and unsustainable. This report highlights some of the consequences of such a prolonged period of governing without ministers:

- With the NI Assembly unable, and the UK Parliament unwilling, to legislate in devolved areas, progress on certain issues – such as domestic violence, judicial reform and compensation for victims of historical abuse – has stalled, even where there is political agreement.

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- As civil servants are unable to develop new policy and change policy direction, no progress can be made on the long-term public service reforms necessary to run Northern Ireland efficiently. David Sterling, head of the NICS, warned of the risk of “stagnation and decay”.
  - The North South Ministerial Council is not able to meet, meaning that opportunities for cross-border working, particularly on Brexit, have been missed.
  - In the absence of ministers and a sitting Assembly, there are few mechanisms in place to hold civil servants to account and scrutinise decision making. The UK’s Parliament in Westminster is not well-placed to fill this accountability gap.
  - Northern Ireland lacks proper political representation in the Brexit process, despite **being more acutely affected by the outcome than any other part of the UK**. There are no NI ministers to sit alongside their Scottish and Welsh counterparts in ministerial discussions. The unbalanced representation at Westminster, where Sinn Féin pursues its policy of ‘abstentionism’ (the party refuses to take its seats) means the Democratic Unionist Party (DUP) is in effect the voice of Northern Ireland, even though it represents only one perspective.
  - Power-sharing was designed to foster co-operation in a divided society; without it there is a long-term risk of deterioration of community relations.

Given the unique challenges of governing Northern Ireland, there are questions as to how effectively the issues raised above would have been dealt with had the executive remained intact throughout this period. This we cannot know, but one thing we do know is that without any ministers there have been no opportunities to address them at all. The UK government must make restoring durable and sustainable government in Northern Ireland a priority. But restoration alone does not guarantee effective government. Chapters 4 and 5 of this report explore some of the challenges a restored power-sharing executive will face and makes recommendations as to how it could be supported to overcome them.

We repeatedly heard Northern Ireland described as an ‘immature’ political system, with ministers focusing on short-term political point-scoring rather than making difficult long-term choices. Developing more ‘buttressing’ institutions could improve ministerial decision making.

Northern Ireland lacks a vibrant policy community – although as a consequence of Brexit, civil society groups have become increasingly vocal. Future government and civil society should build on this to reinvigorate wider policy engagement across Northern Ireland and facilitate greater interchange with other parts of the UK. Governance in Northern Ireland is more centralised than other parts of the UK, and its small scale means ministers tend to micro-manage; a wider review of the governance landscape would be welcome.

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Scrutiny in the Assembly is also underdeveloped. The creation in 2016 of an official opposition is a new feature that requires further development; committees have done some great work but are often not taken seriously by ministers. To effectively hold the executive to account, the Assembly needs to develop its own identity, distinct from government, and ensure it has the appropriate resources to effectively scrutinise it.

The NICS should be applauded for how it has handled the absence of ministers, but as the Renewable Heat Incentive Inquiry into the 'cash-for-ash' scandal is expected to outline in its report due in November 2019, there are areas – such as transparency, collaboration across departments and capability – where there is room for improvement. Reform is needed.

In Westminster and Whitehall, the NI-specific implications of policies or issues are rarely considered, the Northern Ireland Office (NIO) is marginalised, and there is a poor general understanding of local issues. Greater clarification of the role of the NIO and steps to improve Northern Ireland literacy are necessary.

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# 1. Introduction

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**This report looks at how Northern Ireland has been governed since the collapse of the power-sharing executive in January 2017.**

Northern Ireland has been without a functioning executive for over two and a half years. This hiatus comes at a time when the country finds itself at the unwelcome epicentre of the debate over the UK's terms of withdrawal and future relationship with the EU. The status of the Irish border, and the implications of Brexit for the Belfast/Good Friday Agreement (GFA), have become central to UK–EU negotiations, with the [Northern Ireland 'backstop'](#) presenting a potential barrier to the independent free-trade policy so desired by Brexiteers.\*

Brexit has profound effects for Northern Ireland – on its economy, on its security and on its people's everyday lives. The Police Service of Northern Ireland (PSNI) has warned that if a solution that avoids border infrastructure is not found, Northern Ireland's hard-won peace could be under threat.<sup>1</sup>

The political situation has been further complicated by the parliamentary arithmetic in Westminster. In normal times, those Northern Ireland MPs who take their seats (Sinn Féin refuses to do so) participate in parliamentary proceedings but do not exert a major influence at Westminster. The election of 2017 changed that; having lost its majority, the Conservative Party became dependent on its 'confidence and supply agreement' with the Democratic Unionist Party (DUP), which promised its support on both finance and Brexit votes.\*\*

This has given the DUP considerable influence on the course of Brexit. The absence of an executive to speak for the whole of Northern Ireland, and the non-representation of the nationalist community in the UK Parliament, means the only voice from Northern Ireland dissenting from the DUP line has been that of the independent MP Lady Sylvia Hermon.

The last time the executive collapsed, in 2002, the government swiftly imposed direct rule. This time, UK ministers have focused on restoring the power-sharing executive, rather than assuming responsibility for areas in Northern Ireland's devolved competence. There is a growing list of outstanding policy decisions; Northern Ireland civil servants do not have the authority to act and UK ministers are reluctant to fill the gap. This approach may be to put pressure on the parties to return to power-sharing or simply to avoid the need to legislate or to take responsibility for what should be local decisions made in Northern Ireland.

Meanwhile, it is the people of Northern Ireland who suffer the consequences of a lack of political leadership.

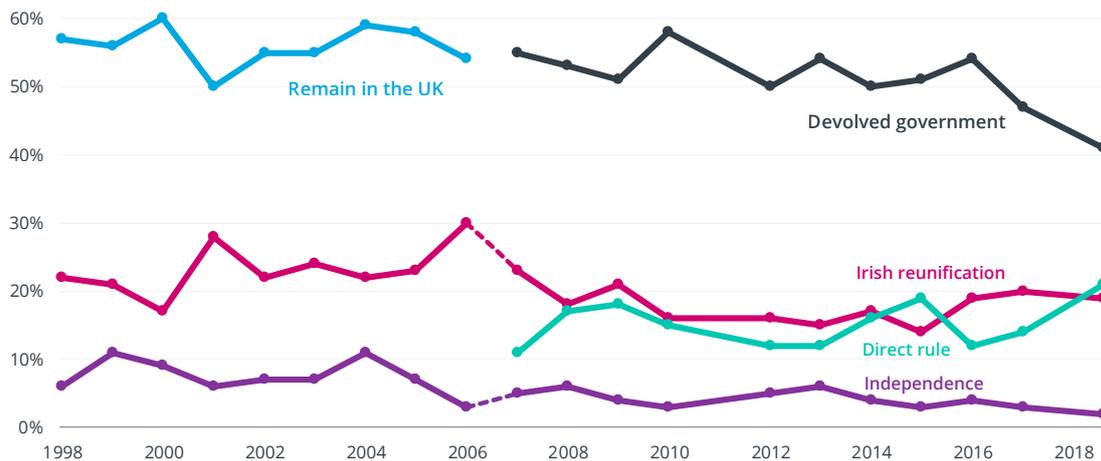
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\* Brexiteers objected to the backstop – designed to avoid a hard border on the island of Ireland – in Theresa May's Withdrawal Agreement on the basis that it would mean the UK remaining in a customs territory, and so would remove the UK's ability to vary its tariffs, a key component of trade deals.

\*\* The deal excluded "Northern Ireland Office (NIO) issues" but Brexit is not treated as an NIO issue despite its massive impacts on Northern Ireland.

Among the Northern Ireland public, since 1998 there has been a clear and consistent preference for devolved government over any other form of constitutional arrangement. Twice as many people in Northern Ireland prefer devolved government to either Irish reunification or direct rule from the UK, and there is little support for complete independence at all. But since the most recent collapse of the executive, support for devolution has been declining.

**Figure 1: Constitutional preference in Northern Ireland, 1998–2018**



Source: Institute for Government analysis of the Northern Ireland Life and Times Survey, 1998–2018, 'Other' and 'Don't know' responses not shown.

Underlying all this is the fragility of the political settlement in Northern Ireland, and a concern among many that a continued lack of institutions leaves a vacuum that extremists on either side may move to fill. Northern Ireland's unique political institutions are a testament to the problem of maintaining an acceptable approach to government in a historically divided community. It took the murder of journalist Lyra McKee in April 2019, and the outrage expressed at her funeral, to give renewed impetus to get the political parties back round a negotiating table.

In this report, we first look at the history of devolution in Northern Ireland, its difficult past and how this provides the context in which the most recent collapse must be situated. We then look at how Northern Ireland has been governed since the 2017 collapse of the executive. It has fallen largely to the Northern Ireland Civil Service (NICS) to keep the show on the road, managing the 'day-to-day' of government.

While doing this, the NICS, along with Northern Ireland Office (NIO), has also had to represent the interests of Northern Ireland in the UK government, to provide input for the Brexit negotiations and try to prepare Northern Ireland for a possible no-deal Brexit – with the UK's only land border with the EU on the island of Ireland.

The government's no-deal planning assumptions – [Operation Yellowhammer](#), released in September 2019 – state that in the event of no deal, the government will not impose new checks, to avoid a hard border. However, it also notes that "the model is likely to

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prove unsustainable due to significant economic, legal and bio-security risks and no effective mitigations to address this will be available".<sup>2</sup>

We argue that the UK government and the British political establishment has not treated Northern Ireland and the Irish dimension of Brexit with the seriousness it deserves since the 2016 referendum, and even following the collapse of the power-sharing executive.

Finally, we look at whether it might be possible after any future return of power-sharing to bolster NI political institutions to make it easier for local politicians to address longer-term issues. Northern Ireland needs a functioning government, one that is capable of representing the whole population and of not just governing (worthwhile as that is in itself) but governing well.

At the Institute for Government, based in London, we are very aware that we, in common with much of the wider policy-making community in Whitehall and Westminster, lack in-depth knowledge and understanding of Northern Ireland. Too often there is a tendency to put Northern Ireland's problems in a "too difficult" box and turn a blind eye to what is happening there. The authors are grateful to all those closer to the local situation who have shared with us their knowledge of the intricacies of Northern Ireland government and politics.

If nothing else, the key message of this report is that the current generation of Westminster politicians need to care as much about what is happening in Northern Ireland, and take their responsibilities with regards to it as seriously, as they do for the rest of the UK.

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## 2. A (short) history of devolution in Northern Ireland

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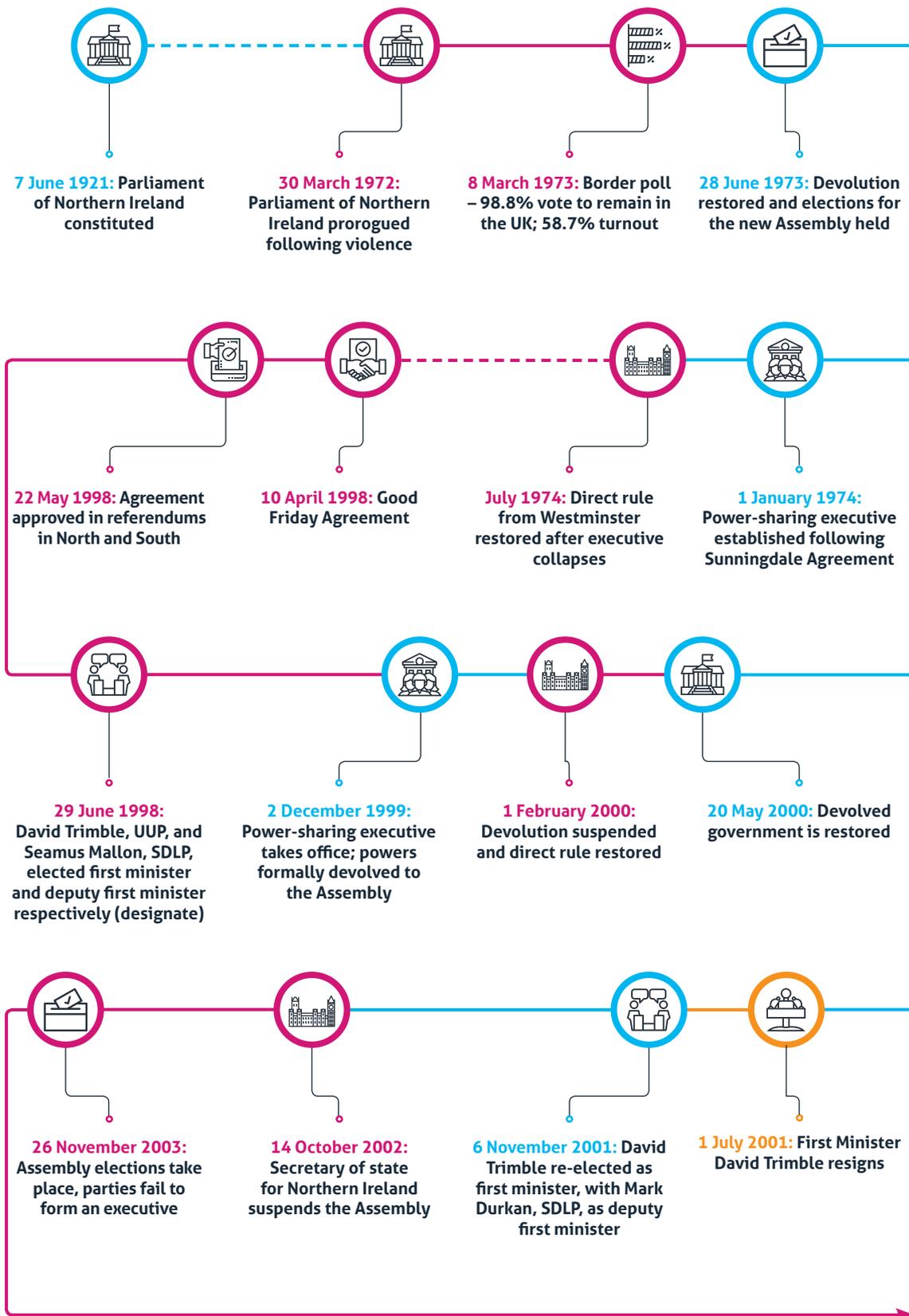
To understand the current situation in Northern Ireland, we must first understand its history. Those well versed in events may wish to skip ahead – but one of the comments we heard about UK politicians and civil servants dealing with Northern Ireland was that there was a lack of historical knowledge regarding the island of Ireland, so we will start with a brief background.

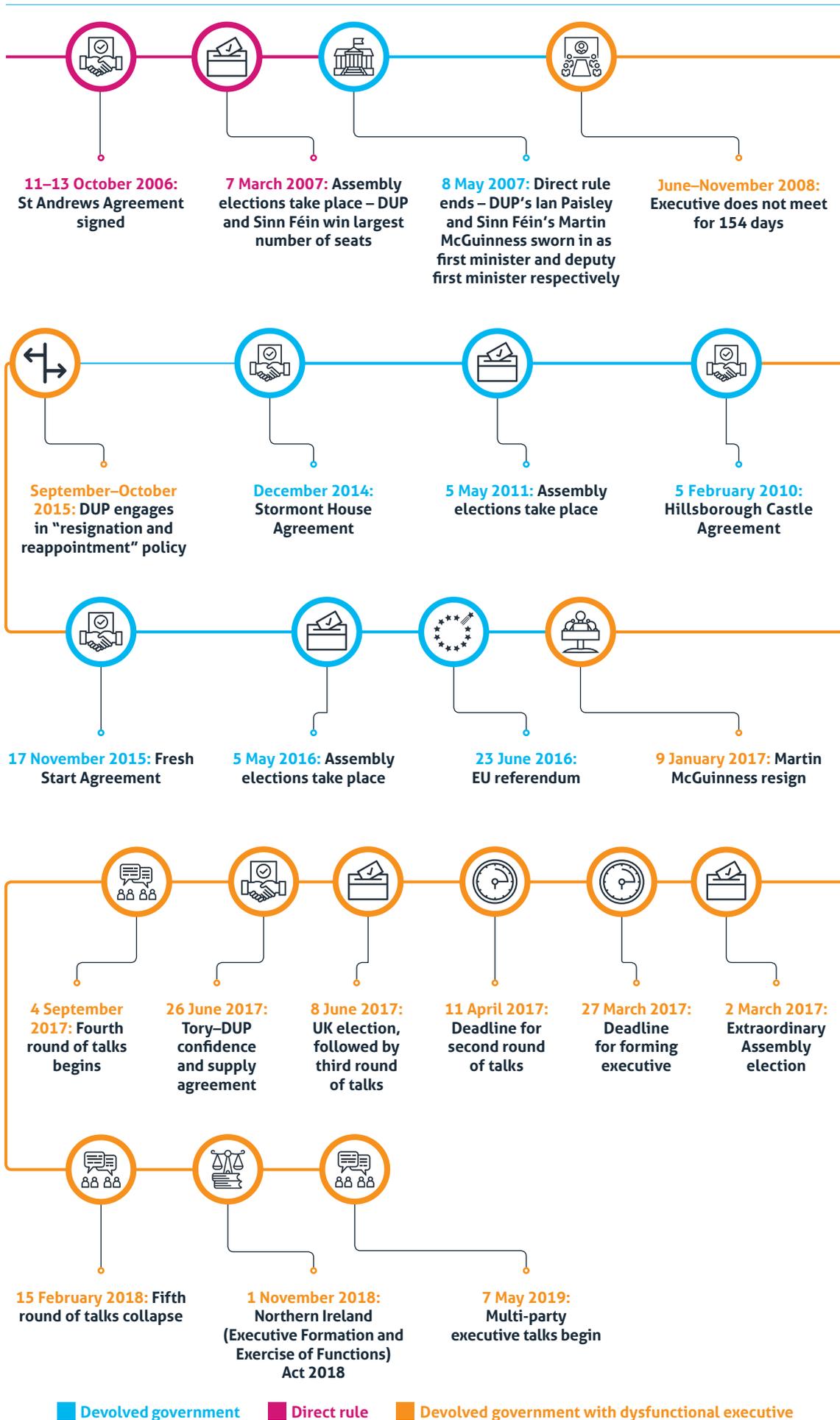
Devolution to Northern Ireland began much earlier than to Scotland or Wales, dating back to 1921. However, the unionist-dominated majoritarian system put in place by Westminster gave rise to discrimination against the Catholic minority, which culminated in a period of sustained civil unrest beginning in the 1960s and '70s that became known as 'the Troubles'. Between 1972 and 1998, devolution was suspended, and Northern Ireland was ruled directly from London.

