

The background of the entire page is a photograph of the Giant's Causeway in Northern Ireland. It shows a vast number of dark, hexagonal basalt columns that have cooled and contracted into a honeycomb-like pattern. The columns are of varying heights and are tightly packed together, creating a unique natural architectural structure.

NORTHERN IRELAND'S POLITICAL FUTURE CHALLENGES AFTER THE ASSEMBLY ELECTIONS: A DISCUSSION PAPER

Alan Whysall

NORTHERN IRELAND'S POLITICAL FUTURE

Challenges after the Assembly Elections: A Discussion Paper

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Northern Ireland's Political Future

**Challenges after the Assembly
Elections: A Discussion Paper**

Alan Whysall

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Approach of This Report

This report is about the future of the Belfast/Good Friday Agreement: as it approaches its 25th anniversary, can it survive, and can it be revived? The focus is now on the political process following the elections to the Northern Ireland Assembly on 5 May. It is a discussion paper, intended to stimulate further conversation and reflection, in Belfast, London, Dublin and beyond.

A second report, addressing the ‘destinies’ – longer-term issues notably around the constitutional status of Northern Ireland, between Union with Great Britain and Irish unity – will appear later in the year (the approach was summarised in this [blog](#)).

The paper aims, in a neutral spirit, to offer explanation, analysis and proposals for further action, in support of the Agreement. None of this purports to be definitive – a key theme of the paper is that much more thought is needed on key issues if Northern Ireland is to achieve progress.

But there is a need to move with seriously high ambition. The Agreement needs to undergo a comprehensive process of renewal, focusing on its wider objectives of overcoming social division, as well as possible institutional change; and with an emphasis on delivering good government. This will not happen without the right contribution from London, as well as Dublin, and from civic society.

This paper aims to be accessible and useful to a range of audiences, who will vary widely in their knowledge of Northern Ireland politics. But, consistently with its theme that we need proper informed discussion of a range of issues, it also seeks to go well beyond generalities. It is probably not to be read in one go...

It embodies therefore several layers of detail. It starts in the Executive Summary with a statement of its key themes and then a chapter-by-chapter outline. Chapter 1 analyses the history of the Agreement settlement and where it now stands, and outlines what needs to be done to sustain it. Chapters 2–5 discuss the process we shall face after the election, the prospects of collapse, the responsibilities of the government in London, and what renewal of the Agreement would involve. Chapters 6–9 present detailed discussion of the substantive issues that need to be addressed in order to sustain and reinvigorate the Agreement settlement – the Protocol, some of the other issues that bear on the fundamentals of the Agreement, the need for good government, and possibilities of institutional change.

Some repetition, regrettably, is inevitable on this approach. Possibly offensive amounts of bold type are also used to flag up the key elements of the argument, and to guide different kinds of reader to the content they are looking for.

The text of the report was completed in late April. I am grateful to Professor Alan Renwick and to Conor Kelly of the Constitution Unit for comments on the draft.

A primer on Northern Ireland politics

For those completely unfamiliar with Northern Ireland politics, the following may be useful.

- Elections in Northern Ireland are to an Assembly of 90 members, by proportional representation under the Single Transferable Vote system. Members of the *Legislative Assembly* are called MLAs.
- In the last Assembly, the *Democratic Unionist Party* (DUP) was the largest party with 28 seats (following the last election, in 2017): it nominated the First Minister – Paul Givan, until he resigned in February; its leader is Sir Jeffrey Donaldson, currently a Member of Parliament, not in the last Assembly, but standing this time. *Sinn Féin* (SF) had 27 seats and nominated the deputy First Minister, Michelle O'Neill; though its overall leader is Mary Lou McDonald, Dublin-based and not standing in the election. The other three main parties, represented in the Executive, were the *Social Democratic and Labour Party* (SDLP) (12 seats) led by Colum Eastwood, the *Ulster Unionist Party* (UUP) (10 seats) led by Doug Beattie, and the *Alliance Party* (8 seats) led by Naomi Long, the Justice Minister. The *Green Party* had two seats, the hardline *Traditional Unionist Voice*, one and the left-wing *People before Profit*, one.
- Members of the DUP, UUP and TUV designate themselves under standing orders as 'unionist', those in Sinn Féin and the SDLP designate themselves 'nationalist'. Each of those parties derives the bulk of its support from a single section of the community. Alliance, the Green Party and People before Profit are designated as 'other', and have a wider support base. Unionists together once constituted an overall majority in the Assembly (and of Northern Ireland seats in Parliament). They lost the Assembly majority in 2017, and it is unlikely to occur again.
- Despite their different titles, the First Minister and deputy First Minister have precisely equal powers, exercised jointly. The system by which the power-sharing Executive is constituted, and the significance of designations, are discussed in chapters 2 and 9.

Executive Summary

Key Themes

These are some of the main themes of the paper:

- **The Belfast/Good Friday Agreement remains the only basis for politics. There is no plausible alternative framework capable of widespread support.**
- **But the foundations of the Agreement are now shaky. It is essential that things are done differently following the election:**
 - That is certainly needed **to resolve immediate political problems so that the institutions can continue, because the alternatives are dire.** The institutional framework may need adjustment to new voting patterns.
 - But it is also needed **to address the underpinnings of the settlement that are at risk of ebbing away** – for example, progress towards reconciliation, eliminating paramilitary influence on politics, and policing by consent.
 - And it is needed because **devolved government must deliver to be stable.** The grave economic and social challenges Northern Ireland faces must be tackled.
- **So the 1998 settlement is in need of comprehensive renewal, and this must begin in the post-election talks.** The institutional framework may need adjustment to new voting patterns. This is a project of a scale of ambition close to that of 1998.
- **We need better informed and more realistic debate; we need people to foster compromise.** Much political discussion in Northern Ireland is focused on the traditional constitutional issues, to the neglect of issues of the here and now. On many issues, it is probable there are at least partial compromise responses, capable of commanding substantial support across the community.
- **The Protocol is one issue that requires a different approach.** The current stand-off is likely to benefit no one, with particular doubts about how it helps the unionist cause.
- **The governments, and particularly London, must assume their responsibilities.** In the past, the role of developing ideas, fostering debate, and promoting and brokering compromise has been taken by a close partnership of the British and Irish governments.
- **But London's approach has changed markedly.** There is a strong UK self-interest in a stable and prosperous Northern Ireland, as previous governments of all parties are recognised. London's present policies are not likely to achieve this.
- **There is a role, perhaps a necessity, in current conditions, for those outside politics – civil society, business people, academics and others – to contribute more fully to**

debate and the pursuit of compromise. Northern Ireland should be able to make a greater contribution to resolving its destiny.

The traditional fatalism that says nothing can be achieved is unjustified. The complacency that says that it does not matter is profoundly wrong.

Chapter summaries

Chapter 1. The Belfast/Good Friday Agreement

The first chapter looks at the history and prospects of the Agreement reached in 1998.

That Agreement once created great political momentum, and great public hope. And it is still widely supported. But much in politics did not change. And Brexit and its outworkings have gravely exacerbated already-developing tensions: it was the first major change in the arrangements that lacked the cross-community support by which the Agreement was achieved. Mistrust now abounds.

The Agreement has achieved much: political violence has largely ceased, policing by consent exists, there has been economic success and much international goodwill, political partnership has helped society to move on.

But progress has been imperfect; and it is dangerous to believe these are permanent gains, indeed signs of crumbling can be seen.

Devolved government, meanwhile, has markedly failed to achieve its promise in the face of serious economic, social and public service challenges.

The Agreement is the essential foundation for future success, in the absence of any practicable alternatives. Though there is now much discussion of Irish unity, there is nothing at present like a majority for it.

But the Agreement needs renewal. This must start with the post-election negotiations. The renewal process may need to run on after them, culminating in the Agreement's 25th anniversary year in 2023: we should not be satisfied with mere sticking plaster for the immediate political problems.

Chapter 2. The Post-Election Political and Legal Context

The following chapter looks at the post-election political negotiation. It is liable to be very difficult, and last most of the year. The Protocol may be a major sticking point; so may institutional matters, whether because unionism has lost the First Minister post, or because the rise of non-aligned parties shakes the binary model of the Agreement.