After a quarter of a century of violence and years of tough negotiations, the Belfast/Good Friday Agreement (GFA), signed in 1998, restored devolution. The GFA established new political institutions based on power-sharing; these unique arrangements were designed to ensure that both communities would be represented in government and to protect minority rights. But they created unique challenges, too; those who had once fought against each other were now required to co-govern, and deal with divisive issues relating to the legacy of a conflict only recently ended.

For these reasons, government in Northern Ireland has been fragile, and the executive has frequently collapsed (see Figure 2). Political stability in the country requires good relationships and parity of esteem between both communities, placing a heavy burden on political leaders. In 2017, this trust once again broke down.

**Figure 2: Key events in the history of the Northern Ireland executive**





Source: Institute for Government analysis.

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## 1921–74: unionist rule

Devolution in Northern Ireland dates back to 1921. The Northern Ireland Parliament was originally constituted as part of Irish Home Rule arrangements through the 1920 Government of Ireland Act, which partitioned the island of Ireland. Independence followed for the southern 26 counties.

Northern Ireland was constituted from the six Ulster counties deemed to hold a majority for remaining part of the UK; the remaining three counties that made up Ulster, home to the highest proportions of Catholic populations (and so more likely to be nationalist), became part of the Irish free state, an independent Commonwealth dominion established under the 1922 Anglo-Irish Treaty.<sup>1</sup>

Northern Ireland was given powers over a range of devolved issues, but Westminster retained ultimate authority.<sup>2</sup> Many Irish nationalists saw these arrangements as illegitimate, and the 1937 Irish Constitution laid territorial claim to the whole island of Ireland.<sup>3</sup>

Under its majoritarian system, Northern Ireland's Protestant and unionist majority in the population translated into political control. The Parliament was dominated by the Ulster Unionist Party (UUP), which commanded a consistent majority of over 60% of seats in the Northern Ireland House of Commons between 1921 and 1972, and therefore control of government.<sup>4</sup> Only one law tabled by a nationalist politician became law in this period – the Wild Birds Protection (NI) Act 1931.<sup>5</sup>

Unionist control tightened over time as the Parliament took steps that further contributed to the under-representation of nationalists. The system of proportional representation that the UK government had put in place at the time of the 1921 devolution was abolished – first for local elections and later for parliamentary elections – in favour of a first-past-the-post system that resulted in fewer nationalist-held seats.<sup>6</sup> The Parliament redrew electoral boundaries and imposed voter restrictions that disproportionately affected nationalists. Protestants also dominated the police force and the judicial system, and institutional discrimination against Catholics was common in public sector employment, housing and in the allocation of education revenues.<sup>7</sup>

This situation ultimately led to a civil rights movement in Northern Ireland in the 1960s, following the US example. The unionist government's resistance to the movement, and banning of protest marches, led to increased civil unrest, which escalated into a sustained period of violence that became known as 'the Troubles'.

In 1969, the Northern Ireland government asked the UK government to deploy the British Army to Northern Ireland to support the police in restoring order. The security response that followed generated a significant backlash and a further escalation of violence. The UK government concluded that it needed to take over responsibility for security in Northern Ireland; the Northern Ireland unionist government's resistance to this, seen as a betrayal by London, led to the prorogation of the Northern Ireland Parliament at Stormont in 1972, and its abolition in 1973.

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## **1974–1998: extended direct rule**

In June 1973, following the Sunningdale Agreement, the UK government tried to establish a new Assembly, with a power-sharing executive, but it lasted only five months before collapsing due to a unionist strike. Direct rule from Westminster was imposed in 1972, and again in 1974, with the secretary of state for Northern Ireland and his junior ministers taking on ministerial powers within Northern Ireland and legislation. The NI secretary was given powers to legislate for issues that had previously been matters for the NI legislature, through Orders in Council – a type of secondary legislation – with UK parliamentary approval.<sup>8</sup>

Northern Ireland remained under Westminster control for the subsequent 25 years, while the unrest and violence continued. The conflict led to an estimated 3,532 deaths between 1969 and 2001; in its worst year, 1972, 480 people, out of a population of 1.5 million, died.<sup>9</sup>

During the 1990s, the search for a way to end the conflict intensified – with a key marker of progress coming by way of the Downing Street declaration of 1993 in which the UK declared that the future of Northern Ireland was a matter for the people of Northern Ireland alone. The final breakthrough came in April 1998 when lengthy multi-party negotiations resulted in the Belfast/Good Friday Agreement (GFA), which paved the way for the restoration of devolution in Northern Ireland.

The agreement was supported by the UK and Irish governments and by eight of the 10 political parties in Northern Ireland who had participated in the negotiations (the DUP and the UK Unionist Party opposed it) and was endorsed by 71.1% of Northern Ireland voters and 94.4% of voters in the Republic of Ireland in concurrent referendums held on 22 May 1998.<sup>10</sup>

## **1998: the Belfast/Good Friday Agreement**

Although we focus below on the institutional arrangements pertaining to Northern Ireland's governance, a critical element of the GFA was the creation of arrangements that allowed both sections of the community to maintain and express their identity, and for there to be parity of esteem and equality between these identifies. As Jonathan Powell, Tony Blair's former chief of staff and one of the key architects of the agreement, wrote in 2018: "The Good Friday Agreement was all about identity. People in Northern Ireland could feel British, Irish or both."<sup>11</sup>

The agreement recognised and guaranteed Northern Ireland's place in the UK on the basis of the wishes of the majority of people in Northern Ireland – but also the right of the people of the island of Ireland to exercise their right to self-determination and bring about a united Ireland with the consent of both north and south.

As part of the agreement, UK legislation provided for a possible referendum on Northern Ireland's constitutional future – known informally as a border poll – "if at any time it appears likely to [the NI secretary] that a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland".<sup>12</sup> In parallel to this, the Irish government amended

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its constitution to give up its territorial claim on Northern Ireland, and replaced it with an entitlement for all those born in the island or Ireland to be part of the Irish nation, and an aspiration to unite the people of Ireland.<sup>13</sup>

The GFA outlined arrangements for a new set of relationships: within Northern Ireland; between Northern Ireland and the Republic; and between the UK and Irish governments. The agreement outlined plans for the establishment of three strands of administrative relationships.

- **Strand one** concerned the democratic institutions in Northern Ireland, providing for the operation of devolved government. Central to this were arrangements for a power-sharing executive.<sup>14</sup>
- **Strand two** concerned north–south co-operation. A North South Ministerial Council (NSMC) bringing together the first minister and deputy first minister, the taoiseach (the Irish prime minister) and relevant ministers to facilitate working on a cross-border basis would be established, along with a clutch of north–south implementation bodies such as InterTrade Ireland.
- **Strand three** focused on east–west co-operation, and outlined two different institutions. The British-Irish Council (BIC), which would comprise representatives from the British and Irish governments, the devolved institutions, and the Isle of Man and the Channel Islands; and the British–Irish Intergovernmental Conference (BIIC), which would promote “bilateral cooperation” between the British and Irish governments. The BIIC would allow the Irish government to put forward views and proposals on non-devolved matters concerning Northern Ireland; members of the Northern Ireland administration would also be present at meetings.

### The devolved institutions

The Northern Ireland Act 1998 transferred powers over areas such as health and social care, education, housing, transport and social security to the Northern Ireland Assembly – although until recently social security policy operated according to the ‘principle of parity’.\* Areas such as the constitution, defence, immigration and national security were designated ‘excepted matters’ and remained in the exclusive competence of the UK Parliament.

A third category of ‘reserved powers’ could be moved between the excepted to transferred categories by Order in Council following a cross-community vote in the Assembly – this category included powers over policing and justice.

The extent of devolution since 1998 reflects both practical geography and the previous history going back to 1921; Northern Ireland, despite its small size, has more extensive devolved powers than the other devolved nations. Unlike Scotland and Wales, Northern Ireland has its own civil service, which is distinct from the UK civil service.

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\* Welfare spending was directly funded by the UK government on the understanding that ministers in the UK government and NI executive would consult each other with a view to ensuring that benefit entitlements are the same everywhere in the UK.

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## **The Assembly**

The Northern Ireland Assembly was to consist of 108 members elected by single transferable vote, a proportional electoral system.\* Several safeguards were built into the Assembly's operation, including a requirement to comply with the European Convention on Human Rights and any subsequent human rights legislation. Statutory parliamentary committees were established to shadow each of the executive departments. Committee membership and committee chairs would be allocated on a proportional basis according to party strength.

The GFA also made arrangements to ensure that key decisions would be taken on a cross-community basis; either by:

- parallel consent: this would require a majority of members, with a majority of both of nationalists and unionists present and voting
- a weighted majority: this required the consent of 60% of members, including 40% each of nationalists and unionists present and voting.\*\*

At the first meeting of the Assembly, members would be required to register a designation of their identity – nationalist, unionist or other – for this purpose.

Certain key decisions – such as the election of the speaker of the assembly, the joint election of first minister and deputy first minister, the standing orders that regulate the way the Assembly conducts business, and budget allocations – were designated in advance as requiring cross-community support. A group of 30 Assembly members would also be able to trigger a requirement for a cross-community vote through a 'petition of concern' – effectively enabling one community to block decisions, even if that decision commands a majority in the Assembly.

## **The executive**

The agreement specified that executive authority would be exercised by the first and deputy first minister, with joint and equal powers, with up to 10 ministers. The GFA outlined arrangements for jointly electing the first and deputy first minister on a cross-community basis, using the parallel consent procedure.\*\*

Under its terms, if either the first minister or the deputy first minister ceased to hold office – because they ceased to be a member of the Assembly or because they resigned – the other would also cease to hold office. New elections for both roles were required to be held within six weeks.

The ministers constituted an executive committee, a forum for debate and "recommending a common position where necessary", which suggests no strict collective responsibility. Ministers were given "full executive authority in their respective areas of responsibility".<sup>15</sup> However, the agreement stated that each year the executive committee must agree a

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\* This was reduced to 90 members following the 2017 Assembly election.

\*\* Although this term is not used in the 1998 Act.

\*\*\* The procedure for deciding first and deputy first ministers has since been changed, as discussed later in this section.

programme for government, including a budget that must be approved by the Assembly on a cross-party basis.

The power-sharing executive could be described as a mandatory coalition: ministerial posts being allocated to political parties according to party strength in the Assembly using the d’Hondt system – where a mathematical formula allocates both the number of executive posts to which a party is entitled and the order in which they choose their portfolio.<sup>16</sup>

Under this system, most major parties represented in the Assembly, including smaller ones, are entitled to be represented in government. Each party entitled to ministerial office(s) may nominate a person to hold that office, or decline to nominate, in which case the next party in line may nominate a candidate for the role.<sup>17</sup> If a ministerial office becomes vacant, it is filled by the same party, unless they decline to nominate a person.

### Civic forum

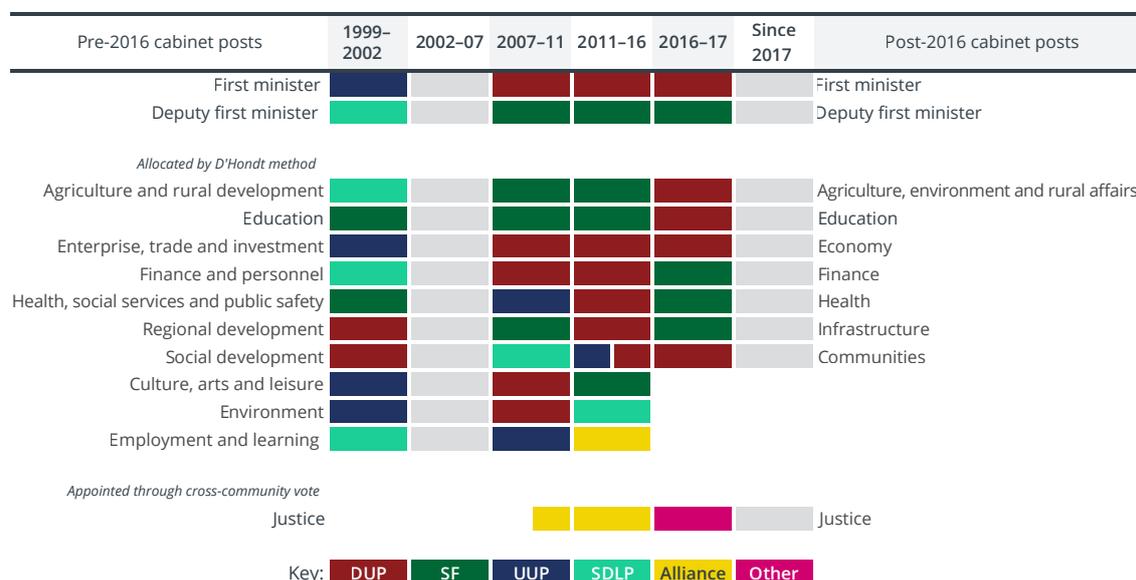
The GFA contained a commitment to establish the Civic Forum for Northern Ireland, to be comprised of representatives from business, trade unions and other sectors. The role of the forum was to “act as a consultative mechanism on social, economic and cultural issues”, and would be supported by the first and deputy first minister.

### 1999–2002: a rocky start to power-sharing

The first elections to the new Assembly took place in June 1998, and the first power-sharing executive took office in December 1999. The executive consisted of 10 ministers – three UUP, three Social Democratic and Labour Party (SDLP), two DUP and two Sinn Féin – although the DUP refused to take part in executive business.

David Trimble of the UUP and Seamus Mallon of the SDLP (both seen as the more moderate unionist and nationalist parties – both of whom supported the GFA) were the first to be elected to the roles of first and deputy first minister respectively.

**Figure 3: Cabinet posts in the Northern Ireland executive by party, 1999 to 2017**



Source: Institute for Government analysis of NI executive posts.

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The new institutions lasted just three months before the Assembly was first suspended. The UUP's agreement to enter into government with Sinn Féin was conditional on the IRA decommissioning its weapons; in both David Trimble's and the UK government's view, progress had not been sufficient.<sup>18</sup> The UK Parliament immediately passed the Northern Ireland Act 2000 which suspended devolution and imposed direct rule from Westminster.<sup>19</sup>

### **Box 1: Direct rule and the Northern Ireland Act 2000**

Section 1 of the Northern Ireland Act 2000 suspended devolved government in Northern Ireland. This meant that the Assembly could not meet, conduct business or pass legislation and that all ministers, junior ministers, and committee chairs and deputy chairs ceased to hold office.

While section 1 was in force, the UK government had the power to legislate for Northern Ireland by Order in Council – a type of secondary legislation – on any area that had been within the devolved competence of the Assembly as per the Northern Ireland Act 1998. This power could not be used in relation to excepted areas.

The draft Orders in Council needed approval in both Houses of Parliament before they could come into force unless the secretary of state for Northern Ireland advised that they were urgent, in which case they required approval within 40 days of being made.

Under direct rule, the NI secretary (and, in practice, NI Office junior ministers) were each put in charge of a portfolio of Northern Ireland departments.

The Act enabled the NI secretary to make a "restoration order" resuming devolution, but it also gave them the power to revoke that order so that section 1 came into force again.

The Assembly was restored two months later but, in July 2001, David Trimble resigned over the same issue. To avoid calling an election, as required by Northern Ireland Act 1998, the UK government suspended the Assembly twice for a day at a time, using the revoking powers in the 2000 Act, to allow extra time to resolve the situation.<sup>20</sup>

In October 2001, the IRA announced a decommissioning progress and the executive was restored the following month with another SDLP member of the legislative assembly (MLA), Mark Durkan, replacing Seamus Mallon as deputy first minister. However, relations within the executive worsened following reports of paramilitary activity, which led unionist members to announce their intention to resign; the NI secretary suspended the Assembly a year later, citing a "lack of confidence and trust between the partners in power-sharing".<sup>21</sup> Northern Ireland then re-entered a prolonged period of direct rule.

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## 2002–07: direct rule

The Assembly was dissolved in April 2003 in anticipation of elections, which, after a delay, took place in November. Both the DUP and Sinn Féin increased their number of seats, making them the largest parties, overtaking the UUP and SDLP, respectively, for the first time.

Recognising that joint election of first and deputy first minister was unlikely, the NI secretary decided not to convene the Assembly, which would have triggered a six-week period after which an election would be required. Instead, the UK and Irish governments opened a review of the operation of the GFA.<sup>22</sup>

The review stalled after the Progressive Unionist Party pulled out in March, but talks on forming an executive resumed in early 2004. Hopes for an imminent agreement were high in late 2004 but it was not forthcoming. Following the completion of IRA decommissioning in September 2005, and successful multi-party talks, the St Andrews Agreement was reached in October 2006, paving the way for the restoration of devolution.

## Governance under direct rule

From 2002 to 2007, Northern Ireland remained under direct rule. The administration operated similarly to the way it did in the 1970s and '80s; Northern Ireland Office (NIO) junior ministers were each given day-to-day responsibility for several NICS departments. According to senior NIO officials at the time, the level of ministerial intervention varied depending on the minister, but most were hands-off, visiting the departments under their control infrequently. However, even more dedicated ministers struggled to effectively manage the workload of the multiple departments under their control.

Different secretaries of state took different approaches. Paul Murphy took a much less high-profile approach than Peter Hain, who pursued a big reform agenda – including consolidation of local authorities and plans to tackle the question of water charging. The reform proposals were designed to encourage the parties to re-establish government and prevent these unpopular policies from being implemented.<sup>23</sup>

## 2006: St Andrews Agreement

The St Andrews Agreement (SAA) covered a range of issues, including a commitment to work towards the devolution of police and justice powers, a programme of work on equality and human rights, and a financial package for the newly restored executive. As part of the SAA, a statutory ministerial code was proposed – the first in the UK – to improve the accountability of ministers and to foster more collective decision making.<sup>24</sup> The code would:

“provide for the discussion of and agreement on any issue which is significant or controversial and:

(a) clearly outside the scope of the agreed Programme for Government or

(b) which the first minister and deputy first minister agree should be brought to the executive.”<sup>25</sup>

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The parties also agreed to introduce additional mechanisms through which executive decisions could be challenged. Three members of the executive would be able to require an executive decision to be taken on a cross-community basis if consensus could not be achieved, and the petition of concern would be extended to enable 30 MLAs to refer an executive decision for executive review, building on the principle established for Assembly decisions.

Changes were also made to the process for appointing the first minister and deputy first minister. Instead of standing jointly for election – an unpalatable option for both the DUP and Sinn Féin, who did not want to vote for each other – the largest party would make a nomination for first minister, and the largest party in the second designation (in practice a unionist and a nationalist) would make a nomination for deputy first minister.

Also included in the SAA was the UK government's commitment to repeal the Northern Ireland Act 2000, which had enabled the NI secretary to suspend devolution by order. As a result, imposing direct rule in the future would require primary legislation to be passed in the UK Parliament.

### **2007–11: relative stability**

In the March 2007 Assembly elections, the DUP and Sinn Féin both increased their number of seats, retaining their status as largest and second largest parties respectively. In May, the leaders of the parties agreed to set up an executive, and Ian Paisley and Martin McGuinness were nominated as first minister and deputy first minister respectively under the new SAA procedure. In June 2008, Paisley retired and was replaced by Peter Robinson.<sup>26</sup>

This Assembly term represented a period of relative stability for the executive, with no suspensions in devolution. However, disagreements over the devolution of policing and justice meant that the executive did not meet for 154 days, from June to November 2008. While the devolution of these powers had been agreed in principle in the SAA, the actual transfer of them required consent in the Assembly, executive and UK Parliament and discussions continued on a few matters of detail about how the new arrangements would operate.<sup>27</sup>

Agreement was eventually reached in February 2010 through the Hillsborough Castle Agreement, and in March the Assembly voted to approve the devolution of powers.<sup>28</sup> Special arrangements for approving the appointment of a justice minister through a cross-community vote were agreed, and leader of the cross-community Alliance Party, David Ford, became the first office holder in 2010. The executive lasted the full Assembly term until elections were held in May 2011.

### **2011–16: outward stability – but rising tensions**

The 2011 elections resulted in little change to the distribution of seats in the Assembly, with Peter Robinson and Martin McGuinness re-appointed as first and deputy first ministers.<sup>29</sup> Like the previous assembly term, the executive remained intact throughout this period.

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Executive function was relatively harmonious at the beginning of the term, but tensions flared up in 2013 following disputes over the displaying of flags, seen as symbols of sectarian allegiances. In response, the Northern Ireland parties convened all-party talks, chaired by senior US diplomats Richard Hass and Meghan O’Sullivan. The parties made progress in several areas but failed to reach an agreement.<sup>30</sup>

In 2014, the executive became deadlocked over welfare reform. The UK coalition government had made significant reforms of the welfare system in the rest of the UK without taking account of the impacts in Northern Ireland, which would have been expected under the principle of parity. Sinn Féin refused to implement the reforms, leading to financial penalties, with the UK government reducing the block grant.\* As a result, parties were unable to agree a budget, creating a political crisis.<sup>31</sup>

Executive collapse was avoided after successful talks between the main political parties and the UK and Irish governments, culminating in the Stormont House Agreement (SHA) in December 2014. The Northern Ireland parties agreed to implement the welfare reforms in return for financial support and mitigation measures.<sup>32</sup>

The SHA also contained a number of other reforms including a commitment from the UK government to devolve corporation tax, to enable Northern Ireland to compete with the low corporation tax levied in the Republic of Ireland; a reduction in the number of government departments and the size of the Assembly; provision to allow the formation of an ‘official opposition’ for parties who decline to be part of the executive; and the establishment of bodies to consider the legacy of the Troubles.<sup>33</sup>

While the agreement smoothed things over temporarily, relations within the executive worsened after reports of IRA activity. The UUP quit the executive and the DUP engaged in a ‘resignation and reappointment’ policy between September and October 2015, leaving ministerial positions vacant and preventing them from being filled by the next entitled party.<sup>34</sup> During this period, Peter Robinson was also implicated in a corruption scandal, centring around the National Assets Management Agency (Nama), a body created by the Irish government to deal with toxic loans after the 2008 property crash. DUP politicians were accused of profiting from the sale of Nama’s Northern Ireland loan portfolio.<sup>35</sup>

Following further multi-party talks with the UK and Irish governments in November 2015, the Fresh Start Agreement was reached, setting out a plan to implement the SHA. The parties agreed that welfare reform would be legislated for in Westminster and approved in the Assembly through a legislative consent motion. Peter Robinson stood down as both first minister and leader of the DUP in January 2016, to be succeeded by Arlene Foster. Despite several crises and near collapses, the executive survived its second full term.

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\* The funding for devolved administrations that comes directly from the UK government, as calculated by the Barnett formula.

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## 2016–17: the executive collapses

The May 2016 Assembly election once again resulted in little change in composition, with the DUP and Sinn Féin forming the two largest parties. As provided for in the Stormont House Agreement, the SDLP and UUP chose not to take up ministerial positions and join the executive, and instead formed the first 'official opposition'.<sup>36</sup> The Alliance Party also declined to stay on in the justice department after the two main parties rejected its programme – the justice portfolio was taken by an independent – creating Northern Ireland's first two-party government.

The executive was formed within the context of the EU referendum campaign, during which four of the five main parties backed Remain, with only the DUP advocating a Leave vote. Just over a month after the executive took office, voters in Northern Ireland split 56% to 44% in favour of the UK remaining in the EU, contrary to the UK-wide majority in favour of Brexit.<sup>37</sup>

The referendum result put additional strain on the executive, triggering renewed calls from Sinn Féin for a border poll,<sup>38</sup> but the parties were still able to work together. In August 2016, the first minister and deputy first minister wrote a joint letter to the new UK prime minister, Theresa May, highlighting initial Northern Ireland-specific concerns in relation to Brexit and calling for further engagement with the Northern Ireland government.<sup>39</sup> Civil servants reported feeling a sense of optimism during the first six months of the new term, with a belief that the parties were working well together and starting to tackle difficult policy issues like reform of health services.

However, personal relationships between leading politicians were worsening. The final trigger for collapse was the 'cash for ash' scandal, surrounding the Renewable Heat Incentive (RHI) Scheme. Allegations that the scheme – whereby businesses were paid subsidies to move from fossil fuel to renewable heating systems – was being abused emerged in January 2016.<sup>40</sup> In the absence of a cap on the amount users could claim, it was possible to earn more money in subsidies than the cost of fuel burnt.

In December 2016, Northern Ireland's Department for the Economy said the scheme would be a 'maximum burden' on the budget of £490 million (m) over the next 20 years,<sup>41</sup> but an impact assessment produced for UK legislation introducing controls in 2018 calculated the cost at £700m.<sup>42</sup> The scheme was closed, and an inquiry initiated.

First Minister Arlene Foster – who had been responsible for the department that oversaw the scheme when it was introduced – faced calls to resign, but resisted. In response, deputy First Minister Martin McGuinness stood down in January 2017, automatically removing Foster from her post.<sup>43</sup> Sinn Féin refused to appoint a replacement for McGuinness, and so in accordance with the Northern Ireland Act 1998, the NI secretary called an election.

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## 2017– present: attempts to restore power-sharing

In March 2017, elections took place to the slimmed down Assembly – a reduction from 108 to 90 seats having been agreed as part of the Fresh Start Agreement. The DUP and Sinn Féin retained the highest shares of first preferences, although the gap between them narrowed further to 28.1% and 27.9%, respectively. For the first time in the history of Northern Ireland, there was no unionist majority in the Assembly.<sup>44</sup>

The statutory time limit of 14 days for executive formation was extended after no agreement was reached following the first round of talks. The second round of talks also failed, leading to a further extension. The third round was interrupted by the UK general election in June 2017, following which the Conservative Party and the DUP entered into a confidence and supply agreement.<sup>45</sup>

The fourth round of talks did not begin until September that year, but once again the parties could not come to an agreement. Hopes were high for a breakthrough in February 2018, following a fifth round of talks, but they too collapsed due to a disagreement over the Irish Language Act; reports suggested that the DUP had agreed in principle but faced opposition from its membership.<sup>46</sup>

New talks were proposed in February 2019 but were rejected by Sinn Féin, who called them a 'sham'.<sup>47</sup> In April 2019, journalist Lyra McKee was shot and killed while reporting on rioting in Derry/Londonderry.<sup>48</sup> Following mounting pressure on political leaders to come together, including an incendiary and damning speech delivered at McKee's funeral, talks resumed on 7 May 2019; despite early reports of progress,<sup>49</sup> they appeared to have stalled.

Since the executive collapsed, the UK government's focus in Northern Ireland has been on trying to restore it alongside the Irish government. Talks are on their sixth round, and two and a half years after the latest collapse, restoration of the executive does not look to imminent.

Brexit complicates the context further, and would put an enormous strain on even a well-functioning executive. As it is, the DUP and Sinn Féin have taken over from more moderate unionists and nationalists, making consensus less likely than in previous times, and relations between the UK and Irish governments are similarly strained: the latter sees itself as a co-guarantor of the GFA, a role the UK government is not comfortable with.

Unlike previous periods of government instability, Westminster has made no moves to introduce direct rule. That means that it has been left to the NICS to continue to administer Northern Ireland in the absence of ministers. In the next chapter we look at how that has worked and the consequences for Northern Ireland of nearly 1,000 days without an executive.

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## 3. Administering Northern Ireland without ministers

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Unlike previous occasions when the power-sharing executive has collapsed, the UK government has not suspended devolution and introduced direct rule from Westminster.

Since the 2017 Assembly elections, the statutory period for forming an executive has been repeatedly extended by legislation in Westminster, preventing another election. For the last two and a half years, the Northern Ireland administration has continued to operate, but without ministers to give political direction.

### **How has Northern Ireland been governed in the absence of ministers?**

With the number of days without ministers set to reach 1,000 by mid-October 2019, the first part of this chapter looks at how Northern Ireland has been administered since 2017.

#### **The NICS can make decisions, but only within the context of existing policy**

In the absence of an executive, departments operate as before, but without the usual ministerial direction or decision making. To give those decisions political cover, the Northern Ireland Civil Service (NICS) permanent secretaries make decisions within the scope of the policy direction set by ministers prior to the executive's collapse. They are largely guided by the 2016 Draft Programme for Government, the plan agreed when the executive was formed after the 2016 Assembly election, which has been operationalised by the NICS in the form of an Outcomes Delivery Plan.<sup>1</sup>

The ability of civil servants to make decisions in the absence of ministers has been subject to judicial review. A decision involving the Hightown incinerator on the outskirts of Belfast was overturned; the scheme had been rejected by a minister in 2015 but was approved by the Department of Infrastructure in September 2017. Northern Ireland's High Court ruled that the department did not have the power to approve the scheme without ministers.<sup>2</sup>

The judgment said that although the 1998 Northern Ireland Act states that devolved executive powers may be exercised by ministers or departments, section 4 of the Departments (Northern Ireland) Order 1998 stated that the "functions of a department shall at all times be exercised subject to the direction and control of the minister."<sup>3</sup> Therefore, the case had wider implications for governance in Northern Ireland in the absence of ministerial decision making, raising concerns that civil servants' limited decision-making capacity would be further constrained.

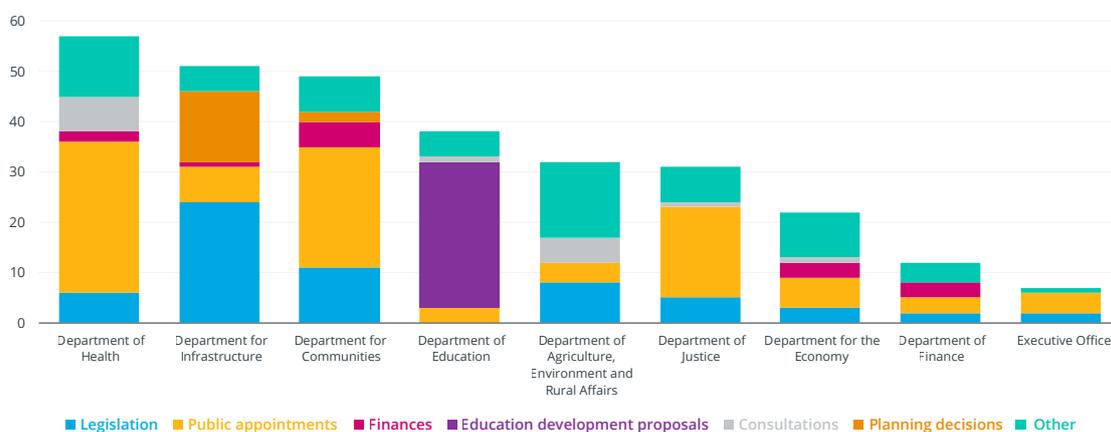
In response, the UK government introduced legislation to "clarify that a senior officer of a Northern Ireland department is not prevented from exercising functions of the department during the period for forming an executive where it is in the public interest to do so".<sup>4</sup>

That legislation – the Northern Ireland (Executive Formation and Exercise of Functions) Act (EFEF) 2018 – passed in November 2018 also obliges the NI secretary to publish guidance on decision making by departments. This guidance states that departments should take into account:

- the need to “maintain the delivery of public services as sustainably and efficiently as possible”
- that “the priorities and commitments of the former executive and minister(s) should be followed unless there is an exceptional circumstance such as a significant emerging challenge, new strong objective evidence, or significant changing circumstances”
- that “opportunities should be taken to work towards the 12 outcomes published in the 2018–19 Outcomes Delivery Plan”
- “the consequences of deferring decisions, particularly in terms of the financial, economic, environmental, legal or social impact should be considered and significant detriment avoided.”<sup>5</sup>

The decisions taken in accordance with the guidance are reported on a monthly basis and are summarised in Figure 4. The number of decisions taken by each department varies significantly.