But it is important that the next Executive have a programme, to ensure it delivers sustained good government, dealing with accumulated economic and social problems.

And the failing underpinnings of the Agreement – social division, the threat of violence and so on as discussed in chapter 7 – need to be addressed.

Politically, the possibility of a second election will be in many negotiators' minds.

Crucial to success will be the role of the British and Irish governments, which in the past have worked closely together to foster compromise. But recent briefings coming out of London suggest its approach may be centred around a conflict with the EU. The two governments may find it hard to work together. There may be demands for external brokerage.

Civic society may also have an important role here in helping to broker a compromise.

The difficulties are such that resolving them may require ambition on a scale not much different from the original Agreement. The governments at top level need to be engaged.

Chapter 3. Collapse

The third chapter looks of the possibilities if the negotiations fail. It is widely thought that once devolved government would then disappear, and reviving it would be impossible for a long time.

Some may see this as a tipping point, favouring Irish unity. But a dysfunctional Northern Ireland may be unwanted both to the east and to the south. And a political vacuum has traditionally been seen as favouring disorder and violence – the possibility of which cannot be ignored, though we are in a very different position from the Troubles years.

How government would be done would be acutely difficult. The legitimacy of direct rule from London may be seriously contested. But leaving government largely to the civil service, as between 2017 and 2020, is hard to contemplate when decision-making may be needed on Brexit issues, and potentially on Covid. In all circumstances, the absence of devolved government is likely to mean worse government.

Dublin has the right under the Agreement to take a role non-devolved matters, which would come to the fore if devolution were not operating, and it would be highly contentious.

Chapter 4. The Responsibilities of London

This chapter considers the approach of British governments to Northern Ireland in recent decades. For a long time, it was a policy priority to restore and maintain peace and stability in Northern Ireland; generally with bipartisanship at Westminster, and a close and effective partnership with Dublin, seeking to show even-handedness and build trust among different traditions in Northern Ireland.

This has changed markedly in the last couple of years. To many, London has appeared to play tactical games with the Protocol issue, for reasons of London Brexit politics, heightening tensions that threaten institutional stability. Polling now shows it to be mistrusted and unpopular across the board in Northern Ireland. Dominic Cummings' view that Northern Ireland issues were 'very low priority', indeed that the Protocol was concluded with the intention of later repudiating it, crystallised suspicions. The partnership with Dublin, and bipartisanship at Westminster, are little in evidence; nor indeed is any strategic view. Despite unionist claims of London betrayal, allegations of partisanship towards the DUP are also widespread.

This approach makes it much harder, however immediate Protocol issues play out, to keep the Agreement settlement in being. The government may have cause to regret its approach within a few months.

Chapter 5. The Need for a Revived Agreement

Chapter 5 considers what might be done to stabilise the 1998 settlement, and reverse the unwinding of politics of recent years. It draws out two main themes: making devolved government effective; and addressing the underpinnings of the settlement.

The chapter suggests ways in which, with the governments potentially stymied, civic society actors, in Northern Ireland and beyond, can contribute to renewal, as they have contributed in the past – not to circumvent politics, but to change the terms of the debate.

In 2023, the 25th anniversary year of the Agreement, a broader and more far-reaching understanding – potentially, as in 1998, drawing in international actors – may have the potential to transcend the current difficulties.

Chapter 6. The Northern Ireland Protocol

This chapter looks at ways in which the Protocol debate may be moved on.

Flexibility in both Brussels and London could obviate many of the current difficulties, and enable Northern Ireland to take advantage of its unique position in both the EU and UK single markets. Getting there will need substantial new thinking, and substantial political engineering, but without it, it is not clear what happy outcomes are available.

The chapter looks at the prospects for the different tactics adopted by the parties. The harder line unionist positions, urging London to break with Brussels, may not be destined either for success, or to strengthen the Union. Whether they strengthen the cause of a united Ireland, in the short term at least, is, however, also questionable.

Chapter 7. Underpinning the Stability of the Settlement

Chapter 7 considers the Agreement's ambitions of promoting reconciliation, tolerance, partnership, equality, parity of esteem for the British and Irish identities, and the rejection of the use or threat of force to influence politics. These underpinnings of the institutional structure appear to be in growing danger. Social division may not be reducing. Paramilitaries continue not only to operate, but apparently to influence the political process.

This report cannot consider all these issues, and its chief plea is for deeper consideration, informed debate and new ideas outside as well as within the political arena. But it looks at specific questions bearing on the fundamentals that may arise in the negotiations, including: 'legacy' issues (dealing with the past, including court proceedings); identity and language issues (such as the demand for an Irish Language Act); rights; education (notably the commitment to facilitate integrated education, where progress has been slow); the continuing presence of paramilitarism; and the maintenance of policing by consent.

Chapter 8. The Good Government Deficit

Chapter 8 looks at the governing performance of the institutions, which has been patchy at best in the face of serious issues of economic underperformance, grave social problems, struggling public services and lapses in standards and propriety.

Neglect of these issues is traditional, and the Agreement says little about them. The problems of the health service are much discussed, but many other issues continue to be neglected, and to lack political traction. The most recent Executive never concluded a Programme for Government; indeed at times it was not clear what it stood for at all, beyond going on from day to day.

Good government and sound policy are valid objectives in their own right, but have a broader significance in Northern Ireland: successful devolved institutions will underpin political stability.

Serious change in the political culture is ultimately needed. It must start with a fully worked through Programme for Government, with machinery to ensure implementation.

More outside involvement in public policy is needed, analysing problems and fostering debate. There is now a Fiscal Council, and an independent public policy think tank. But this is probably not enough: there is a strong case for an independent public body that would inform debate across public policy issues, produce draft Programmes for Government, and monitor implementation.

The post-election negotiation should lead to the establishment of an Executive whose dissolution would be unthinkable by the end of its term, because it was indispensable.

Chapter 9. Institutional Challenges and Opportunities

Chapter 9 looks at the issues around the structure of the institutions that may feature heavily in post-election negotiation.

The possibility of Sinn Féin being the largest party, leaving a unionist party to nominate the deputy First Minister, is one of the immediate issues that may arise: Institutional changes to address the political complications this may cause are discussed.

But the rise of the centre ground may call into question the binary unionist/nationalist model of the institutions, which puts ‘other’ representatives at a disadvantage. A number of parties, from different perspectives, favour abandoning designations and moving to a weighted majority basis for ensuring that an Executive, and its decisions, have cross-community backing.

Various models are discussed, but they raise difficult questions. How can the Agreement change? And can a single party block not only a resumed Executive, but also the enactment of changes that might permit politics to move on? The chapter suggests not.

There is also the issue that the current institutions were not designed with efficient government as a priority: increasingly, it is a priority, and that may have institutional implications.

These issues are not often discussed outside the parties and governments, but deserve further debate. If they are not central to the politics on this occasion, they may be before long.

Chapter 1.

The Belfast/Good Friday Agreement

This chapter considers whether the Belfast/Good Friday Agreement is still the necessary foundation for politics in Northern Ireland, and whether its structures and achievements are in danger. It concludes that there is no visible alternative to the Agreement, its institutions must be kept in being, but that is not enough: it needs renewal.

Background

The Agreement

The Agreement was the product of compromise pursued over several decades by the British and Irish governments working in close partnership, by some in politics, by members of civic society in Northern Ireland and by governments and individuals beyond. It was agreed in interparty negotiations involving the governments and independent chairs, of whom the most notable was the American Senator George Mitchell.

The Agreement was once widely popular in Northern Ireland: in the negotiations it was backed by a majority both of unionist and of nationalist parties, and then achieved 71% support in the 1998 referendum (reckoned to include an overwhelming majority of nationalists, though only a bare majority of unionists¹). It engendered great political momentum, and public hope for a better future. Many voters overcame their hesitations based on traditional political allegiances, and supported it. The British and Irish Prime Ministers had been heavily involved in the negotiation, as had the US Administration, and it was greeted with worldwide approval.

The [text of the Agreement](#) opens with high ambitions: the initial Declaration embodies a commitment to the achievement of reconciliation, tolerance, partnership, equality and mutual trust; the protection of rights; and the rejection of any use or threat of force for political purposes.