**Figure 4: Decisions made under the EFEF Act by department, November 2018 to June 2019**



Source: Institute for Government analysis of reports on decisions taken by Northern Ireland departments in accordance with guidance issued by the secretary of state. Decisions involving multiple board members of the same board coded as one decision; decisions to make multiple pieces of secondary legislation for the same or similar purpose(s) coded as one decision.

The largest number of decisions relate to public appointments – for example, making new appointments, extending existing terms or making recommendations for the boards of public bodies to ensure their continued functioning. The second largest number of decisions relate to legislation.

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Although in the absence of an Assembly primary legislation cannot be made in Northern Ireland, NI departments still make subordinate legislation and statutory rules, for example, for the purposes of maintaining parity with the UK. Some types of decisions are particular to that department's work; such as the majority of decisions taken in the Department of Education, which have been on school development proposals. Similarly, in the Department of Infrastructure most decisions relate to planning.

The highly centralised nature of government in Northern Ireland means that some planning decisions that would in the rest of the UK fall to local authorities come to the Department for Infrastructure for decision. The judgment on the Hightown incinerator meant officials had to go back and run decisions through a revised process so they could not be challenged. So far, officials seem to have managed to keep up a flow of decisions, signing things off when assessment processes have been completed, although a backlog remains

More generally, departments have taken different approaches to working without ministers depending on the nature of the departmental work, the level of ministerial intervention when the executive was running, the level of clear policy direction pre-collapse and, in some cases, the individual personalities of senior officials and their willingness to take possibly risky decisions, for example, the Department of Health (DoH) benefits from a 10-year plan *Health and Wellbeing 2026: Delivering Together*, approved by the executive before its collapse and published in May 2016.

In an interview with *Civil Service World*, DoH Permanent Secretary Richard Pengelly, said that "the first couple of years are largely getting your sleeves rolled up and starting to do the hard graft"<sup>6</sup> so civil servants have been able to get on with delivering this. By contrast, there had been little new policy direction from ministers in the Department of Education prior to the collapse. As such, the focus of the department has been on maintaining the current system, not reforming it.

### **Officials have had to manage preparations for Brexit without local political input**

One area that is certainly not business as usual is preparing for Brexit. Officials have had to make preparations without guidance from ministers – or any clear policy direction prior the executive collapse. Therefore, the role of the NICS has largely been restricted to providing factual information and advice to the UK government.

NICS departments have worked closely with Whitehall departments on Brexit preparations, particularly on the drawing up and passing of hundreds of statutory instruments under the European Union (Withdrawal) Act 2018, necessary to ensure that the statute book continues to function after exit day.

Intergovernmental working at an official level has generally been good, but there have been concerns that Northern Ireland-specific issues are not being adequately considered in UK preparations. This is in part because UK officials have been reluctant to force their ministers to confront the issues associated with managing the land border and north–south relations after Brexit.

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There is a general wariness in Whitehall to share information on Brexit preparation with the devolved administrations – a consequence of the UK government’s distrust of Holyrood – hampering the ability of civil servants in the devolved administrations to plan accordingly. A lack of knowledge, and a failure to think through the implications of UK-wide initiatives for Northern Ireland, have also meant the NICS has repeatedly had to draw issues – such as unintentionally inflammatory communications\* – to the attention of Whitehall colleagues.

The head of the NICS has become a regular attendee at Wednesday morning meetings (the weekly gathering of departmental leaders in Whitehall), since no-deal planning ramped up in January 2019. More recently, the Police Service Northern Ireland (PSNI) and Northern Ireland representatives from the business community, farming and civil society have taken part in the government’s advisory groups on alternative arrangements – looking at technological solutions to avoid border infrastructure on the island of Ireland – established in June 2019.

NICS officials attend intergovernmental forums, in lieu of ministers, including attending the joint-ministerial committee (JMC) meetings at which the UK and devolved governments discuss Brexit and seek to resolve disputes. Although the officials from Belfast can speak, the ministers from Scotland and Wales take precedence and the NICS officials do not raise the same sort of political objections as the Scottish and Welsh governments (although we have heard anecdotal evidence that Scottish and Welsh ministers often feel obliged to highlight issues that affect Northern Ireland in such fora).

Also in the absence of ministerial direction, Northern Ireland has not been able to develop clear thinking on its post-Brexit approach in key areas such as agriculture, fisheries and environmental protection. This has hampered its ability to feed into the discussions on the UK-wide commons frameworks necessary to ensure co-ordination and consistency across the UK in certain devolved policy areas that are to be repatriated from the EU.

The lack of ministerial voice from Northern Ireland places an additional responsibility on the Northern Ireland secretary to make sure that Northern Ireland’s concerns are properly addressed in all UK government Brexit discussions – and to make sure that they fully reflect the whole range of local concerns. While Theresa May’s Northern Ireland secretary, Karen Bradley, was on her key EU exit committee, her successor, Julian Smith, does not sit on the XS Committee, the Johnson administration’s key EU exit strategy committee.<sup>7</sup>

### **Westminster has only been prepared to legislate in devolved areas when unavoidable**

Since the collapse of the executive, Westminster has taken a hands-off approach to government in Northern Ireland, intervening in devolved areas only when absolutely unavoidable. There are several factors guiding this approach. The UK government’s

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\* For example, UK government communications showing UK passports being displayed in nationalist areas, where many people hold Irish passports. The NICS raised this issue with Whitehall and it was changed to a blank maroon passport.

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priority is restoring the executive. Past experience shows that once direct rule is imposed, it is difficult to restore devolution; a move to direct rule may decrease the chances of an agreement being reached between the Northern Ireland parties. Indeed, in the current circumstances, it may be even more difficult than in recent periods. It has been suggested that the government is attempting to use the absence of decision making as leverage in the talks, putting pressure on the parties to return to government and address issues of public concern.

Political considerations may have affected the decision to hold out for so long. Following the 2017 election, in which the Conservative Party lost its majority, it entered into a confidence and supply arrangement with the DUP. This reduced the UK government's credibility as a neutral arbiter in Northern Ireland, creating a high risk that any action taken would be perceived to have been influenced by the party's relationship with the DUP.

Minority government has another consequence: when the government risks being ambushed on key Commons votes it makes it difficult for the NI secretary to spend much time in Northern Ireland, establishing relationships and finding out what is happening there. Karen Bradley was questioned on this at one of her regular sessions with the House of Commons Northern Ireland Affairs Committee in March 2019; she said she was trying to spend one working day a week in Belfast.<sup>8</sup> That would be insufficient even if the executive were up and running – and is even more so in the current circumstances.

The supremacy of the UK Parliament means that Westminster is still able to legislate in devolved areas, even without direct rule – and it has done so where necessary to keep Northern Ireland functioning. Legislation has been necessary to extend the period for executive formation, to pass budgets and to set local taxation rates.

### ***Legislation has been necessary to prevent another Assembly election***

Legislation has been needed to prevent a further election being triggered. The Northern Ireland Act 1998 provides for a 14-day period following an Assembly election during which ministers must be appointed; if no executive is appointed in that period, the NI secretary is required to propose a date for another Assembly election. After the March 2017 Assembly election, this period originally expired on 29 March. The government left a gap, which appeared to go unchallenged, before passing new legislation in November 2018 and then provided for a second five-month extension by secondary legislation if no executive had been established by the end of March. That expired in August and so the government was forced to legislate again in July – extending the deadline to October 2019 and providing for a further extension to January 2020.

### ***Westminster has passed budgets for NI***

Westminster has also passed budgets for Northern Ireland in the executive's continued absence. In 2016, the Northern Ireland Assembly passed a budget for the financial year ending in March 2017. Discussion of the 2017/18 budget was underway in the Executive Committee, but no agreement was reached before power-sharing collapsed.

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The Northern Ireland Act 1998 contains provision for the permanent secretary at what is now the NI Department of Finance to authorise the issue of funds out of the Consolidated Fund for Northern Ireland for the following year, if a budget is not passed by three days before the end of financial year. But that has spending consequences: the Act only permits the authorisation of spending up to 75% of the previous year's budget in the first instance; this rises to 95% if no budget has been passed by July.

Initially this provision was used to keep government and public services in Northern Ireland running. However, by November 2017, spending was approaching its legal limit and an imminent agreement between the parties was looking unlikely; the NI secretary, James Brokenshire, passed a full 2017/18 budget in UK Parliament. At second reading of the bill, Brokenshire said that he was introducing the measure with "the utmost reluctance and only because there is no other choice available".

Since then, the UK Parliament has continued passing budget acts to keep Northern Ireland ticking over. Budgets passed in Westminster have closely resembled previous budgets passed by the Assembly, adjusting for spending pressures on advice from the NICS, and for the substantial additional funding\* secured as part of the Conservative Party and DUP's confidence and supply agreement.

Brokenshire's successor, Karen Bradley, broadly continued with his approach, passing legislation only when it could no longer be avoided, which has tended to mean passing it as late in the day as possible. The logic behind this is that it gives the parties maximum opportunity to re-establish the executive and pass a budget locally. While sympathetic to the reasons for this approach, senior civil servants told us that this created difficulties for their departments, as departmental budget allocations were not known until well into the financial year, making financial planning difficult.

### ***The UK has set annual rates***

Regional property rates are set annually by the Northern Ireland executive; in its absence they have been set by the UK government. Similarly, when cost control measures on the Renewable Heat Incentive Scheme were due to expire in March 2018, the UK government took the decision to extend them, and made further reforms in 2019.

### ***UK ministers have been empowered to make key public appointments***

In the absence of Northern Ireland ministers, appointments to certain key institutions cannot be made. This was particularly problematic for the Northern Ireland Policing Board, whose political members were unable to sit due to the lack of an executive, and which lost three of its nine independent members.<sup>9</sup> The board is responsible for appointing senior PSNI officers, and by November 2018 two out of five of NI's most senior policing positions were occupied on the basis of temporary promotions because the board could not formally promote them.

The EFEF Act addressed this, conferring a limited power on UK ministers to make appointments to key positions related to security and justice.

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\* The confidence and supply agreement provided for an additional £1bn over two years – that is equivalent to around £30bn of additional public spending in England based on the Barnett population.

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### ***Backbench amendments have resulted in more substantive policy change***

The original content of UK legislation for Northern Ireland has been largely procedural, but bills can always be amended to insert more controversial provisions. This may have further persuaded successive NI secretaries not to legislate unless completely necessary. Since the 2017 general election, the UK government has operated with a very narrow majority, dependent on the support of the DUP – in September 2019, it lost its majority altogether – and defeats over Brexit bills were a feature of 2017–19 parliamentary session.

The government has also come under increasing pressure to address discrepancies in abortion and LGBT rights that exist between the UK and Northern Ireland. During the passage of the Northern Ireland (Executive Formation etc) Bill 2017–19, amendments were added to compel the government to extend same-sex marriage to Northern Ireland and to liberalise abortion laws – both issues the government considered to be devolved matters – on which MPs were given a free vote. These provisions will come into force should the executive not be restored by 21 October 2019.

Further amendments were subsequently added, including requirements for the NI secretary to report to Parliament on the progress of executive formation on specified dates, to limit the window in which the government could prorogue Parliament and to ensure that Parliament sits in the run-up to the UK's current date for EU withdrawal on 31 October. The bill was passed into law in July 2019.

### **Consequences for Northern Ireland**

Everyone we spoke to agreed that the current situation was unacceptable – but had differing views on what the most troubling implications of the prolonged period without ministers were. They variously highlighted:

- Pressing issues are going unaddressed – even where there is local agreement.
- The inability of civil servants to make policy decisions risks “stagnation and decay” of public services.
- There is a lack of scrutiny and accountability.
- Opportunities for cross-border working are being missed.
- Northern Ireland has been left without proper representation in the Brexit process.
- The long-term risk is a deterioration in community relations.

### **Pressing issues are going unaddressed – even where there is local agreement**

Even with the clarification of the EFEF Act, there are still many relatively uncontroversial decisions that have not been made in the absence of an executive. In most cases, this is because legislation is required. For instance, in 2015, the UK government passed legislation to make coercive control an offence in England and Wales. In 2016, the NI

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Department of Justice (DoJ) consulted on the creation of a similar offence in Northern Ireland, and its minister announced plans to introduce a draft bill to do so in 2017.<sup>10</sup> When the executive collapsed, the plans stalled.

Similarly, committal hearings – a process used to admit criminal cases for trial – were abolished in England and Wales in 2013 with the purpose of speeding up the justice process. In 2016, an NI executive report recommended that the NI DoJ bring forward legislation to reform the committal process, and the then justice minister committed to do so. The department aimed to have legislation in place by April 2019 but, again, without a sitting legislature, no further progress was made.<sup>11</sup>

The Hart Inquiry into Historical Institutional Abuse, which concluded in June 2017, made recommendations including a compensation scheme for victims. A public consultation on the report ran from November 2018 until March 2019, at the conclusion of which the head of the NICS wrote to the NI secretary asking her to introduce legislation to implement the recommendations, not least because many of the intended beneficiaries of compensation were dying.<sup>12</sup> Given the political nature of the decision, the NI secretary asked Northern Ireland parties for their view on the consultation; on 11 July, six parties responded urging the secretary of state to implement “a suitable legal and financial framework”<sup>13</sup> By summer 2019, in a break with its approach so far and under continuing local pressure to act, the UK government was showing an increased willingness to legislate on some of these issues.

On 24 July 2019, over two years after the Hart Inquiry concluded, then minister of state for Northern Ireland, John Penrose, told the House of Commons that the UK government would introduce legislation after summer recess;<sup>14</sup> a commitment that the new NI secretary, Julian Smith, reiterated in August.<sup>15</sup>

The Domestic Abuse Bill introduced to the House of Commons on 16 July extends the offence of coercive control to Northern Ireland. The decision in September by Prime Minister Johnson to end the parliamentary session meant that the bill was expected to fall, but with the Supreme Court’s decision that prorogation was unlawful it could continue its passage unless and until parliament is prorogued again.

Despite these recent commitments, such changes will require primary legislation – unless direct rule is imposed. And with continuing parliamentary battles over Brexit and the vulnerability of Johnson’s minority government, it is unlikely that devolved Northern Ireland issues will be a priority of the UK government in the near future – so the list of outstanding issues is likely to grow the longer the executive is absent.

### **The inability of civil servants to make policy decisions risks “stagnation and decay” of public services**

Most senior civil servants we spoke to told us that the biggest consequence of the absence of an executive was not an immediate ‘cliff-edge’ caused by a lack of short-term decision making, but a longer-term inability to develop new policy or change policy direction. Many interviewees told us of the major structural changes to public services that are needed in Northern Ireland to run government effectively, but

on which no progress can be made in the absence of ministers. In an interview with *Civil Service World*, David Sterling, head of the NICS, warned of the risk of “stagnation and decay”.<sup>16</sup> While the root of this problem lies beyond the past two years, without ministers there is no ability to develop policy to respond.

There are particular concerns about the long-term funding of healthcare, as set out explicitly by the NI DoH in its annual update on progress towards the 2026 outcomes on health and wellbeing:

**“The budget for 2019/20 does not provide sufficient funding to meet current demand. In short, the budget as it currently stands is insufficient to meet rising pressures across hospital, general practitioner (GP) practices, social care and mental health services, or to systematically tackle the growing waiting list backlog”.**<sup>17</sup>

But the issue is less about funding than structures. The permanent secretary of the NI DoH said: “We have enough money to run a world class health service, but we don’t have enough money to run this health service.”<sup>18</sup>

Officials are attempting to tackle this problem and, as outlined, the recent policy mandate in healthcare reforms gives officials more leeway on this issue than in other areas. Officials told us that the absence of ministers may even have made it easier to consult on options for healthcare reform as, for example, they were able to include options that would mean the reconfiguration of hospital services in key politicians’ constituencies – which may have been deemed politically unacceptable by sitting ministers.

But even where there is clear policy direction on transformation there are still important decisions that civil servants do not feel can be made in the absence of political cover. A prime example is the merging of NI hospital emergency departments, where performance has always been worse than their English comparator, but has been in further decline since 2017, as Figure 5 shows.

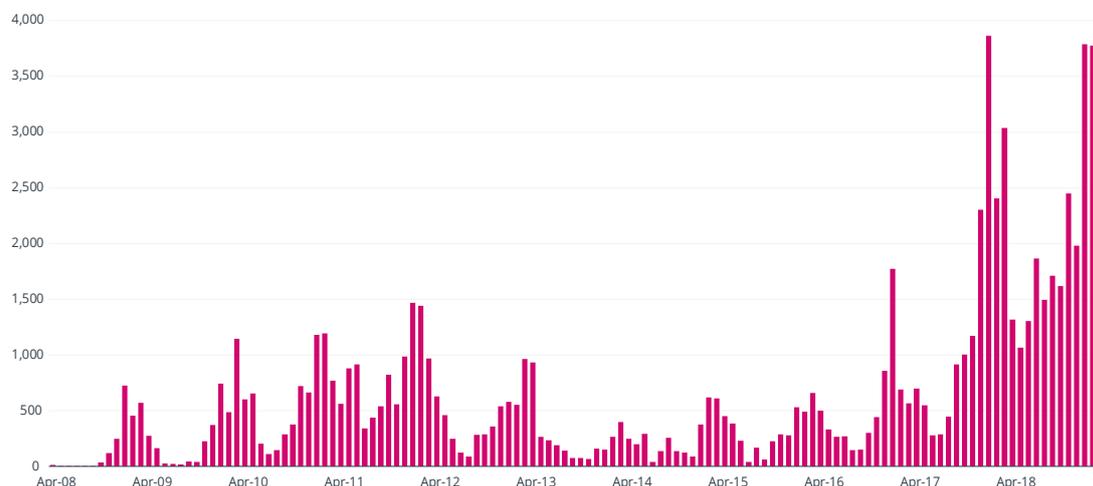
**Figure 5: Performance against four-hour waiting time target at type-1 emergency departments in England and Northern Ireland, August 2010 to August 2018**



Source: Institute for Government analysis of NHS England, ‘A&E Attendance and Emergency Admissions and Department of Health, Northern Ireland Waiting Time Statistics: Emergency Care Waiting Times.

Current targets also state that no patient should wait longer than 12 hours for emergency care;<sup>19</sup> this target has not been met in Northern Ireland since 2008. After the collapse of the executive in 2017, the number of patients waiting over 12 hours has spiked (Figure 6).

**Figure 6: Number of patients waiting over 12 hours in type-1 emergency departments in NI, April 2008 to June 2019**



Source: Institute for Government analysis of Department of Health, 'Northern Ireland Waiting Time Statistics: Emergency Care Waiting Times'.

In areas other than health, there is even less policy direction on the transformation of public services. In education, there are concerns about the sustainability of school funding and the duplication of schools' provision, which for historical reasons largely remains segregated along community lines.<sup>20</sup>

Without ministers, there are no opportunities for new policy solutions to address this.<sup>21</sup> In its review of education funding in Northern Ireland, the Northern Ireland Affairs Committee said that "the political deadlock at Stormont has meant that the education system has been unable to respond to the urgent challenges facing schools", and that the UK's approach of passing budgets for Northern Ireland on a rolling annual basis "has been an obstacle to investment and improvement in children's education".<sup>22</sup>

Officials in the Department of Infrastructure told us that there is a public perception that the absence of ministers has meant that there is a big pile of projects waiting for sign off. In reality, however, there is no money for new projects to sign off on – and officials feel they cannot commit any capital sums for future projects that would pre-empt the decisions of incoming ministers.

There are also important decisions to be made about the long-term funding of water infrastructure. Northern Ireland is the only part of the UK that currently does not have domestic water charges, but officials and regulators have warned that the underfunding of water infrastructure is becoming increasingly unsustainable and could act as a brake on future economic development.<sup>23</sup>

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The track record of the executive does not suggest that its return would guarantee the decisions necessary to avoid long-term 'stagnation and decline' would be made. However, unless the UK government wants to impose solutions from London, it is necessary for progress.

### **There is a lack of scrutiny and accountability**

Senior civil servants are not elected and are therefore not directly accountable to the public. Nor do they have a mandate given to them by the electorate. Permanent secretaries are usually accountable to their ministers, who in turn are accountable to the Assembly and its committees. All these normal mechanisms are currently absent.

Acknowledging the accountability gap, a number of senior civil servants told us that they had started taking a more public-facing role; appearing in the media to explain the work of departments or to respond to new developments. However, most officials also reported that this was not a comfortable role for them, and felt it was certainly no substitute for the political accountability of ministerial decision making. One permanent secretary expressed concern that, although he could explain what the department was doing and why, no one could challenge it except through the courts.

As there are no ministers to be questioned on the floor of the Assembly or in committees, there are few ways for MLAs to obtain information unless it is pro-actively published by departments. We heard that most MLAs have continued to act as geographical representatives, taking up their constituents' issues with permanent secretaries in place of ministers, but for the most part were not taking any more general interest in the operation and sustainability of public services.

The Northern Ireland Audit Office (NIAO), which exists independently of government (in Belfast or London), has continued to publish reports, providing a valuable source of ongoing scrutiny of the work of departments. The NIAO is conscious of the absence of Assembly committees, and in particular of the NI Public Accounts Committee, which would normally pick up its reports and hold officials and ministers to account for their findings.

The NIAO has responded by making greater efforts to ensure its reports get public profile through the press and the media. The reports now receive a response from the NI secretary and are deposited in the parliamentary libraries, attracting more attention from MPs and the House of Commons Northern Ireland Affairs Committee than previously. Nonetheless, both scrutiny and accountability in Northern Ireland are significantly reduced in the current situation.

The Westminster institutions have done little to fill the scrutiny gap left by the absence of the NI Assembly. As a consequence of the UK government's unwillingness to legislate until the last minute, most Northern Ireland bills have been subject to the emergency legislation procedure. In recent times, bills have usually been passed in one day in the Commons – having committee stage on the floor of the house rather than in public bill committees – and have passed through the Lords in two days. This means that legislation is often subject to little or no scrutiny, and there are few, if any, opportunities for concerned parties in Northern Ireland to feed into the process.

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The practice has drawn criticism from the House of Commons Northern Ireland Affairs committee, one of the few formal scrutiny mechanisms still functioning. Initially, the committee (which ordinarily does not conduct inquiries in devolved policy areas), did not change its approach, expecting the executive to be restored swiftly. But when Westminster passed budget legislation, the committee launched inquiries on health and education spending to scrutinise the budget allocations.

The committee has continued to undertake inquiries and publish reports on issues for which Westminster has legislated, or where it may need to in the near future. Committee hearings also provide an opportunity for the NICS and other Northern Ireland stakeholders to highlight issues faced by the administration in a public forum.

Nonetheless, in the absence of any nationalist representation in Parliament, there are no nationalist members on the committee and most represent English constituencies, meaning it cannot claim to be cross-community. The committee does make an effort to engage with all of Northern Ireland society, undertaking visits and holding evidence sessions in the country. However, cross-community representation is most important around the committee table when that evidence is being weighed up and, unfortunately, on this the committee is aware that it lacks balance.

### **Opportunities for cross-border working are being missed**

The absence of an executive has also had implications for the other institutions established by the Belfast/Good Friday Agreement (GFA). In the absence of Northern Ireland ministers, the North South Ministerial Council (NSMC) is no longer able to meet. As the council is responsible for board appointments to four of the six north–south implementation bodies\* no new appointments can be made, and there is a risk that the boards will soon become inquorate.

There has been contact between the civil service in Northern Ireland and its counterparts in Dublin – particularly on security co-operation – but regular meetings of the north–south ministers might have provided a forum to discuss practical solutions to many of the areas in which cross-border co-ordination will be required after Brexit.

The British–Irish Council has continued to meet occasionally, albeit without ministerial representation from Northern Ireland, and the British–Irish Inter-Governmental Conference met three times in 2018, having not met since the resumption of devolution in 2007.

### **Northern Ireland has been left without proper representation in the Brexit process**

Northern Ireland will be **disproportionately affected by Brexit**, not least as it shares what will become the UK's only land border with the EU. But in the absence of an executive, there has been no political voice capable of representing the interests of Northern Ireland as a whole in the Brexit process. While we cannot assume that had the executive been functional it would have been able to agree a common position, prior

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\* InterTrade Ireland, the North South Language Body, Foyle, Carlingford and Irish Lights Commission and Food Safety Promotion Board, although in the case of the latter body the board is only advisory.

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to collapse there were signs the parties were working together on Brexit – evidenced by the joint letter from the first minister and deputy first minister to Theresa May in August 2016.<sup>24</sup>

Instead, the only political representation of Northern Ireland has been that of DUP MPs in Westminster – who represent only one community and hold a perspective on Brexit not widely shared in Northern Ireland – and a single independent MP, Lady Sylvia Hermon, who voted in favour of Theresa May’s deal and the backstop.

The confidence and supply agreement with the Conservative Party has also given the DUP’s perspective additional influence, with its MPs’ votes necessary to pass any future deal. Indeed, this has led many in Westminster to confuse the DUP line with wider opinion in Northern Ireland – something that many of the people we spoke to were eager to make clear was not the case. The common NI position – which the executive would have been obliged to articulate and then feed into UK debates, and which could have influenced the course of Brexit – has been missing.

This absence of political representation was made even more problematic by the fact that the Northern Ireland perspective has often been missing in Whitehall, too. The Northern Ireland Office lacks the clout within government to ensure that Northern Ireland issues were given the priority they perhaps deserved. Officials told us that the culture of ‘no bad news’ among ministers translated into a reluctance to address the difficult issues raised by the Irish border and need for cross-border co-operation – for example, the operation of the Single Electricity Market.

In the absence of a plurality of Northern Ireland voices in Westminster, civil society in Northern Ireland has taken a more high-profile role than previously. Business, farming and human rights groups have publicly outlined their views on the consequences of Brexit on their respective sectors, and have been increasingly vocal in opposing no deal.<sup>25</sup> This is unusual in Northern Ireland, where many civil society groups have been traditionally reluctant to speak out on political issues.

The NICS too has been forced to be more vocal than it would have been with ministers in post – particularly as the re-establishment of the executive began to look increasingly less likely. For example, in March 2019, the head of the NICS, David Sterling, wrote a letter to the Northern Ireland political parties warning of the consequences of a no-deal Brexit. [Speaking at the Institute for Government in July](#), he repeated that “no deal would have a profound and long-lasting impact on Northern Ireland and society”.

Some officials and stakeholders in Northern Ireland have suggested that the absence of ministers has, in some ways, been positive, as it has allowed the NICS to present a politics-free, evidence-based assessment of the implications of the process of Brexit. However, they have been keen to state that the positives do not outweigh the negatives: unlike Scotland and Wales, Northern Ireland cannot assert itself and highlight the interests of Northern Ireland at a political level, nor develop thinking on policy after Brexit.

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## The long-term risk is a deterioration in community relations

By far the biggest concern expressed to us about the absence of an executive was the decline in community relations in Northern Ireland. Power-sharing arrangements were designed to foster co-operation in a divided society, as parties from both communities would need to work together in government and put on a united front when representing Northern Ireland. As we discussed in the previous chapter, these arrangements did not always work perfectly – but they did foster a degree of co-operation and discourage destructive rhetoric.

We have heard from some people that, since the executive collapsed, parties are publicly criticising each other much more often than before and blaming each other for the failure to restore the executive. Some reported that they believed that this was contributing to worsening relations between unionists and nationalists at a population level and created a space in which extremists could flourish.

However, there is also evidence that fewer voters in Northern Ireland are identifying with the traditional communities; the 2018 Northern Ireland Life and Times Survey found 50% of voters identified as neither nationalist or unionist, representing a shift away the long-entrenched communitarian positions of NI society.<sup>26</sup> The cross-community Alliance Party scored its best ever result in local elections in May 2019, and took the third seat for Northern Ireland in the European Parliament elections for the first time. This has attracted ‘transfers’ – second- or third-preference votes – from moderate nationalists, suggesting that there might be some scope for shifting the political dynamics in Northern Ireland, to which the political institutions may need to respond.

## Going forward

The big outstanding question is how long Northern Ireland can remain in this under-governed limbo. There are four areas of particular concern that the country, its political parties, the NICS – and Westminster – must address.

## The absence of an executive is prompting remarkably little comment

It is striking how readily accepted the prolonged absence of the executive seems to be, both in Westminster and back in Northern Ireland. In other countries, such as Belgium and the Netherlands, even where the forming of a government has taken an excessive amount of time, a caretaker government is installed with a prime minister in place who can take decisions, and provide political accountability, during the hiatus.

One of the striking things we were told by many of our interviewees in Northern Ireland was how resigned people there were to the idea of governing without ministers – with the exception perhaps of anger over that fact that MLAs continue to draw their salaries.<sup>27</sup>

In Westminster, although the Northern Ireland Affairs Committee drew attention to the “democratic deficit” in its report in May 2018, there has been little pressure on either political parties or DUP MPs to get back into government – or for the UK government to bite the bullet and impose direct rule. Former First Minister Peter Robinson, speaking last year at Queen’s University Belfast, said “we have barely been governed at all with the absence of the Stormont institutions and the reluctance of Westminster to step in during their absence. Successive secretaries of state have chosen instead to embalm the structures”.<sup>28</sup>

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## The current arrangements could not survive a no-deal Brexit

It is also clear that this vacuum could not survive no deal – as both UK ministers and Northern Ireland civil servants have acknowledged. Unless power-sharing is resumed, a no-deal Brexit will require UK ministers to take some sort of legislative control, as officials will not be able to take the fast-pace and wide-ranging policy decisions that will be required to manage the fallout – and cannot be held accountable for those decisions.\*

There is also a risk of civil unrest. While the PSNI is operationally independent, there are concerns that the absence of political support in this event could be damaging. Whether that constitutes full-on direct rule, or more limited Brexit-related powers, is uncertain.

But no one should underestimate how controversial the imposition of direct rule in the circumstances of a no-deal Brexit would be. Such a move would attract strong criticism from nationalists, the Irish government and key figures in the US, who would likely argue that this would be an infringement of the GFA. When direct rule was last imposed, in 2002, there was an understanding that power-sharing was in its infancy and that teething problems were inevitable. Now, 20 years on, a decision to impose direct rule would be much more significant act.

No deal itself would also be controversial in light of Westminster’s rejection of the Withdrawal Agreement negotiated by Theresa May’s government – and in particular the [backstop](#). While many unionists have argued that the backstop undermined the principle of consent,\*\* it has support among most business and farming groups in Northern Ireland, almost unanimous support from nationalists and high support among non-aligned groups.<sup>29</sup>

Polling from August 2019 suggests that a majority of people in Northern Ireland would also back a Northern Ireland-only backstop; although only one in six unionists would.<sup>30</sup> It is worth remembering that Northern Ireland voted for Remain by a majority of 56% in the 2016 EU referendum; ‘Remain parties’ were also the big winners in the 2019 European Parliament elections in Northern Ireland.<sup>31</sup> The UK government would undoubtedly be widely blamed for any economic fallout – north and south of the border – caused by a no-deal exit.

In these circumstances, hopes of an imminent return of devolved government would be dashed. A no-deal Brexit would drive a further wedge between the parties, and the difficulties it would create would likely disincentivise any political party from re-entering government. The history of Northern Ireland shows that once imposed, direct rule often remains in place for a long time.

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\* On 5 September 2019, Cabinet Office Minister Michael Gove, acknowledged it would be a possibility in the event of direct rule; House of Commons Committee on Exiting the European Union, *Oral evidence: The progress of the UK’s negotiations on EU withdrawal (HC 375)*, Q5151–3, 5 September 2019.

\*\* See for example, former First Minister Lord Trimble’s foreword to Policy Exchange’s research note, which says that “there is a genuine risk that Northern Ireland will end up as part of an effective EU protectorate, without the say-so of the Northern Ireland Assembly. This would be an appalling breach of the principle of consent, which runs through the Agreement”; Gudgin G and Bassett R, *The Irish Border and the Principle of Consent*, Policy Exchange, 2018, retrieved 6 September 2019, <https://policyexchange.org.uk/publication/the-irish-border-and-the-principle-of-consent>

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## The UK government must make restoring durable power-sharing a top priority

The current political climate in the UK is hardly the most propitious for restoring power-sharing. A recent change of administration – bringing with it a prime minister who is close to the DUP and committed to leaving the EU on 31 October, deal or no deal – has complicated matters further.