Central to it is the accommodation on the issue of union within the UK versus Irish unity, based on consent. It recognises the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland; it requires a poll on the issue to be held if it appears that a majority would favour a united Ireland; and simple majorities in both parts of the island would lead to unity. (The implications of its provisions here were explored at length by the UCL [Working Group on Unification Referendums on the Island of Ireland](#), and will feature in the forthcoming report on ‘destinies’).

¹ Two exit polls gave evidence on Catholic/Protestant voting patterns. One found support for the Agreement at 96% among Catholics and 55% among Protestants. The other put those numbers at 99% and 51% respectively. See Sydney Elliott, ‘The Referendum and Assembly Elections in Northern Ireland’, *Irish Political Studies* 14, no. 1 (1999), 138–49, at p. 143. In the South, meanwhile, the Agreement was approved by 94% of voters in a referendum held on the same day as that in Northern Ireland.

It also lays out an [internal machinery of government in Northern Ireland](#) (sometimes called Strand One), embodying the principle of power-sharing – which it had been widely accepted for several decades was essential to political stability in Northern Ireland – and minority protection, with regular requirements of cross-community support for change.

It is also concerned with wider relations in the two islands. It (or strictly the international Treaty accompanying it) also establishes structures to bring together ministers and administrative functions from the North and South of the island (Strand Two), and East–West structures, bringing together the Dublin and London governments and the UK devolved administrations (Strand Three).

The earlier Agreement years

The first years of the Agreement were rocky: power-sharing government stuttered, and then broke down for five years from 2002. But, to a substantial degree, the political parties committed to the arrangements. There were strong electoral pressures on them, and encouragement from the governments, the US and the EU, to overcome disagreement and be seen to be working together. And there is no doubt that many of those involved were enthusiastic about developing constructive politics.

The Democratic Unionist Party, even though initially opposed to the Agreement, came fully into the institutions after relatively minor adjustments to several aspects, embodied in the St Andrews Agreement of 2006. And for a time, the parties flourished in doing so: the DUP and Sinn Féin appeared to be rewarded for their partnership in the outcome of the 2011 Assembly elections, for example.

But in politics, much did not change. The principal lines of division between most of the main parties continued to be constitutional fundamentals, and most continued to derive the great bulk of their support from one or other part of the community .

The old identity issues returned, starting with public demonstrations about the display of flags in 2012, which seriously shook the stability of the Executive. Further splits were patched up in a succession of political agreements, but Sinn Féin felt able to [collapse the institutions of government in 2017](#). The trigger was governance issues involving the DUP raised by the Renewable Heat Incentive affair, but underlying tensions ran much deeper.

The British and Irish governments worked closely, especially during the brief tenure of Julian Smith as Secretary of State, to [bring the parties back into power-sharing government](#) under the [New Decade, New Approach](#) agreement of January 2020 – but Smith was shortly afterwards sacked by London.

The impact of Brexit

Brexit and its outworkings have greatly exacerbated political division. The DUP favoured Brexit; the other main parties opposed it. Northern Ireland voted to remain by 56% to 44%. Both Brexit and the Protocol uprooted various understandings that had led to the Agreement taking the shape it did. Had there been any suggestion in 1998 that the UK might leave the EU, or that

a great increase in controls of the sea border between Great Britain and Northern Ireland was possible, the text would probably have been significantly different.

And Brexit was the first major change in the arrangements established after the Good Friday Agreement that clearly lacked the cross-community support by which the Agreement was reached.

Brexit has brought to the fore much underlying mistrust within Northern Ireland politics.

- There may be suspicions that some unionists have favoured Brexit in order to undermine the Agreement in ways they could not have achieved otherwise.
- Nationalists may similarly be suspected of using the issue to shift the debate to Irish unity, with the revival of the suggestion that proponents of unity do not wish Northern Ireland to work, because that undermines the unity cause.
- The British government, mistrusted according to the polling on all sides, is suspected of using Northern Ireland as part of tactical games with the EU. And, although accused by unionists of betrayal, is seen by others as partisan towards the DUP.
- Mistrust between London and Dublin has also grown significantly, damaging the partnership which in recent decades has underlain political advance.

Hard Brexit inevitably meant more physical borders somewhere in or around Ireland. The [Northern Ireland Protocol to the UK Withdrawal Agreement](#), which came into effect at the beginning of 2021, has made Brexit issues material in Northern Ireland, notably the controls that now operate across the Irish Sea. It has become the central, or at least most talked of, issue in Northern Ireland politics.

The Agreement settlement remains widely supported

The main parties still generally profess their commitment to making the settlement work. Most of them have long-standing preferences for changes to the Agreement, particularly around the structure of the institutions (see chapter 9), but these are long-standing and have not threatened stability, so far.

Some smaller parties do not back the Agreement. On the unionist side, such forces may be growing in strength. The [loyalist paramilitary groups](#), and a party associated with one of them, the [Progressive Unionist Party](#) have announced they no longer support the Agreement; and the Traditional Unionist Voice, rising in the polls on the stauncher wing of Unionism, [regards it as ‘pernicious’](#). Some who share this outlook are actively seeking to [promote instability](#) unless their demands are met.

DUP figures, perhaps because of the TUV threat, have issued reminders of their opposition to the original Agreement but stand by it as amended at St Andrews. Latterly, the DUP has been [calling for change to the Belfast Agreement](#), to reflect its view of the consent principle (see chapter 6).

A few hard-line republican groups also regard the Agreement as a betrayal of their ideals, but they are electorally insignificant.

[Polling suggests enduring support](#) for the Agreement, if with changes.

What has the Agreement achieved?

The Agreement has brought clear benefits, many of which endure. Many aspects of Northern Ireland life are now strikingly different from those at the time of its negotiation. Progress has been remarkable – and in the early years of the Agreement, to those who had lived through the previous thirty, it was at times astonishing.

Most obviously, the Agreement brought about conditions in which political violence has largely ceased. Most of those involved in paramilitary activity have moved on, and street violence has reduced greatly since the Agreement – at least until last year, and protests over the Protocol.

Remarkably, given what went before, policing by consent was achieved: support across the community for the Police Service was in remarkable contrast to the past.

There have been at times economic successes, notably in the attraction of substantial foreign investment, and tourism, encouraged by the stability that the Agreement delivered. There has been infrastructure investment, some of it EU-financed.

The Agreement settlement also attracted a great deal of international goodwill, notably from Europe and the United States, which may have had a range of material benefits, hard to measure.

Cross-border relationships with the South have flourished, economic and (for a time) governmental.

And much of society has moved on. Indeed, this has often appeared to be happening faster than the politics. Nevertheless, such developments may also have taken inspiration from political partnership – perhaps notably that of Ian Paisley and Martin McGuinness, politically lifetime polar opposites, who came together to lead the Executive in 2007.

And so life in Northern Ireland changed greatly for the better.

The unfulfilled promise, and the dangers of regression

It is dangerous to assume, though, that these are permanent gains. They may need work to maintain them, and some, in the polarisation and political dysfunction of recent years, have seemed particularly shaky. It is hard now to say that the Agreement is meeting its wider objectives around promoting reconciliation and removing the threat of violence from politics; or that the institutions are working effectively and delivering good government. Why? (these points are covered in more detail in chapter 7).

Some paramilitary activity continues at both extremes, which has occasionally led to deaths; some paramilitary organisations are also fronts for drug dealing, other gangsterism and neighbourhood control. The continuing political influence of paramilitaries is also much discussed, whether that of former IRA figures on Sinn Féin, or of the loyalist paramilitary organisations on unionist parties. Most recently, there appears to be a recurrence of [loyalist paramilitary activity for political ends](#).

Hopes for greater reconciliation have also suffered setbacks.

- **‘Legacy’ issues** – a range of questions about the consequences of the Troubles, notably those around continued legal proceedings – were always going to be difficult to resolve, but lately they have become more contentious, not least because of a change of approach in London.
- **Issues around identity and mutual respect**, after some early successes, have also become hung up, as exemplified in the flags protests. The Executive in 2015 set up a commission on the issue, which had some limited success in finding consensus on secondary issues; but, after a year-and-a-half of internal disagreement, the Executive could not agree on any aspect of implementation. More recently, commitments were made in London to introduce legislation on language issues, subsequently backed away from.
- **Much division continues within the structures of primary and secondary education**, with progress towards integrated education having slowed.
- [Societal divisions continue to be manifested in peace walls](#), of which a great many remain, particularly in Belfast.