Most alarming from a NI perspective is the apparent lack of a “sustainable plan” for managing no deal in Northern Ireland – while the fact that the NI secretary made clear on the floor of the House that he had not been consulted on the implications for Northern Ireland of September’s attempted prorogation also points to a lack of concern at the centre of government.<sup>32</sup>

The UK government’s approach of letting decisions stack up has not resulted in local pressure for the NI parties to return to government to deal with. Indeed, the flak for the failure to move on compensating the victims of historical child abuse fell primarily on the NI secretary, Karen Bradley.<sup>33</sup>

Despite initial reports of movement among the parties – all parties vowed to do a deal at the start of the latest round of talks in May 2019 – it seems progress has stalled.<sup>34</sup> The government needs to think both about incentives, and how to exert more pressure on the parties. The problem is that what works as pressure on one side incentivises the other in the opposite direction. For example, Parliament’s move to bring Northern Ireland into line with the rest of the UK on same-sex marriage if power-sharing is not restored could incentivise the DUP to return to power and block the reforms – but at the same time disincentivises Sinn Féin, who want to see such changes.

Many people suggest that power-sharing is near to its last chance saloon, and that any further collapses would leave big question marks over how to govern Northern Ireland in the long term. Whatever problems devolution has encountered, everyone we spoke to was clear that Northern Ireland had benefited from its return and that when the parties could act together that brought solid gains to Northern Ireland. This is perhaps best manifested in the fact that Northern Ireland has become a major tourist destination in recent years – external overnight trips increased by 34% between 2013 and 2018<sup>35</sup> – and that figure will have been further boosted in 2019 by the hosting of the Open golf tournament for the first time since 1951.<sup>36</sup>

If the current attempts to restore power-sharing falter – and the government is not forced by a no-deal Brexit to change approach – the NI secretary should set out clearly the government’s long-term plan for governance in Northern Ireland, including how it intends to address the scrutiny gap.<sup>37,\*</sup>

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\* The Northern Irish Affairs Committee set out some ideas for better scrutiny in a 2018 report, in which it proposed a resurrection of more representative Stormont committees, reflecting the make-up of the Assembly, to scrutinise both the decisions of UK ministers on Northern Ireland but also permanent secretaries in Northern Ireland. It proposed that the NI secretary should take advice on how to set those committees up, but the government brushed off that proposal, making clear its preference was the restoration of power-sharing.

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It should also outline how it will ensure that the people of Northern Ireland do not suffer from the failure of their politicians to co-operate. Prime Minister Johnson has said restoration is a priority: he now needs to act as though it truly is. He must also think how a power-sharing executive can be supported through the type of Brexit he is pushing for. The excuse that everything is on hold until power-sharing comes back is well past its sell-by date.

### **Whatever comes next, good UK–Irish relations are of great importance**

Co-operation between the UK and Irish governments is essential to any successful strategy in Northern Ireland. But Brexit has meant official relations between the two are at their lowest ebb since well before the 1990s.

The Irish government considers itself as the co-guarantor of the GFA; the UK government has been reluctant to embrace such a characterisation, although Dublin’s central role in power-sharing talks is widely acknowledged. Officials present during the St Andrews Agreement, which paved the way for the last successful restoration of the executive, highlighted the importance of the British and Irish governments working in ‘lockstep’.

If direct rule is imposed, nationalist parties would expect a role for the Irish government. Both Sinn Féin and the SDLP have said they would favour a “joint authority” approach where Northern Ireland is co-governed by the UK and Irish governments – but the UK has ruled this out.

Nonetheless, the Irish government will want to make full use of its entitlement under the GFA to involvement in Northern Ireland affairs (though without the derogation from sovereignty) through the British–Irish Intergovernmental Conference. This institution, although disliked by unionists, is an essential part of the GFA. The government must find ways to repair its relationship with the Irish government, for the sake of Northern Ireland.

Those institutions will be more important than ever as the UK leaves the EU. Irish diplomats have stressed that the fact that the UK and Ireland were both EU members, and often acted in concert in the EU, provided a forum for building and normalising relations that had been strained over the previous 50 years. The UK’s exit reduces that opportunity:<sup>38</sup> the UK will have to actively invest in maintaining good relations with Ireland.

While resumption of power-sharing is the immediate priority, it is also important to look at how well Northern Ireland has been governed when power-sharing was in operation – and whether there are longer-term changes that could be made to ensure that Northern Ireland is not just governed locally but governed better. That is the subject of the next two sections.

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## 4. What are the challenges to effective government in Northern Ireland?

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Given the history set out above, the mere fact that devolution was restored, and power-sharing institutions created, in 1998 is seen as a striking achievement by anyone who witnessed the Troubles dividing Northern Ireland for more than two decades. But despite this achievement, the Northern Ireland executive should not be free from scrutiny.

One of the most potent images on the walls of the Institute for Government is the picture of sworn life-long enemies Rev Ian Paisley and Martin McGuinness sitting together, laughing. It hangs on the opposite wall to an equally improbable image of a handshake between Nelson Mandela and F W de Klerk.

However, while the former image celebrates the remarkable achievement of Northern Ireland in establishing a functioning government able to embrace its divided communities, that government should not be free from scrutiny. As the power-sharing talks continue, one issue to address is whether changes could be made that would allow not just the executive to be restored, but the quality of government to be improved, within the framework established by the Belfast/Good Friday Agreement (GFA).

This chapter draws on interviews with people working in and with the Northern Ireland executive, and outlines the challenges it has faced over the past two decades – and will face once restored. Some of these challenges are specific to the unique arrangements and institutions of Northern Ireland; others are common to governments in the UK and internationally. We look at these challenges from two perspectives: structural and cultural.

### **Structural challenges**

#### **Power-sharing creates forced coalitions that do not always act (particularly) collectively**

Nowhere else in the UK has the sort of mandatory coalition that operates in Northern Ireland. NI parties do not get to choose whom they govern with. This is different from the voluntary coalitions that have been in power in the UK between 2010 and 2015 and in the devolved administrations – and even from the arrangements that apply in local councils suffering from prolonged periods of ‘no overall control’. Under power-sharing, parties can decide whether or not they want to be in government, but have no choice about whom they are in government with.

This lack of collective responsibility has led power-sharing to be dubbed ‘power-splitting’, reflecting the way in which parties prioritise the work of their own departments over than the executive as a whole.<sup>1</sup> That said, where there has been collective action – as for

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example when the first and deputy first ministers promote Northern Ireland externally as a destination for overseas investment – it is incredibly powerful.

### **The structure of departments reinforces siloisation**

There are further barriers to collective action. In Northern Ireland, powers are vested by statute in individual departments of state with individual permanent secretaries who are also the accounting officers for their departments; by contrast, in Scotland and Wales, there is a single accounting officer (the permanent secretary). This reinforces the tendency for departments to act as individual fiefdoms and makes cross-cutting working harder even than in Whitehall.

The centre of government in Northern Ireland is also weaker than it is in the UK. The Executive Office, which supports both the first and deputy first minister, occupies the place at the centre analogous to Prime Minister's Office in 10 Downing Street and the Cabinet Office. However, in reality it acts more like the extended private office of the first and deputy first ministers, with civil servants working closely with special advisers, without the range of additional government management functions that sit in the UK.

The Executive Office covers complex issues that are too sensitive to leave to individual departments or that need a joint approach. It has handled legacy issues from the Troubles and has been the central co-ordinating capacity on Brexit. There is a view that it has worked well in difficult circumstances, but has not developed additional capacity similar to that developed by UK prime ministers – either to develop a central policy agenda or to drive effective implementation across other departments.

### **Competition in the executive has a detrimental impact on decision making**

The d'Hondt system of portfolio allocation used in Northern Ireland means that on forming government, parties select departments that offer political, and therefore electoral, advantage – and the departments that face the more difficult decisions can find themselves relegated to be a final choice. From a budget- and policy-advancement standpoint, there are clear benefits to a department of being headed by one of the big two parties: the absence of typical collective decision making means a department headed by a smaller party will find it difficult to advance its policy agenda and is liable to see its budget cut.

The agenda paper for the Executive Committee (the equivalent of Cabinet) is controlled by the first minister and deputy first minister. This means ministers from smaller parties can find their papers simply not tabled for decision, and civil servants talk of big parties 'ganging up' on departments run by smaller parties. UK ministers are far from exempt from taking political considerations into account how they allocate funds. However, the comparatively small scale of Northern Ireland, and the fact that its administration also performs many of the functions which in England, Scotland and Wales fall to local government, means that there is greater temptation to use ministerial office to secure electoral or constituency advantage.

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Parties also use mechanisms designed to protect minority rights to block proposals from other parties, dubbed 'power-snaring'.<sup>2</sup> The provision for 'petitions of concern' – where 30 MLAs can trigger the requirement for a cross-community vote on certain decisions – formalises a community right of veto. Some 115 uses of petitions of concern were noted in the 2011–16 Assembly – and were used to signal general policy disagreements (such as on welfare reform) and prevent reprimands of politicians as well as higher-profile disagreements like those on same-sex marriage.<sup>3</sup>

The DUP, which for a time had sufficient MLAs to trigger a petition of concern without support from any other party, used the mechanism 86 times during that period; Sinn Féin used it 29 times. This makes it hard to make progress on any issue where a major party objects.

The parties have agreed to reform the petition of concern on a number of occasions; as part of the 2015 Fresh Start Agreement, the parties signed a protocol committing only to use the mechanism in "exceptional circumstances", though the agreement has not been fully implemented.<sup>4</sup>

### **The political system entrenches polarisation**

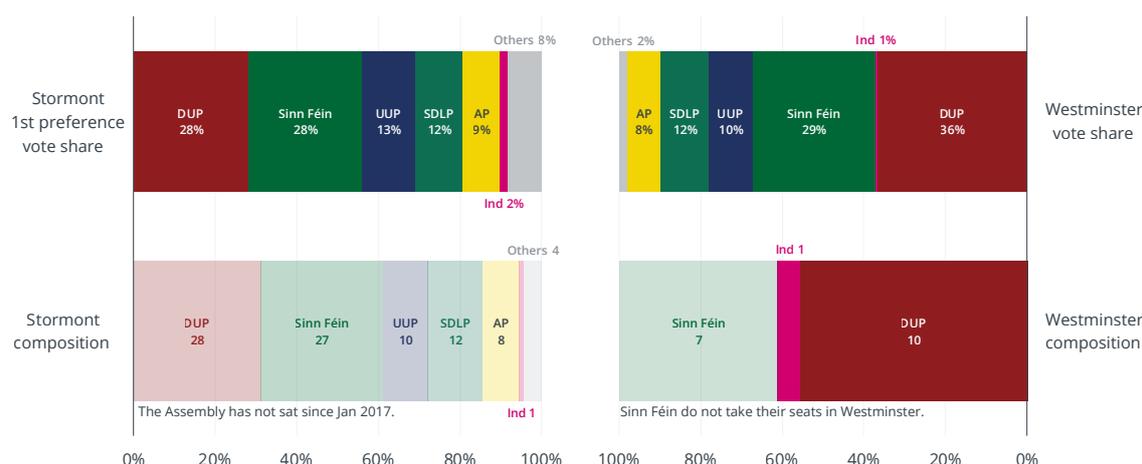
There is evidence that the strength of community affiliation in the Assembly – and therefore the executive – is increasingly out of kilter with weakening levels of identification in the population as a whole. While 86% of MLAs are designated as nationalists or unionist, in the most recent Life and Times Survey, 50% of the NI public identified as neither.<sup>5</sup>

But the focus on identity in Northern Ireland politics means that the most acute competition is within communities rather than between them. The method of allocating the first minister and deputy first minister roles adopted after the St Andrews Agreement incentivises communities to give their votes to the largest party representing their community to ensure they secure the first minister slot. Many people we spoke to felt that this system had cemented support for the DUP and Sinn Féin since they replaced more moderate parties (the UUP and SDLP) as the largest and second-largest parties respectively in the 2003 election.

This polarisation is more evident in Westminster than in Stormont with the former's use of the first-past-the-post system, rather than single transferable vote (STV), to elect members (see Figure 7, overleaf). Currently, Westminster seats are only held by DUP and Sinn Féin MPs (Sinn Féin refuse to take them) and the independent Lady Sylvia Hermon. But in Stormont it has meant that the two parties most opposed to each other have had to work together to oversee the executive.

Crucially, the Northern Ireland system depends on the qualities of the political leaders and their ability to make a forced relationship of adversaries work. It worked under the administrations of Trimble–Mallon and Trimble–Durkan, but also under Paisley–McGuinness and Robinson–McGuinness. But it places extraordinary demands on leaders.

**Figure 7: Northern Ireland Stormont and Westminster election results, March 2017 and June 2017**



Source: Institute for Government analysis of the Electoral Office for Northern Ireland.

### Opposition in the Assembly is weak

Northern Ireland’s system of government creation means that the normal discipline on governments of facing the prospect of electoral defeat and replacement by an alternative government does not apply. Until 2016, when some of the reforms of the Stormont House Agreement were implemented, there was no official opposition in the Assembly.\* The decision of the UUP and SDLP not to join the last administration created one for the first time – exposing the executive to a degree of accountability that officials told us ministers found uncomfortable. However, the concept and role of opposition is still underdeveloped and under-resourced.

As part of the Fresh Start Agreement, the parties agreed that an official opposition would have enhanced speaking rights and “cost-neutral financial and research assistance”.<sup>6</sup> The Assembly and Executive Reform (Assembly Opposition) Act (NI) 2016 provided for “additional payments” to be paid to opposition parties, but is not yet in force.

### Committee scrutiny is underdeveloped

Unlike in other UK legislatures, the committees of the Northern Ireland Assembly have a statutory basis; the Northern Ireland Act 1998 provides for the establishment of committees “to advise and assist each Northern Ireland minister in the formulation of policy with respect to matters within his responsibilities as a minister”. Committee chair positions are allocated using the d’Hondt system and are chaired by an MLA from a different community to the department’s minister, chosen not by their fellow backbenchers as in the UK Parliament but by the party’s nominating officer.<sup>7</sup> Like Scottish and Welsh committees, alongside conducting inquiries, departmental committees also scrutinise primary and secondary legislation.

These arrangements can work well if ministers are open and co-operative. For example, the minister for agriculture and rural development and their corresponding committee agreed 27 amendments to the Forestry Bill; both the minister and the committee chair

\* Although prior to 2016 parties not entitled to ministerial positions formed an ‘unofficial’ opposition.

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praised the productive relationship in debates on the bill.<sup>8</sup> However, officials told us that this example was an exception to the norm and that the quality of scrutiny was variable.

Strong intra-party discipline means MLAs are often reluctant to criticise a minister from their own party, and the strong committee chair roles that have emerged in the UK Parliament since chairs were elected by MPs rather than appointed by the whips have yet to emerge in Northern Ireland. It is notable how reluctant NI committees were to engage on Brexit, despite its importance for Northern Ireland: in the period between the 2016 referendum and the fall of the executive there were only two evidence sessions focussed on Brexit – one by the Committee on Agriculture, Environment and Rural Affairs and one by the Justice Committee.<sup>9</sup>

Some ministers appear to treat committees with a degree of disdain. Committees are relatively powerless when faced with a minister who is not willing to work with them. Assembly officials said that ministers did not always take committees seriously, refusing to provide papers and information, cancelling evidence sessions at the last minute and failing to respond to committee correspondence for up to a year. This has hampered departmental scrutiny and allowed executive power to go unchecked.

The Assembly prizes transparency, and unlike public bill or select committees in the UK Parliament, which can meet in private, all Assembly committee meetings are conducted in public. While the intention of this is to ensure cross-community trust in the process, it can often prevent members from engaging in honest discussion, deliberation and open dialogue, and therefore from reaching a consensus as a committee. As a result, party political issues are often resolved through private meetings at an executive level where representatives lack both the expertise of specialist committees and the time to fully consider the evidence.

By the time legislation reaches the chamber there is little room to manoeuvre, as further changes would require renegotiation: therefore, opportunities to scrutinise and improve legislation may be missed.

### **Northern Ireland lacks a vibrant external policy community**

The Northern Ireland executive exercises powers over a wider range of policy than the devolved governments of Scotland and Wales, for a nation of 1.8m people.\* Northern Ireland ministers are unsurprisingly keen to have bespoke Northern Ireland solutions to problems, which puts demands on their internal policy making capacity.