Cross-community support for policing has taken severe knocks, notably when leaders of the main unionist political parties demanded the resignation of the Chief Constable last year.

And devolved government itself has latterly failed markedly to achieve its promise. Having collapsed in 2017, it was brought back to life by the two governments in early 2020, but what the institutions were trying to achieve beyond managing from day to day was at times difficult to discern. Delivery has been sparse. There was a conspicuous lack of any vision for what Northern Ireland (whether in the UK, or in a united Ireland) might become over the coming decades. The institutions finally collapsed into caretaker status in February, when the First Minister resigned (see chapter 8).

And the public mood, which once strongly backed the Agreement, now appears much deflated. The disappearance of the hope the Agreement once gave may have wider consequences – for example, talented young people who might once have stayed in Northern Ireland prefer to leave, for higher education or other opportunities, and do not return.

Can the Agreement lead to further progress?

Some suggest we are at a tipping point: that we cannot go back to where we were; perhaps that we are inevitably on course for another destination – often, it is suggested, Irish unity.

There will be more discussion of these issues in the later report on ‘destinies’. But some mention of them is relevant to the current debate.

A range of groups are now promoting dialogue about unity. There is very limited unionist participation in this discussion, however. This is not for want of invitations, which have regularly been issued; but many unionists, understandably, feel disinclined to join in the planning of something they oppose.

The political context has changed significantly, and in all likelihood permanently, as a result of longer-term trends in voting patterns, coupled with events of the post-Brexit years and their impact on perceptions in Northern Ireland of London and Dublin.

But there is little sign that this points to any radically different arrangements for Northern Ireland in the foreseeable future.

- There is little to suggest that there is likely to be a majority for Irish unity in the near future.
- A close vote for unity – though it would in Agreement terms deliver a united Ireland – could not with confidence be expected to bring about a stable new settlement.
- And Irish unity of itself cannot be regarded as a universal solvent for all of Northern Ireland’s difficulties.

We may ultimately be looking for new accommodations, therefore. But in the present state of politics, and any we are likely to be in in the medium term, there is no plausible alternative to the Agreement, as a foundation for the government of Northern Ireland and for social stability and progress: no alternative to the broad shape of the institutions, nor to the wider Agreement programme.

There is no sign that any other set of arrangements would command significant cross-community support.

If the Agreement institutions disappear, the prospects are dire. The institutions would be very hard to resurrect. Any other form of government, certainly including the traditional fallback of direct rule, would seriously lack legitimacy (see chapter 3).

But ensuring the mere existence of the institutions is not sufficient.

- **Public approval will not return without a government that delivers** on a serious economic and social programme. The institutions will inevitably be plagued by instability if they fail to deliver and are beset by a political climate of dissent.
- **And resumed work in pursuit of the broader objectives of the Agreement around reconciliation and ending the threat of violence in politics is essential.**
- **For this we need many more ideas, thinking on the scale that underlay the original Agreement. So it will not be sufficient to find a short-term political fix,** of the sort we have seen in recent political agreements, whose shelf life has been short.

- If Northern Ireland is to be stable, prosperous and well governed, there is a need to recreate the political and popular mood and energy that the Agreement settlement once generated; and perhaps also the international involvement, from the US and the EU.
- In short there is a need for a renewed Agreement, whether achieved within the negotiation period, or in the Agreement's 25th anniversary year.

It is easy, and common in Northern Ireland, to be fatalistic about the prospects of political advance: this was seen before the 1998 Agreement. And there is often a complacency about failure to achieve it. Both are out of place: there is a real prospect now that renewal can occur, but failure to secure it could wipe out many of the benefits the Agreement has brought.

Chapter 2. The Post-Election Political and Legal Context

This chapter sets out the parameters, legal and political, of the process following the Assembly elections to find the basis for continued devolution. It asks what needs to be done to ensure that the institutions survive and deliver good government, and to meet the underlying challenges to the Agreement settlement.

Background: The lead up to collapse

Devolved government in Northern Ireland under the Agreement, restored in early 2020, enters Assembly elections in a semi-collapsed state, with a real prospect that it will fall apart completely in the post-election negotiation. What went wrong?

When devolution was restored, there were signs of the largest parties, the DUP and Sinn Féin, seeking to make it work. The report on the Inquiry into the Non-Domestic Renewable Heat Incentive Scheme, the issue that had caused Sinn Féin to collapse the institutions in 2017, caused no further political disturbance when it was published in March: all debate on it quickly gave way as the Covid epidemic grew.

There was a strong public expectation that the Executive took a grip of the epidemic; hence it held together, despite strains – notably when, in the middle of Covid restrictions, the [funeral of Bobby Storey](#), a former high-ranking figure in the IRA, attracted a very large turnout, including the Sinn Féin leadership; and later when members of the DUP opposed continuing Covid control restrictions favoured by other parties.

But the tensions that Brexit introduced into Northern Ireland politics became more intense with the coming into effect at the beginning of 2021 of the Northern Ireland Protocol. There were strains between the parties, but, especially in the case of the DUP, also within.

Polling last year began to forecast the loss of much of the DUP's strength in the Assembly, a significant amount towards the hardline Traditional Unionist Voice (TUV). There were several [street disturbances](#) over the Protocol issue, rumoured to be orchestrated by loyalist paramilitary figures. Having first taken the position that the Protocol had advantages and needed to be lived with, the DUP leadership under Arlene Foster hardened its line. She was nevertheless ejected as party leader, and hence as First Minister – but so, shortly afterwards, as DUP internal affairs fell into further disarray, was Edwin Poots who had ousted her.

London, meanwhile, in the persons of the Prime Minister and Lord Frost, the minister in charge of European negotiations, raised the stakes around the Northern Ireland Protocol: they sought wide-ranging changes, and spoke of invoking unilaterally its Article 16, so as to suspend part of its operation. The government claimed to be acting in defence of the Agreement; others suggested that continuing conflict with Brussels suited its tactical purposes at Westminster, and stirring up

divisions in Northern Ireland was a price it was willing to pay. The US Administration argued strongly the need for respect for the Protocol.

Sir Jeffrey Donaldson was installed as DUP Leader in summer 2021 (though, being a Member of Parliament, not of the Assembly, he did not immediately take a role in the Executive). He instructed his ministers, in protest over the Protocol, not to participate in the operation of the North–South institutions of the Agreement. They persisted in this course despite it [being declared unlawful by the courts](#).

But Sir Jeffrey also threatened to withdraw ministers from the Executive unless [grievances over the Protocol were resolved](#) (and gave notice that his Ministers in the Executive would use their powers to block any further checks under it at the ports). Although Brussels announced various steps to alleviate the effects of the Protocol in the autumn, and negotiations seemed more promising after on the UK side the Foreign Secretary had taken over the UK lead from Lord Frost, the [DUP eventually carried its threat into effect](#). Its Agriculture Minister on 2 February instructed his officials to end border controls under the Protocol, a move of [much-disputed legality](#). The following day, it was announced that the DUP First Minister, Paul Givan, would resign his post. This resignation, by law, also removed from office the Sinn Féin deputy First Minister, Michelle O'Neill.

Other ministers (including DUP ministers) remained in post, though effectively as caretakers, unable to take significant new decisions (see below). A three-year budget had been proposed before the First Minister resigned, but not voted on by the Executive. The Finance Minister maintained that failure to do so left £300 million that could not legally be allocated. [Attempts between the parties to find a way forward failed](#).

Once the new Assembly meets following the election, it must elect a Speaker; and then the First and deputy First Ministers must be appointed. Under the current rules, the largest party in the Assembly nominates the First Minister; and the largest in the largest designation (that is, nationalist, unionist or other), apart from the First Minister's, nominates the deputy First Minister.

If either of those parties does not nominate, the process of Executive formation is stalled. There will be a period of up to 24 weeks to find a political basis on which ministerial appointments can be made.

Analysis: post-election prospects

Depending on post-election arithmetic, this may be the most difficult Northern Ireland political negotiations since 2006, if not 1998. There may be several fundamental difficulties in appointing a new Executive after the election.

In the first place, the DUP has said it will not go back into government unless the Protocol is 'replaced by arrangements that restore Northern Ireland's place within the United Kingdom' – and it is likely to be in a position to block formation of the Executive. The UUP does not take so definitive a line. The attitudes of both may be influenced by the TUV vote. But the Protocol is likely on any analysis to loom large. And there is a profound question whether unionist interests are really favoured by crashing the institutions (see chapter 6). Other issues, for example questions

about 'legacy' or the Irish language (as to both, see chapter 7) are also likely to feature in the negotiation.

Second, a significantly changed electoral line-up from Assemblies of the last two decades is in prospect. That may pose a number of different, but serious and complex, challenges to the institutional arrangements.

Possible outcomes and their implications

What exactly the stakes may be will turn on the results. There is a wide range of contingencies: A former leader of the Alliance party sketched out [nine possibilities](#). It is worth exploring some of these. They and their implications are discussed at greater length in chapter 9.

Recurrent polling over the last year suggests a fragmentation of the unionist vote may be under way – with a decline in the DUP vote, hitherto much the largest on the unionist side, a possible rise in that of the UUP, but also a rise in support for the TUV. If reflected in election results (and barring an unexpectedly high Alliance vote) this would lead to Sinn Féin becoming the largest party, and so taking the First Minister post (under arrangements introduced following the St Andrews Agreement of 2006).

In that event, the largest unionist party would be entitled to nominate the deputy First Minister. Some on the unionist side, though, argue that the DUP or UUP should not accept that role – even though the First Minister and deputy First Minister posts are precisely equal in powers – hence collapsing devolution. The leaderships have avoided saying what they would do.

DUP campaigning since St Andrews has with great success played up the importance of a unionist as First Minister, and therefore of a vote for them rather than another unionist party – so for them, taking the deputy job would be difficult. The overall unionist vote is still likely to be higher than the nationalist vote, and under earlier (pre-St Andrews) arrangements, the expectation might have been a unionist First Minister. And psychologically, being displaced from the First Minister role would be painful for some unionists, as the latest of a string of manifestations of a shrinking unionist presence in Northern Ireland politics.

There are possible institutional changes to defuse this difficulty. But a nationalist party might well be reluctant to rush to change a system from which the DUP had profited, simply because it no longer suited unionists. Some arrangement might, however, emerge from negotiations.

The elections may also see the non-aligned parties substantially increase their vote. Members joining the Assembly are required to designate themselves unionist, nationalist or 'other'. The unionist and nationalist blocks have traditionally been much the largest, but 'others', and notably Alliance, did spectacularly well in the elections (not to the Assembly) of 2019. [Polling in recent weeks](#) has indicated that Alliance would keep a substantial proportion, though not all, of the 2019 gain in overall vote; further, this is an election by single transferable vote, and Alliance have traditionally picked up many transfer votes.

What might be the results?

- If an 'other' *party* were the largest in the Assembly, it would nominate the First Minister.

- If not, but the ‘other’ *designation* were the largest in the Assembly, the *largest party in that designation* would nominate the deputy First Minister.

In either case, the traditional binary, unionist/nationalist, balance of the Agreement would be disturbed – one or other of those traditions would not be at the top table. It is hard to see devolution, which is posited on power-sharing between unionists and nationalists, resuming on that basis: some change would be required. Despite the surge in Alliance polling, however, these contingencies are not likely in the coming election.

But some would also see an injustice in a third contingency:

- if ‘other’ substantially increased its vote, so that an ‘other’ party became the second-largest – it would be left by the current rules without representation at the top level of government.

And the veto given by the Assembly’s cross-community voting rules to unionism and nationalism, but not to ‘others’, would rankle further.

If the growth of the centre ground continues, the binary model will become less and less workable, whether the crunch comes now or later.

Again, there is a range of possible changes to address these issues.

So there may be a demand for amendments to the internal government structures set out in the Agreement, reflected in UK law. The Agreement has no express amendment provision, but its review provisions clearly envisaged change, and some changes have been made: the governments have sought a degree of cross-community support similar to that by which the Agreement itself was approved.

The other key issues that need attention

Two other sets of issues ought to feature, in order to stabilise and strengthen the Agreement settlement.

- **Serious attention needs to be given to the Programme for the next Executive** (as argued in chapter 8). The period after the Assembly meets is one in which the ministers in the new government, reflecting party strengths in the Assembly, would be expected to negotiate a draft Programme for Government (and the smaller of the parties to decide whether they wish to participate, or go into opposition). But the parties on past form may accord little priority to debate on these issues – with the exception, perhaps, of the health services, whose frailties have received much public attention.
- **Attention also needs to be paid to the decaying underpinnings of the Agreement** (chapter 7). If these issues are not considered around the table, there will be a case for new mechanisms to ensure that the necessary analysis is done and debate begun. Perhaps, as suggested elsewhere in this document, leading to a revived Agreement on its 25th anniversary next year.

Legal framework for the post-election period

The [Northern Ireland \(Ministers, Elections and Petitions of Concern\) Act 2022](#) passed at Westminster in early February, has significantly extended the period before which, in default of nominations for First Minister and deputy First Minister being made, elections are called. This is in line with commitments in the [New Decade, New Approach](#) deal, intended to curb the power of the parties holding or nominating to those posts to pull the institutions down quickly.

The period is in principle 24 weeks. It can, though, be brought to an end after six weeks, if two thirds of those voting in the Assembly so wish; or Secretary of State believes it necessary in certain circumstances.²

Existing ministers generally retain their powers until the end of the 24 week period, unless new appointments are made. But since at present there is no First Minister or deputy First Minister, the Executive cannot meet and, under the [Ministerial Code](#), new controversial or cross-cutting decisions cannot be made. Hence this is essentially a caretaker government.

Further elections before Christmas are on the cards, if the institutions are not restored. Where, at the end of the 24 weeks or earlier, an election is called, it must be held as soon as practicable, and in any event within 12 weeks. So the deadline for negotiation is around the end of October, with the potential of elections before Christmas or early in the New Year.³

In the past, for example in 2017, following a collapse, an election and a failed attempt to find a political way forward, it has been assumed that a further election would change nothing and exacerbate division, and new Westminster legislation has therefore put it off. But, after 24 weeks' negotiation, and with voting patterns in a volatile state, there may be scope for substantial change at a second election. So it is harder to see the election being put off, the more so since that the legislation providing for it is new.

Following the further election, there would be another 24-week period – but with no ministerial powers.⁴

² The Act ties this to 'giving effect to the underlying purpose of' a paragraph of the *New Decade, New Approach* deal; that paragraph is about commitment to power-sharing and cross-community protection, and ensuring sufficient representation to command cross-community confidence in the Assembly. In what circumstances this empowers, or requires, the Secretary of State to call early elections could be open to significant dispute, and potentially litigation. But it may well have the effect that if all unionist ministers or all nationalist ministers leave their posts, there is an early election.

³ The main parties could if they wished extend the negotiation period consensually, by appointing and then immediately removing a First Minister and deputy First Minister. This is not likely, but possible if the talks were near a breakthrough and it suited the largest parties.

⁴ New Westminster legislation may be necessary at that stage, because there would likely be the same confusion as to what, if any, powers civil servants retain as was left by court cases during the 2017–20 hiatus: the Westminster legislation that restored their powers has been repealed by the latest Act. In any event, in short order, legislation may be needed to permit decisions to be made at Westminster, for example over Brexit issues, that civil servants could not possibly take on their own account – but this is likely to be intensely controversial (see chapter 3).

The political context: what will happen in the 24-week period?

The intention is that there should be ‘concerted and determined efforts’ by the parties to find a basis for resumed devolved government.⁵ The Assembly will continue to sit, and will review progress from time to time, but little else is laid down as to how the political process will operate.

Much in the politics of a negotiation depends on the arithmetic: which will be the biggest party? How far will the centre ground vote expand, and what implications will that have? Will the DUP or UUP be the largest unionist party? How far will the TUV be a significant presence in the new Assembly?

There is a real prospect that the largest unionist party, entitled to appoint either the First, or the deputy First Minister, will have only a plurality of unionist votes – and perhaps MLAs. If this is the UUP, whose leader is keen not to collapse devolved government, would he be able to proceed into government despite the opposition of the other unionist parties, including the DUP in opposition mode? There would be a risk in that case that, without 50% of unionist votes in the Assembly, formation of the Executive would stall over the election by the Assembly to the Justice Minister post, which is chosen differently from other ministerial posts.