People are divided about the extent to which that internal capacity is constrained,\*\* this is likely to be an issue which features in the report of the inquiry into the operation of the Renewable Heat Incentive (RHI) scheme later in 2019. What people do agree on is the absence of a vibrant wider policy community in Northern Ireland. Few (if any) UK think tanks have Belfast offices, although a new home-grown think tank is being set up.

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\* Scotland has a population of 5.4m; Wales of 3.1m.

\*\* The Republic of Ireland has 30,000 people classified as civil servants compared to Northern Ireland's 20,000 – but of course has to exercise the full panoply of state functions including foreign policy; Ireland Information 'The Irish State - The Civil Service', (no date), retrieved 12 September 2019, [www.ireland-information.com/reference/civilser.html](http://www.ireland-information.com/reference/civilser.html)

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Internal party capacity in Northern Ireland is absorbed by servicing ministers in Stormont and MPs in Westminster rather than broader policy work.

Interviewees told us they felt that the sectarian nature of politics in Northern Ireland and the graduate exodus made it hard to attract the sort of people who form the special adviser/parliamentary researcher cadre in the UK government in the numbers required. At the same time, political parties have tended to internalise policy development processes, rather than looking outside for new ideas and proposals.

Perpetual government means an absence of the opportunity to renew and refresh in periods of opposition. This leaves limited opportunity to fly kites or debate new ideas outside government. External problem-reviews of policy – of the sort widely used in the UK – have been used in a limited way, most notably in health, as a partial mitigation, but NI's political parties appear reluctant to do anything to more substantially loosen their grip on policy formation.

### **The Northern Ireland Office is marginalised within Whitehall**

Devolution has raised questions over the role and status of the territorial offices. The devolved governments in Scotland and Wales expect to deal directly with their counterpart departments – and management of that relationship falls primarily to the prime minister or their deputy. The Northern Ireland Office (NIO) has a rather different role – initially because justice and policing were not devolved, and more recently because of its continuing role in counter-terrorism. When policing and justice were devolved in 2010, the size of the NIO was reduced – and its most senior civil servant effectively downgraded.

The frequent collapses of the executive have also meant that the NIO has had to gear itself up both in periods of direct rule and to help support negotiations to restore power-sharing (its current major focus), increasing its capacity and recruiting more manpower. Indeed, the instability of the Stormont government led to the head of the NIO being upgraded again. But while numbers can increase, it is less easy to staff up with people with adequate local knowledge and understanding.

Northern Ireland secretary is not regarded as a key Cabinet post – and prior knowledge of Northern Ireland is not a prerequisite – meaning learning curves can be long. Ministerial turnover is also high: since 2010, there have been five secretaries of state and six ministers of state for Northern Ireland.\*

The NIO has reduced in stature since the 1980s and '90s. During the Troubles, Northern Ireland was a key prime ministerial priority: both John Major and Tony Blair devoted significant amounts of prime ministerial capital to the peace process and supporting the process of re-establishing NI institutions. It has been much less of a priority for their successors. As a result, the department has struggled to attract talented, ambitious civil servants, and generally has had much less clout in Whitehall. Consequently, Northern Ireland issues get far less attention in UK central government than it used to.

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\* The current NI minister of state, Nick Hurd, has announced he will be standing down at the next election.

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## Cultural challenges

As well as the structural challenges outlined above, people we talked to noted certain cultural characteristics of the way ministers and civil servants work in the Northern Ireland executive. Below we set out some of the main points that are, in part, a result of the structures and system they need to navigate to reach decisions.

### Ministers still have to cope with divisive legacy issues

Northern Ireland is a post-conflict society and there are still a lot of legacy issues that ministers have to deal with. In its early days, the power-sharing executive fell over the pace of progress on paramilitary groups' decommissioning. Ministers since have had to grapple with a range of issues absent from the political agenda elsewhere in the UK – notably persistent identity issues such as parades, flags, support for the Irish language and how to deal with the direct legacy of the Troubles.

These are difficult issues, which bring their own mass of historical baggage and dump them into the present, and have the potential to reignite simmering community tensions. Too often they are seen as binary choices – where one side wins and the other loses. There is immense scope for what might otherwise be procedural issues to become proxies for more deeply rooted cultural issues and attain a symbolic importance. This gets in the way of building the mutual trust and co-operation on which power-sharing depends.

### Decision-making processes are slow and not guided by collective priorities

Perhaps the most common critique we heard was that internal decision-making processes are not designed for speed and that ministers defer difficult decisions where they can. The norm of UK governments being elected on a manifesto they then implement does not apply to a power-sharing executive.

Until the Fresh Start Agreement, there was no requirement to agree a programme for government before ministers took office – and portfolios were allocated before any agreement on what the government was trying to do was reached. But that had started to change – and officials noted that the Foster–McGuinness executive had embarked on a process to focus not just on inputs and activity but to follow the models of Scotland and New Zealand and develop a national outcomes framework to guide policy. The fall of the executive in 2017 means that it is impossible to judge what that would have meant in practice.

### Ministers avoid difficult long-term decisions

Short-termism was particularly notable in budgeting. Whereas the UK now operates on three-to-five-year spending reviews, departmental allocations in Northern Ireland are still settled annually. Even if ministers were present, and the will was there, this makes it difficult to commit to big projects.

Officials in Belfast argue that the main issue is not funding but service configuration, but politicians have spent most of the life of the executive avoiding difficult decisions on re-organisation.<sup>10</sup> Even when UK ministers volunteered to take the hit for an

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unpopular decision – in the introduction of water charges to raise potentially up to £0.5bn a year – NI politicians demanded abandonment of the scheme as a price for re-entering government in 2007.

### **There is a lack of a value-for-money culture in Northern Ireland**

The division between Sinn Féin and the DUP is along constitutional lines, but both accommodate a range of ideological views. One interviewee described both parties as being Conservative on taxes but Labour on spending – particularly if it is the UK taxpayer who ends up footing the bill.

The RHI Inquiry has shone light on the lack of a value-for-money culture in Northern Ireland – particularly where there was an opportunity to extract cash from the UK taxpayer or from the EU: David Sterling, head of the NICS, said in his evidence that: “executive ministers were criticised on any occasion when we didn’t draw down all the moneys available, either from Westminster or the EU.”<sup>11</sup>

### **Northern Ireland’s small scale allows ministers to micro-manage**

Northern Ireland has a lot of arm’s-length bodies (ALBs) to manage relative to the size of its small centralised civil service: 110 (including health and social care trusts)<sup>12</sup> compared to 125 in Scotland<sup>13</sup> and 70 in Wales;<sup>14</sup> and they have not been subjected to the regular culls that have been a feature of UK government. But ministers have not been keen to let go of decisions that ALBs might be expected to make elsewhere – and this prejudice against delegation, according to those who work in NI ALBs, is compounded by the caution of middle-ranking civil servants in sponsor departments.<sup>15,\*</sup>

Micro-management, risk-averse and meddling sponsor departments, and chairs and chief executives frustrated at being second-guessed by junior officials are hardly issues unique to Northern Ireland’s governance. But the small scale of the country offers more opportunities for intervention – and also the potential to tie up civil service resources.<sup>16</sup>

Unlike England, the NHS in Northern Ireland is run from the Department of Health – and ministers are drawn into operational decisions. There is no equivalent of NHS England, or of NHS CEO Simon Stevens, sitting between the department and individual trusts. As noted above, the executive also takes a lot of decisions that in the rest of the UK fall to local government, further opening up the option of its micro-managing the day-to-day affairs of the country.

### **The NICS is under-reformed**

The leadership of the NICS has done a remarkable job in ensuring continuity of government in the prolonged absence of ministers: as civil servants this is not what they signed up for. Their performance may have been helped by the experience of periods of direct rule – when some UK ministers would take a hands-off approach to

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\* There are reasons for caution. Officials are scarred by the collapse of the Northern Ireland Events Company in 2007 about which the Public Accounts Committee wrote “[we were] appalled at the level of mismanagement and impropriety associated with the Northern Ireland Events Company.”

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local policy decisions – but those ministers were still accountable for the decisions they made. This is not the case currently.

The number-one skill for civil servants since the restoration of government in Northern Ireland has been to make the executive function – which itself is a demanding task given the politics. However, in achieving this, they themselves admit that they have been too eager to please their ministers.<sup>17</sup> The RHI Inquiry has shown that civil servants – understandably given the fragility of the political coalition they are required to support – have focused on keeping the show on the road more than on challenging ministers.

People within the NICS note that it has not built the new, more professional skills that have been part of the UK's civil service reform agenda over the past decade. There are, for example, comparatively fewer people with commercial or project-management skills, and there is no local equivalent of the UK's Major Projects Authority to manage the executive's project portfolio.

The NICS long recruitment freeze (since 2010) has skewed the age profile, and the number of civil servants under 34 has nearly halved from 30.6% in 2010 to 15.6% in 2018; just 0.4% are under 24. In the same period, the number of civil servants over 50 has increased from around a quarter to nearly 40%.<sup>18</sup> It should be noted that NICS is now recruiting again, but it will take time to address this imbalance.

The smaller size and separation from the UK civil service makes interchange and development opportunities harder; movement between the two has decreased significantly since policing and justice, run primarily from the NIO in Belfast, were devolved in 2010.

The evidence from the Northern Ireland Audit Office to the RHI Inquiry listed a litany of problems that led to the failure of that scheme, including poor project management; disregard of value-for-money considerations; inadequate responses to whistleblower allegations; flawed design; a lack of technical expertise; and poor governance arrangements. The comptroller and auditor general also singled out “groupthink” and a lack of challenge as a contributing factor.<sup>19</sup> Since the executive collapse, the NICS has been reflecting on these issues, and thinking about possible reforms.

### **Within Whitehall there is limited understanding of Northern Ireland or Irish history**

Karen Bradley was pilloried when she became Northern Ireland secretary for her admission that she “didn’t understand things like when elections are fought for example in Northern Ireland – people who are nationalists don’t vote for unionist parties and vice-versa.”<sup>20</sup> Although Whitehall civil servants may not lack her basic general knowledge, neither do many of them have much exposure to Northern Ireland.

The NIO can recruit people with policy skills but, as noted above, has difficulties recruiting people with an understanding of the politics of Northern Ireland, particularly when recruiting for its London office. Beyond the NIO, officials may forget the special circumstances of Northern Ireland – from basics like the shared geography

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(which means, for example, that a distinction between domestic and international rail systems makes little sense, and that people cross the border on a daily basis)\* to the sensitivities of appearing to align with one community or another.

This was shown when a UK government communications campaign on Brexit assumed people crossed a border with the EU only by plane or ferry when going on holiday, rather than on a daily basis on foot or by car. Government advice also stated that after Brexit, UK drivers in the Republic of Ireland would be required to display a GB sticker, prompting backlash in Northern Ireland – which is not part of Great Britain.<sup>21</sup>

There is also a reported tendency to see devolution in the UK through the “Scottish lens”. This not only forgets the much longer history of devolution in Northern Ireland – Stormont has been a seat of NI government since 1921 – but also the markedly different responsibilities of the UK government towards the institutions in Scotland and Northern Ireland, and the relationship established in the Belfast/Good Friday Agreement between the UK and the government of Ireland towards Northern Ireland.

In Scotland, the UK government is firmly on the side of promoting the union against the pro-independence SNP government; in Northern Ireland, it is legally required to play a different role. Both the UK and Irish governments had previously agreed the principle that the future place of Northern Ireland is for the people of Northern Ireland alone to determine – and, in the words of the Downing Street declaration that opened the door to the peace process, the UK has no “selfish strategic or economic interest” in retaining Northern Ireland in the UK against the wishes of its population.

The recent actions of both the May and Johnson governments have brought Westminster’s role as an even-handed honest broker between the unionist and nationalist communities into question. The first of these came with the confidence and supply agreement between the DUP and the Conservative Party, designed to keep Theresa May’s government in office after the 2017 election. Then in July 2019, Boris Johnson decided, immediately taking office, to style himself ‘Minister for the Union’<sup>22</sup> – a move that could make sense in the context of UK–Scottish relations but is at variance with his alleged priority of restoring power-sharing in Northern Ireland.

Coupled with a lack of appreciation of local sensitivities and history, such actions put the UK government at a big disadvantage – not just when dealing with the parties in Northern Ireland, but also with the Republic, where senior officials and politicians are much more politically attuned to the history of the island of Ireland.<sup>23,\*\*</sup>

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\* According to the Northern Ireland Statistics Research Agency (NISRA) 110 million border crossings annum, 58% of crossing were by NI residents; there are 72 million vehicle crossings: NISRA, ‘Overview of People Movement, Migration and Transport in Northern Ireland Fact Sheet’, 2 April 2019, retrieved 12 September 2019, [www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/People-Movement-and-Migration-Fact-Sheet.pdf](http://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/People-Movement-and-Migration-Fact-Sheet.pdf)

\*\* UK Home Secretary Priti Patel’s comments in 2018 on food shortages in Ireland after Brexit were denounced by the taoiseach as soon as she was appointed as bringing about reminders of the Irish famine in the 1840s.

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## 5. Improving governance in Northern Ireland

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The final section of this report considers what could be done to support government in Northern Ireland.

Restoring power-sharing is necessary for improving governance in Northern Ireland and should be a priority. Two key elements of the most recent set of talks aimed at restoring the power-sharing executive were on the sustainability of the arrangements and on transparency. Details of the talks have not been published and we do not try to guess at their content here. In future, an examination of whether the particular arrangement of the institutions is conducive to better government may be necessary, but any changes to the Belfast/Good Friday Agreement (GFA) will need to have the agreement of all parties, and this is not what we will cover here.

There will be further recommendations on how to improve the functioning of NI government when the Renewable Heat Initiative (RHI) Inquiry<sup>1</sup> report is released. Those recommendations may cover capacity in the civil service and its need to formalise internal processes, the relationships between ministers and civil servants and the role of special advisers. David Sterling, head of the Northern Ireland Civil Service (NICS) told the inquiry that 14 actions were already being put in place to address shortcomings.<sup>2</sup> We do not attempt replicate the detail of that inquiry or its likely recommendations here.

Instead, we look at possible reforms that might increase the capacity of the political institutions in Northern Ireland to address the longer-term challenges people we spoke to identified. The seven areas for practical improvement are:

- **Develop more buttressing institutions to support Northern Ireland's politicians and civil servants.**
- **Reform the operation and capabilities of the NICS.**
- **Review the wider governance landscape in Northern Ireland.**
- **Build on the recent widening of policy engagement across Northern Ireland.**
- **Encourage more cross-fertilisation between the UK's nations, the Republic of Ireland and Northern Ireland.**
- **Increase the capacity for scrutiny by the Northern Ireland Assembly.**
- **Ensure that the Northern Ireland secretary is a respected figure and improve 'NI literacy' in Whitehall and Westminster.**

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Most of the ideas canvassed here were put forward by the people whose job it is to make the system work from inside – or have to work with it from outside – but they also draw on earlier [Institute for Government work](#). This is not a definitive list, but an attempt to promote discussion on the possibilities.

## Ideas for reform

### Develop more buttressing institutions to support Northern Ireland's politicians and civil servants

As discussed in the previous chapter, the politics of Northern Ireland and its distinctive constitutional arrangements militate against effective policy making on long-term issues. There is a case for looking further at how to increase the policy space for difficult decisions.

There are examples of where short-termism has been overcome, most notably in gaining agreement on health service reform. The Department of Health's 10-year plan was a response to the *Bengoa Report* – the product of an expert panel review tasked with developing a model for the future configuration of services.<sup>3</sup> This demonstrates how external expert evidence and analysis can pave the way to necessary, if politically unpopular, change.

Building on that example, Northern Ireland might benefit from the creation of a standing arm's-length policy capacity. Australia uses its Productivity Commission<sup>4</sup> to produce reports on difficult policy problems (New Zealand has recently followed its example).<sup>5</sup> The Australian Productivity Commission consists of permanent staff and 11 commissioners, a number of whom oversee any single study, bringing in external expertise as necessary.

The main benefit of this approach is that the commission can establish an evidence base for whatever problem needs to be addressed, put it in context and float policy ideas (including with the public) before ministers have to take any ownership of the policy. It has been the motor behind a number of crucial economic social reforms in Australia.<sup>6</sup> In Northern Ireland's specific context it would be important to allow all the parties (not necessarily just the ones that decide to take up ministerial posts) to request reports from the commission.

A less radical but potentially complementary proposal would be to finally establish a What Works centre in Northern Ireland,<sup>7</sup> which is the only part of the UK without one.<sup>8</sup> The UK government's What Works centres focus mainly on evidence synthesis (centres with bigger budgets are also significant evidence commissioners). But it might be more useful in Northern Ireland to follow the Welsh model of the Wales Centre for Public Policy, jointly funded by the Welsh government and the Economic and Social Research Council, whose role is more explicitly to support ministers in policy making.\* Discussions on establishing a Northern Ireland What Works centre has been progressing for some time – and the idea appeared in the DUP manifesto for the elections in 2016.<sup>9</sup>

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\* Wales now has a What Works centre that "supports Welsh government ministers to identify, access and use authoritative evidence and independent expertise that can help inform and improve policy".

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A final addition for Northern Ireland could be to follow through with the commitment in the Fresh Start Agreement to the establishment of an independent fiscal council,<sup>10</sup> a body similar to the UK's Office for Budget Responsibility (OBR) or Scotland's Fiscal Commission.<sup>11</sup> It was proposed that:

**"The Council will:**

- prepare an annual assessment of the executive's revenue streams and spending proposals and how these allow the executive to balance their budget; and
- prepare a further annual report on the sustainability of the executive's public finances, including the implications of spending policy and the effectiveness of long-term efficiency measures."

This would provide the evidence base for trying to put spending decisions on a longer-term basis.

The interesting question is whether the body should stop at those functions. If the body had similar functions to, for example, the Netherlands Bureau for Economic Policy Analysis,<sup>12</sup> it could also advise the parties on the viability of their reform ideas – providing some additional policy capacity. There is also scope to assign that function to a parliamentary body, as happens in Australia (see below).

The fact that other well-established and well-functioning governments find these bodies a useful addition to the policy-making process suggests the case for looking at what might be done to provide more independent external advice in Northern Ireland.

### **Reform the operation and capabilities of the NICS**

There is also a case for looking at the organisation and working practices of Northern Ireland's civil service.

Currently, the role of the NICS is "to support the executive and its ministers in delivering the commitments set out in the programme for government". But, as discussed earlier in this report, the NICS has often been too eager to please. One option for reform is to build on the role that the NICS has played during the government hiatus, and in effect when under direct rule, when remote UK ministers have been hugely dependent on its advice.

#### ***Put the NICS on a statutory basis***

The NICS could be put on a statutory basis with a formal duty to serve the public interest and act as stewards of the longer term. This would put the NICS onto a basis more like that of the New Zealand civil service – which goes beyond the principles for the UK civil service as set out in the Constitutional Reform and Governance (CRAG) Act 2010 (but not in conflict with them).

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The New Zealand state services commissioner describes that role in his (published) incoming briefing to the new prime minister as:

“...exercising the responsibility of stewardship, set out in our governing legislation, for the ‘active planning and management of medium and long term interests, along with associated advice’”.<sup>13</sup>

New Zealand departments present themselves as advisers to ministers, and can publish reports under their own authority, without ministerial cover or sign-off. The New Zealand government is also more transparent – routinely publishing Cabinet papers.<sup>14</sup> It could be worth considering whether adopting those practices would both rebuild confidence in the Northern Ireland policy-making process and make it harder for ministers to avoid difficult decisions.

### ***Improve cross-departmental collaboration***

The second issue that needs to be addressed is to improve collaboration across departments, which the entrenched structures combined with the party fiefdoms make more difficult. Brexit has forced an unprecedented degree of collaboration – and the central co-ordination in Northern Ireland appears to have worked well.

The UK civil service has traditionally found cross-departmental collaboration testing and experimented with ways of overcoming it. It would have been interesting to see whether the more outcomes-focused approach adopted pre-collapse would have engendered better cross-department working – particularly if budgets were allocated to outcomes, not to departments, in some critical areas. If the NICS is put on a statutory basis, it might be worth looking at the New Zealand example again and considering the case for a clear duty on departments to collaborate.

### ***Improve civil service capability***

The third area is on civil service capability. This is a big topic and likely to be addressed in the RHI Inquiry. The civil service needs to become more porous and open to new professional skills; it would benefit from greater interchange with the UK civil service in both directions. The recent appointment of Sue Gray, former cabinet office director general, to head the Department of Finance is a welcome precedent, and David Sterling’s statement that he “would like to see many, many more secondments both ways” is promising.<sup>15</sup> But the centre of government in Northern Ireland needs to be able to drive reform in the way the Cabinet Office can in the UK.

### ***Strengthen non-executive appointments to departmental boards***

A final reform that might help permanent secretaries in Northern Ireland could be to strengthen non-executive appointments to departmental boards.<sup>16</sup> Practice in Northern Ireland is down to individual permanent secretaries – as it was in Whitehall until 2010. While the experience of non-executives sitting on ministerially chaired boards in Whitehall has been mixed,<sup>17</sup> with some ministers welcoming their input and others seeing much less value in it, this has proved a way of bringing in some external expertise and nous, potentially bolstering permanent secretaries when they need to question the feasibility of ministerial demands.

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## Review the wider governance landscape

While power-sharing in Stormont has collapsed, one of the unsung success stories has been that local councils have been functioning even where there are multiple parties acting together. But one of the legacies of Northern Ireland's divided past is that it is even more centralised than other parts of the UK.<sup>18</sup> In part this is because health and social care are managed together (integration is one of the holy grails of health policy and it seems unwise to undo this), but also because other issues that would fall to local government in other parts of the UK rest with ministers in Stormont – or, in the absence of ministers, civil servants.

This is most notable in the areas of planning, where ministers make many decisions; housing, where discrimination was at the heart of the grievances that sparked the Troubles; and education, which is now the responsibility of the Education Authority (whose carefully constructed board<sup>19</sup> is testament to the sensitivity of managing a still deeply divided schools system).

In 2015, Northern Ireland's 26 local councils were consolidated into 11 councils, following a decade of debate on reform.<sup>20</sup> However, the planned transfer of powers over urban regeneration and community development never took place, and the powers of local authorities remained broadly the same. One way of addressing the accountability gap would be to look again at the balance of responsibilities between the executive and local councils.

Local government reform may be on the longer-term agenda, but in the shorter-term it may be worth looking again at the landscape of arm's-length bodies (ALBs) and their relationship with ministers. Recently there have been moves to address that by adopting a Code of Good Practice on Partnerships between departments and ALBs, modelled on the UK Cabinet Office's code but tailored for Northern Ireland.<sup>21</sup> But to last, these changes need ministerial buy-in.

That still leaves open the question of whether Northern Ireland has the right ALBs, with the right relationships with the executive. Some have been reabsorbed into the executive, but we were told that while creating ALBs was often the response to a particular problem (as in Whitehall), there was never any significant impetus later to review whether they were all still needed.

It is easy to imagine how difficult a full-scale review of ALBs might be in Northern Ireland's political system – but at some point it would be worth subjecting them to a review to ask which should remain at arm's length and which should be abolished or merged into departments. As [we have recommended before](#), an ALB's form must follow its function, and be awarded the degree of freedom it needs to perform its role effectively.<sup>22</sup>

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## Build on the recent widening of policy engagement across Northern Ireland

Brexit and the power vacuum in Northern Ireland have led to an increasing willingness of business, farming and other civil society groups to join in the political debate rather than let it be monopolised by the political parties. A question for the future is whether that can be captured and built on both to improve the quality of political debate and accountability in Northern Ireland, and to create the political space for ministers to confront the difficult longer-term decisions that are piling up in their in-tray.

### **Revive the Civic Forum**

One suggestion is to formalise this involvement by reinvigorating the Civic Forum, which was envisaged as a standing consultative body with civil society and business representation in the GFA.<sup>23</sup> The forum was originally established in October 2000 and met 12 times before devolution was suspended in 2002. When devolution was restored in 2007, the executive commissioned a review into the forum, but it led nowhere and the Civic Forum was never re-established.<sup>24</sup>

The Fresh Start Agreement<sup>25</sup> proposed a new way of involving wider civil society through a non-statutory Compact Civic Advisory Panel consisting of six appointed members, supported by an NICS secondee and producing two reports a year. The terms of reference said it would be:

**“tasked by the executive to proactively engage with civic society to develop strategic thinking, strategies and plans on issues that will help shape Northern Ireland’s future. It will do this by looking beyond immediate horizons to some of the challenges and opportunities to be faced in the future”.**

However, then First Minister Arlene Foster was keen to promise that “every effort will be made to minimise administration costs”,<sup>26</sup> suggesting a lack of enthusiasm for the body. The body was not set up before the executive fell.

### **Develop external policy-making capacity**

Northern Ireland could also look south to learn from the Republic of Ireland’s experience, which shows how citizens’ assemblies can be used to chart ways forward on controversial issues.\* Northern Ireland could turn the problems many identified of small scale and localisation into an advantage and this might give politicians the confidence to reform off the back of a degree of public consent.

Another widely noted feature of the Northern Ireland political ecosystem is the lack of external policy debate through the sort of think tank activity that is well established in London. Many of the people we spoke to welcomed the initiative to create a new Northern Ireland policy think tank – Pivotal<sup>27</sup> – that has been designed to address that gap. Universities can also play an important role in connecting think tanks with policy makers in government and research. The existence of independent think tanks can help reduce the risk of any public institutions finding themselves hamstrung by politics.

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\* A civil society convened citizens’ assembly to look at the vexed question of adult social care took place in Northern Ireland last year; Citizens’ Assembly NI, ‘About’, (no date), retrieved 12 September 2019, <https://citizensassemblyni.org/about-us>

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## Encourage more cross-fertilisation between the UK's nations, the Republic of Ireland and Northern Ireland

Our recommendations so far have focused on the domestic NI institutions set up under strand one of the GFA. That agreement also set up two other strands of co-operation – strand two established the North South Ministerial Council (NSMC) and strand three created the British Irish-Council (BIC) and the British–Irish Intergovernmental Conference. The fall of the executive has inevitably put the NSMC into cold storage pending the resumption of the institutions, and the UK government has never particularly warmed to the mechanisms for east-west co-operation, particularly through the BIC, where its status is on a par with the devolved governments.

Beyond those formal mechanisms, policy-sharing between the governments seems to be ad hoc. Brexit has necessitated better intergovernmental working, as Northern Ireland departments and their UK counterparts have been required to work more closely. But it looks worthwhile to explore the scope for more regular and routine sharing between policy departments in the UK administrations – even where policy is fully devolved. That requires movement on both sides: David Sterling pointed out in March that political parties in Northern Ireland were not keen on too much involvement with Whitehall.<sup>28</sup>

That sharing should not just be confined to government departments. Interparliamentary co-operation can also be a useful – and can be facilitated either within the UK through the Interparliamentary Forum, which Northern Ireland Assembly officials currently attend as observers, or through the British–Irish Parliamentary Assembly.<sup>29</sup>

Other organisations, including UK think tanks, should think about how they include Northern Ireland perspectives in their studies – and make efforts to present their work in Belfast as well as London, Edinburgh or Cardiff. That would reduce insularity on both sides and promote a greater degree of understanding. That should apply to policy institutes in the Republic of Ireland, too, where there may be more common challenges given the shared geography and the extent of (current) economic integration. Northern Ireland's recently established think tank, Pivotal, could play an important role bridging between Northern Ireland and other jurisdictions.

## Increase the capacity for scrutiny by the Assembly

MLAs, ministers and Assembly officials have been out of action for two and a half years. The absence of the Assembly means that there is currently no local parliamentary accountability, but it also risks a big loss of capacity as many of the staff who were employed by the Assembly have been seconded.

There is little track record of opposition in the Northern Ireland Assembly – indeed there was no official opposition until 2016. When power-sharing is restored, and should an official opposition form, it should be properly supported to fulfil its functions of scrutinising the government, holding it to account, and providing an alternative policy platform. In the longer term, consideration should be given to setting up an equivalent of Australia's Parliamentary Budget Office,<sup>30</sup> which can also help members develop their own policy proposals.

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Committees must be supported. Unlike Westminster committees, NI Assembly committees do not have committee specialists as a dedicated resource for work on research and policy and, even fully staffed, the Assembly has only a small research service of around 20 people. The Assembly should review how it can use its resources to promote high-quality, effective scrutiny. While transparency is important, the unintended consequence of conducting all committee business in public is that members do not have the chance to deliberate in private, which may hamper cross-community working. The Assembly may also want to consider whether to permit some committee meetings to be held in private.

Officials told us that the primacy of the Assembly as the legislature has never been recognised, and it is often perceived to be just an extension of the executive. The executive and the Assembly are often conflated and simply referred to as 'Stormont' without recognition of the specific role of each. Thought should be given to how to enable the Assembly to establish its own identity; this could empower MLAs and create a sense of public ownership of the representative institutions.

### **Ensure that the Northern Ireland secretary is a respected figure and improve NI literacy in Whitehall and Westminster**

Northern Ireland secretary is an important job in UK government – but prime ministers do not always treat it as such.

Prime ministers should consider carefully who they make their NI secretary. It should be regarded as a role for a (relatively) senior secretary of state who is able to command respect across the political and civil society spectrum in Northern Ireland, and able to fairly represent their views back in London. Appointments must be made with regard for the interests of Northern Ireland, not just who the PM needs to accommodate in Cabinet.

It is also important that the proposed secretary of state should be able to spend a significant amount of time in Northern Ireland – however tight the parliamentary arithmetic and demands in Westminster may be. The two major UK parties should agree automatic pairing for the NI secretary to allow that to happen.

The UK civil service, beyond the NIO, should address the lack of NI literacy among Whitehall officials by ensuring Northern Ireland is covered properly in induction and training, particularly for policy makers, and encourage more contact and interchange. UK civil servants should be encouraged to travel to Belfast whenever appropriate. Officials should be expected to think explicitly about the Northern Ireland dimension when they are developing proposals to ensure that there are no unintended effects.

Westminster also needs to take Northern Ireland issues more seriously when the executive is not sitting and ensure that it is exposed to all shades of opinion in Northern Ireland. Select committees with UK-wide remits should try to ensure that they solicit contributions from Northern Ireland and include NI representatives in their evidence sessions.

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## **The UK government should think carefully about its approach to Northern Ireland**

Theresa May's government appeared to have an approach to Northern Ireland that was to sit on policy decisions as a tactic to force the executive to return. That approach needs to be revisited. If the executive is not re-established soon (and if direct rule is not imposed), the government should set out its approach to governance in Northern Ireland, and should agree to a memorandum of understanding with the NICS on how they are to work effectively together in the interests of the people of Northern Ireland.

The Conservative Party's confidence and supply arrangement with the DUP has diminished its ability as a government to appear to be an even-handed, honest broker in the discussions about restoring power-sharing – or indeed in other policy areas like Brexit, where the NI parties are profoundly divided. This reduces the incentive for the DUP to get back into power in Northern Ireland and rebalances influence within the party towards its Westminster MPs and away from Stormont MLAs.

The rush to do a deal with the DUP in the aftermath of the 2017 election suggests little thought was given to its impact in Northern Ireland, and was instead based on concerns over parliamentary arithmetic in Westminster. While it is clearly unrealistic to exclude the possibility of pacts, ministers should be required to set out how they are ensuring that any deal does not contravene their ability to exercise their functions under the GFA. Ideally, pacts between governing parties and Northern Ireland parties should be avoided because they are so hard to square with the UK's commitments under the GFA.

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# Conclusion

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**Northern Ireland has undoubtedly made massive strides since 1998, but a combination of the pressures of Brexit – both economic and political – and the continued absence of political institutions throw a shadow over its future.**

When the power-sharing executive fell in 2017, many people in Northern Ireland assumed it would be a matter of weeks, or in the worst case months, before it resumed. The hiatus now approaches 1,000 days.

The purpose of this report is, first and foremost, to highlight the consequences of the current impasse for good government and the quality of democracy – not just in Northern Ireland but the UK as a whole. The second is to stress the need for the UK government, working closely with the Irish government, to make every effort to restore durable power-sharing – but also, while power-sharing is absent, to ensure it is not the people of Northern Ireland who suffer from the failure of their politicians.

The final objective is to encourage a further debate on how to ensure that Northern Ireland not only has a functioning government, when power-sharing finally resumes, but that it is well placed to serve the interests of all its people. It is vital that the Northern Ireland public restores its faith in its institutions – and its politicians.

Two decades on from the major achievement of the restoration of devolution in Northern Ireland, we have an opportunity to step back and ask whether there is anything more to be done to improve the way devolved government works in country. That is given more impetus by the inquiry into the mismanagement of the Renewable Heat Initiative Scheme. We hope our ideas contribute to that debate.

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# References

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## Chapter 1: Introduction

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## Chapter 4: What are the challenges to effective government in Northern Ireland?

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