The possibility of a second election, in default of agreement, will be in negotiators’ minds. Hence the negotiation period is liable to take on for some parties the aspect of a political campaign for the second election – if they conclude that they have prospects of increasing their support then, or can do damage to those opposed to them. Some parties, conversely, may be particularly anxious to reach agreement in order not to go to a further election. It may be that a political formula for resuming devolved government will emerge during the negotiation, but without sufficient support to be implemented; certain parties would then go into the second election campaigning for it.

The wider world context will have its impact. The ‘cost of living crisis’ is likely to hang over the negotiations. Indeed if those negotiations failed to make progress, it may lead to increasingly strident protest. The governments, and political opinion beyond Northern Ireland, meanwhile, may be focused on top international tensions. Westminster politics may also have its own preoccupations in coming weeks.

Finance will also impinge. There is no budget for the 2022–23 financial year. The Department of Finance is allowed to pay out some money, but only up to a maximum of 95% of the previous year’s budget. This may cause serious difficulties in the later part of the negotiation period as Accounting Officers seek to close off commitments to funding (typically those most easily cut are grants to external organisations) that they may not be able to meet. Westminster can step in and enact a budget, but that may be seen by some as the start of direct rule.

Will all parties be keen to get devolved government back? There is ultimately a lot of self-interest in doing so; a large number of people’s jobs depend on it. But the jobs are unlikely to be cut off in the short term. It is possible [the DUP would see advantage in Stormont being in suspension](#) for a time, relying on its presence on the floor of the House of Commons (which

⁵ *New Decade, New Approach*, paragraph 3.10

other unionist parties do not have, and which Sinn Féin also lacks because of its abstentionist policy – though it is otherwise quite active at Westminster).

The role of the governments

How will the two governments work together? On past precedent, the Secretary of State and his Irish counterpart (usually the Irish Minister for Foreign Affairs) would be working closely together, in dialogue with the parties, to seek a basis on which government can be resumed (the Irish stepping back on the detail of ‘Strand One’, internal government matters).

In principle, given the likelihood (see chapter 3) that devolved government once let go would be very hard to get back, with severe potential risks of increased instability, both governments should be committed to an intensive effort to achieve agreement. But given their profound differences over the Protocol, which will be at the heart of the negotiations, it is hard to be confident how far in practical terms the two governments will be able to work together.

And it is unclear what the British government’s approach will be. One possibility is a continuation of the current approach: maintaining that the Protocol is not working, using the negotiations to pressure the EU to give way, or take the blame for the collapse of devolution. If recent Westminster briefing is to be believed, it may invoke Article 16 of the Protocol, or seek to modify it, saying this is necessary to save devolution. As discussed below, that approach would serve neither Northern Ireland’s own welfare, nor the UK’s medium-term interests (see chapter 4).

To advance Northern Ireland’s interests would require a much more considered approach, according Northern Ireland a greater priority at the centre of government and with the objective not merely of a short-term political deal, but of setting the 1998 settlement on a stable and more promising foundation.

In doing so, the governments might seek to draw in not only the EU, but also the US Administration. A new agreement – inter alia supplanting the Protocol (whether or not greatly different in substance), and a wider goodwill package backed by the EU and perhaps US – could on an optimistic analysis be part of a successful outcome (see chapter 6). It could also embody, or pave the way for, a relaunch of the Agreement in its 25th anniversary year (see chapter 5).

In any event, in present circumstances the British government is inevitably a player in this negotiation, not just a ringmaster. It negotiated the Northern Ireland Protocol, and its wider positions on Brexit underlie many of the difficulties. For example, some parties will urge it to conclude a sanitary/phytosanitary agreement with the EU (which Brussels has offered), which would obviate the need for many of the Irish Sea border checks. Its proposals on legacy, unanimously disapproved by the outgoing Assembly, may also feature prominently in the negotiation, like its unfulfilled commitment to Irish language legislation.

If it does not give some ground on these issues, it may, depending on the place discussions reach, risk being widely seen as the party that prevented an agreement.

Dublin is also to some degree a player as well as a broker, particularly given its influence with the EU; and **the EU itself is a player**, though how far it may be at the table, in the absence of precedent, is unclear.

The position of the governments may lead to demands for external brokerage – including the possibility of an American or other international mediator, official or private, in the tradition of Senator George Mitchell, Dr Richard Haass and others. The Biden Administration is currently considering [appointing an official Envoy to Northern Ireland](#). Given the strong position that the Administration has taken on the need to respect the Protocol, unionists may not regard it as an honest broker – though Senator Mitchell faced such opposition, and after appointment built considerable respect on all sides.

How [President Biden’s possible visit to Ireland this summer](#) may impact the negotiations is unclear.

Senior Northern Ireland civil servants have also at times taken on chairing and brokerage roles. But finding mediators of sufficient stature, acceptability and willingness to take on what may be a thankless role may be difficult.

The parties themselves could take greater initiative in negotiation. In the past, the two governments working together have taken the lead in animating dialogue. But both governments now face a significant degree of mistrust in some or all of the Northern Ireland political spectrum. It is possible that the main party leaders will take more of an initiative: under *New Decade, New Approach* they have at times operated as a group. But who would feel able to take the lead in such an initiative, and who would feel able to participate, depends on election arithmetic. Some parties may need much cajoling to engage.

Civic society might also be given, or offer to take, new responsibilities. Given the strained politics, and given the challenges to the governments as honest brokers, there is a potentially useful role for people outside politics in offering ideas (see chapter 5).

A civic society coalition might have a valuable role in generating ideas, and ultimately in easing the way towards political compromise. It is important that the pressures the political parties have to deal with are not solely from the more radical wings of the political spectrum.

Might agreement be reached early? There is probably little likelihood of this – though the absence of fully effective government while negotiation goes on may lead to real difficulty. Parties may be keen to press their advantage for as long as possible, and some may be especially reluctant to be seen as pushovers; parties with less to lose in the second election might be keen to keep up the pressure on those desperate to avoid one. Northern Ireland negotiations rarely end much before a deadline.

Will there need to be more money from Westminster (and possibly elsewhere)? It is inevitable that there will be demands for it, given past form. Parties welcome sweeteners, to boost their popularity generally, or to assuage criticism among their bases. Northern Ireland has areas of particular need – for example, the performance of the health service in some fields is very much worse than the UK average. But Northern Ireland already has the highest public spending per capita in the UK. Constant injections of London money have probably led to reduced efficiency

in public spending, and a perception in Westminster of Northern Ireland members as ‘transactional’. On the other hand, some payment may genuinely be essential to getting a deal over the line. If so, it may need to be accompanied by mechanisms for guaranteeing more efficient administrative systems. Demands for further money, with the offer of a deal if it is forthcoming, may be the last issue on the table.

In the past, at least, such a negotiating phase might have ended in a ‘hothouse’ session, with prime ministers in attendance, perhaps outside Northern Ireland. Some such raising of the tempo was necessary to get matters over the line. That may be so again in the early autumn, requiring the intervention of the Prime Minister and Taoiseach.

Likely outcomes

There are four sorts of possible outcomes. The three more benign ones are:

- **A way will be found to resume operation of the institutions**, with or without institutional changes (to be made by emergency legislation at Westminster). This might be accompanied, as suggested in this paper, by a commitment to addressing the longer-term issues leading into a relaunch of the Agreement in 2023.
- **At the end of 24 weeks, no way forward will have been found, and further elections will follow.** In those elections, there may be a changed result – and if sufficient support emerges for ways forward already discussed in the negotiations, **the institutions may resume quickly.**
- **Following further elections, negotiations will recommence** for, in principle, another 24 weeks.

Less benignly,

- **At the end of the (first) 24 weeks, there may be complete deadlock, any further elections appearing likely to make things worse rather than better** – which may lead to suggestions of extending the negotiating period, perhaps with provision for necessary government decisions in the interim. The – extremely problematic – consequences of this are dealt with in chapter 3.

To conclude: things must be done differently. A great deal hangs on the outcome of the post election negotiation. Given the polarisation, the mistrust, the fracture between the governments, it is hard to be confident about the outcome, unless things are done radically differently from the way politics has been conducted in the recent past. That may come after the first election, possibly after a second – but otherwise the prospects are worrying.

Chapter 3. Collapse?

This chapter looks at the question: if, finally, the conclusion was inescapable that power-sharing government was not for the moment possible, what would happen? Would government without London oversight, as in 2017 to 2020, be feasible? Would direct rule be sustainable? What would the Irish role be? How would politics develop – could stability be maintained? The prospects are bleak.

Background

Northern Ireland has found politics deadlocked a number of times before.

In the event of that negotiation leads to no agreement about resume devolution, over the extended periods set out in the latest Act, the only remedy the law has is recurrent elections. The system is built on a requirement of cross-community participation in government, and there is a difficulty if sufficient participation is not forthcoming.

But at times in the past when deadlock has persisted, the conclusion has been reached that further immediate elections would not change the stakes, and would make things worse rather than better. Fresh legislation has then been used at Westminster to put them off.

In this case, as discussed above, if the first negotiation period fails, there may well be further elections; but if during the second 24-week period it becomes clear there is no pathway to agreement for resumed devolution, a third set of elections might be put on hold.

In the past, such a move would have been accompanied by the introduction of direct rule from London: the rationale would have been that government – of course – had to be carried on, and in the absence of local political leadership, it could only be done on the authority of, and with accountability to, Westminster. This system operated from the 1970s through to 1999, and from 2002 to 2007. Direct rule legislation (most recently the [Northern Ireland Act 2000](#)) provided for the Secretary of State to direct the executive machine (in practice, junior ministers in the Northern Ireland Office were allocated departmental portfolios), and for Orders made with the approval of each House of the Westminster Parliament to take the place of Acts of the Assembly.

The Assembly would on past form be suspended rather than immediately dissolved: it would not be able to meet, there would be no Executive appointments, but its members would remain MLAs, handling constituency business. The Secretary of State would have the power to revive devolution, if a political basis for it could be found.

Difficult questions would arise about remuneration of and facilities for MLAs. If the hope is to restore devolved politics, then losing the political class, especially those within it ablest to find employment elsewhere, should be avoided. But paying politicians for failing to agree on a way to govern, where there are acute economic and social needs to be dealt with, is also unpopular. By way of compromise, salaries have at times been reduced, and facilities restricted.

No authority for direct rule any longer exists: the 2000 Act was repealed following the St Andrews Agreement of 2006.

And new powers were not taken when the Executive collapsed in 2017, apparently because the legitimacy of London rule would have been seriously contested – the more so since the Conservative government was dependent at Westminster on its [Confidence and Supply Agreement](#) with the DUP. The Irish government as well as a number of Northern Ireland parties were strongly opposed to direct rule.

So Northern Ireland was between 2017 and 2020 left in the extraordinary position that the administration was carried on by the civil service. It acted on the basis of continuing with the policies set out by the earlier ministers. Even then, the [courts found its powers wanting](#), and they had to be bolstered by temporary Westminster [legislation](#) (now repealed, though the [Assembly has since legislated](#) in the field). Legislation at Westminster also repeatedly suspended the Secretary of State's obligation to call elections.

Westminster had no general powers to direct government, nor could Northern Ireland officials lawfully have followed London directions. But there was an element of 'creeping direct rule' where legislative provision was made at Westminster for London to undertake specific functions (notably enacting budgets and making public appointments).

Public policy remained in those three years in stasis: no new initiatives could be taken, problems went unchecked. The current state of the health service must in some part reflect this, though the neglect of proper planning there goes back many years.

The Irish government role: in the past, there has been a demand from nationalism, when devolved government, and political activity to revive it, have collapsed, that the Irish government take a fuller role in Northern Ireland affairs, and it has authority to do so under the Agreement. The Strand Three provisions confer on the Irish government formal rights to put forward views and proposals on non-devolved Northern Ireland matters, at meetings of the British-Irish Intergovernmental Conference held for the purpose. There is a requirement on both governments to make determined efforts to resolve differences, though it is made clear there is no derogation from sovereignty.

These provisions have been at times intensely controversial with unionists in Northern Ireland. Indeed, the predecessor arrangements in the Anglo-Irish Agreement of 1985 led to much public disorder. And the overtones for unionists remain menacing: the British and Irish governments in 2006, as they sought to induce the parties to resume devolved government, agreed that if there were no devolution there would be 'new British Irish partnership arrangements to implement the [Good Friday] Agreement'. These arrangements were spoken of in media and political circles as 'Plan B', or '[green-tinged direct rule](#)' – indeed by some as 'de facto joint rule'.

Analysis: implications of collapse

Once devolution is off the table for the immediate future, and all restraints on the parties from attacking each other have gone, the political climate may become still worse, and achieving a reset

sufficient to permit devolution to resume may be difficult. In present circumstances reviving devolved government might be impossible for a very long time.

Impact on long-term politics: there are different ideas about how this will impact on longer-term politics (see chapter 6). Some appear to believe that London will feel affinity with unionism, and back that cause. But on recent precedent there must be grounds for doubt.

There is also doubt about whether people in Northern Ireland who are not convinced unionists will feel more attached to the Union when it appears to offer no possibilities of self-government. With the disappearance of an overall unionist majority, such people are now the swinging constituency in the Union versus unity debate.

On the other side, proponents of unity may urge that the collapse is proof that Northern Ireland is a failed entity, and the only viable political future for Northern Ireland is within a united Ireland. But dysfunction and disorder in Northern Ireland seriously risk making unity less attractive: to people within Northern Ireland, because it risks heightening disorder further; and to people in the South who would have every reason to fear the destabilisation of their politics.

Traditionally, a political vacuum has been seen as tending to favour violence in Northern Ireland. Matters have moved on greatly since the ceasefires of the 1990s, of course. Well-developed paramilitary organisations are no longer in place. But there appears still to be some capacity at both extremes for various kinds of illegal or inflammatory action. And there are those on the extremes of unionism who appear to see [the destabilisation of Northern Ireland as likely to help them](#).

It is important not to talk up the risks of violence gratuitously. But it is also important not to neglect the possibilities, given historic patterns of resort to force in recent history.

And how would government be done following the collapse? There are no good answers, and the issue risks adding to the confrontation. Northern Ireland's acute economic and social problems are likely to be aggravated, and given political edge, by the cost of living crisis and post-Covid backlogs.

It is hard to see that arrangements for government such as in 2017 to 2020 could be sustained in present circumstances. At minimum, responses over the Protocol, and any continuing need for measures to deal with Covid, will mean decisions have to be made that only ministers can make: that is, following collapse, those in London..

Mistrust of London is probably now greater than during the last hiatus, however, chiefly as a result of the Protocol, and London's even-handedness is more widely questioned.

So London might be tempted to make ad hoc interventions, rather than take blanket control of the Stormont machine. That, however, will make for poor government; and whether London intervention is formally designated as direct rule or not, many will contest its legitimacy.

Halfway house arrangements may be conceivable, with appointed oversight or advisory bodies. But participation in such bodies might not be a popular role, and they could hardly be a long-term solution. And it is not one consistent with a determined effort to deal with economic and social problems.

The Agreement mechanism allowing the Irish government to make representations about matters in Northern Ireland has been little invoked formally, indeed in recent years little noticed. Any return to it by a Dublin government would be much resisted by unionists (and the mechanism is not fully effective so far as the UK government does not take statutory authority over matters that had been within the responsibility of the Executive).

But on the other side, any reluctance by Dublin to invoke the mechanism has the potential to be extremely controversial among nationalists. And if a British government resisted, its commitment to the Agreement would be fundamentally questioned (within the island, and beyond, including the US).

To conclude: **enough can be foreseen of the possible risks of collapse to suggest that the political situation would become greatly more unstable, with unforeseeable consequences; and the difficulties of resuming any sort of power-sharing government great.**

The Agreement settlement would be in serious doubt, but there is no plausible settlement available to replace it, barring major shifts of opinion. There would be much frustration around the community, and any positive outcome would be very unlikely.

All the parties and both governments should see the clear interest in avoiding collapse.

Chapter 4.

The Responsibilities of London

This chapter asks why London should be concerned about Northern Ireland, and how its approach might need to change following the Assembly election.

Background

UK governments from the 1920s until the late 1960s sought to stand aside from Northern Ireland issues. But the grievances that accumulated in that period were then expressed in civil unrest, which was followed by a terrorist conflict that at its height saw almost 500 deaths in one year (1972).

That made Northern Ireland a significant political issue at Westminster. Successive governments of different parties over the following decades applied significant effort to sustain and develop political stability, on the basis of power-sharing government.

There was during this period probably quite little understanding of Northern Ireland among most at Westminster or across Whitehall. Nor was there much popular feeling in Great Britain about Northern Ireland affairs (and recent polling suggests that indifference remains widespread).

But in government and Parliament, at least, there was felt to be a strong UK self interest in building the peace, and then sustaining the Agreement. There was an awareness of the reputational risks to the UK national interest that flowed from discord in Northern Ireland. There was also an acceptance that a strategic approach was necessary, that at times might impact on national policy.

In their dealings within Northern Ireland, British governments sought to be even-handed as between representatives of different traditions and parties, pursuing trust on all sides; and though they certainly never fully achieved this in any part of the community, their efforts contributed significantly to moving the politics on.

London partnered closely with the Irish government, which was central to all the main political negotiations in Northern Ireland from Sunningdale in 1973 onwards. From the 1990s to the 2010s, London and Dublin had extremely close relations, to the point of maintaining an essentially united position in public. Working together they provided the drive behind the key political advances, notably the Agreement.

On the main Northern Ireland political issues, there was also bipartisanship at Westminster. For example, the incoming Labour government in 1997 essentially pursued, though from a position of much greater political strength, the same approach that the Major government had followed, when it helped bring about paramilitary ceasefires and the opening of negotiation about a constitutional way forward – and took substantial political risks in doing so.

A number of prime ministers made a substantial personal contribution to political negotiation.

For a long time, governments of both Westminster parties remained largely removed from the Union versus unity debate, being persuaders neither for Irish unity (the Labour Party moved away from its traditional position in favour in the late 1990s) nor for the Union.

One aspect of this changed in the 2010 general election when the Conservatives, who headed the subsequent coalition government, were elected on a declaredly pro-Union platform, in a partnership with the Ulster Unionist Party. That alliance was short lived, but it appeared that the Conservatives at Westminster were [also seeking closer relations with the DUP](#), against possible future parliamentary need of their votes. Nevertheless, the 2010 to 2015 government maintained a generally even-handed approach in official business. The relationship with Dublin flourished with the exchange of State Visits, and the development of high-level official networks between London and Dublin.

Brexit and the Protocol

Since the Brexit referendum, and even more the coming of the Protocol, London's approach has substantially changed, as have perceptions of it in Northern Ireland (see chapter 6).

The London relationship with the DUP became much closer in 2017, when the May government, lacking an overall parliamentary majority, concluded a [Confidence and Supply Agreement](#) with the party at Westminster which lasted until 2019, accompanied by a financial support package for the Northern Ireland Executive of 'up to £2.5 billion'. Against this background Secretaries of State struggled to be trusted among the other parties.

Nevertheless, Julian Smith, who occupied the office briefly between 2019 and 2020, was able to work closely with the political parties in Northern Ireland and with Dublin, which permitted him and the Irish foreign minister to reach the [New Decade, New Approach](#) agreement, by which devolution was restored in 2020. Despite very warm reviews across the political spectrum in Northern Ireland, [he was almost immediately dismissed by the Prime Minister](#), evidently over Brexit politics – rather than, as might have been expected, being left in post to provide the deal with much-needed nurturing.

Many in Northern Ireland (and the South) now see the UK government as lacking genuine interest in and understanding of Northern Ireland issues, according them low priority except when they suit its tactical games of Brexit politics. And, worse, they suspect that London is at times willing for those purposes to heighten tensions that threaten institutional stability, rather than calm them.

The current London government is also seen to care much less about the relationship with Dublin: there have been regular public spats, with disparaging reflections on each side about the other's motives.

The traditional [Westminster bipartisanship seems largely to have vanished](#), too. The [Commons Northern Ireland Affairs Committee](#) has done some thoughtful work on Northern Ireland, but it too is constrained by politics.

Recent polling shows extremely widespread [lack of trust in the British government within Northern Ireland over the Protocol](#) (4% trusting it versus 84% distrusting it). More general disenchantment comes through in the Secretary of State's [approval ratings in polling in March](#) of minus 69 (significantly worse than any local politician).

London's approach attracts international criticism, including recurrent warnings [from the Biden Administration](#) and [Congress](#).

Comments by [Dominic Cummings](#) in 2021 throw light on the approach to Northern Ireland at the centre of government, suggesting an attitude radically different from that of earlier British governments of both parties. He dismissed talk of Ireland, the Union and the rule of law in the context of the Brexit debate as '[babble](#)'. Issues around the Northern Ireland Protocol, he asserted, were 'very low priority'. He suggested that the Northern Ireland Protocol was concluded with the intention of later repudiating it. He added that [a core part of the job in government is cheating on foreigners](#) – presumably including Irish ones.

The [former Chief of Staff to Theresa May, meanwhile, said of the present Prime Minister](#) that as Foreign Secretary and then backbencher 'he didn't agonise for a moment over Northern Ireland – he was utterly dismissive of the idea that its unique circumstances should influence the nature of Brexit'.

Others have not spoken so explicitly. But there is quite little contrary evidence. There is scant sign of much policy interest in Northern Ireland at the centre of government beyond the Protocol issues, which some see as essentially about Brexit politics, more than Northern Ireland's interests.

There are continuing perceptions of London partisanship within Northern Ireland, too. The present Prime Minister was cultivated by the DUP while out of office, [promising their party conference](#) in 2018 that there would be no Irish sea border controls. Following the Protocol, he was [accused by unionists of betrayal](#). A DUP MP has [lamented](#) that the Conservatives were becoming English nationalists, with little understanding of Northern Ireland.

But suggestions of party political favours for the DUP continue, and were revived when the government attempted to amend the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022 during its Westminster passage, permitting limited double jobbing between Westminster and Stormont. This was widely seen as a favour to the leader of the DUP, who was attempting to switch.⁶ After denunciation by all the other parties, the government withdrew its amendment.

It has also been [hinted](#) that there was some element of collusion between the government and the DUP over changes to the Bill that facilitated the withdrawal of the First Minister at the time it happened. Others might wonder about the motivation of continued briefing from London

⁶ There might be arguments for the policy: what was especially difficult to justify in the government's conduct was its failure to consult the Northern Ireland parties before seeking to change the law.

during the election campaign that the government was planning to [invoke Article 16 of the Protocol, or ignore the Protocol altogether](#), when voting was over.

Relations with Dublin are probably at a 40-year low: the comments of Mr Cummings about the Protocol led the Irish Deputy Prime Minister (Tánaiste) to [question](#) how far Britain would ever keep promises. We are now a world away from the high point of British–Irish relations, exemplified in the 2011 State Visit to Dublin.

And worsening relations at government level have been paralleled by a [change for the worse in the views of many Irish people towards Britain](#). Social media certainly reflects a resurgence of traditional anti-British attitudes, North and South. Whether these views bolster the prospects of constitutional change, or Irish parties who take a harder line towards Britain, notably Sinn Féin, is unclear.

The nature of Northern Ireland politics has been such that the disputes other devolved administrations have had with London have had less impact there. But if the institutions began to work effectively together again, those challenges would loom larger in Northern Ireland.

To sum up this section: **it is hard to avoid the conclusion that the political world at Westminster has now forgotten most of what an earlier generation painfully learned** about handling Ireland over four decades. There is no longer much apparent understanding of Ireland at the centre.

If the government has any strategic view about even the medium term in Northern Ireland, it is not apparent. There is little sign of any thought-through approach to preservation of the Union, though it is supposedly a prime objective of the government. Much of what it has done recently by contrast is arguably liable to alienate support in the centre ground, which is now the swing constituency on the constitutional issue; flag-waving and drum banging will only (at most) rally the already convinced.

Analysis: should London care, and what should it do?

The downsides of the current London approach may be felt there before long.

As we face greater political instability in Northern Ireland, the lack of trust in the British government will mean it is much harder for it to broker a compromise, or work constructively with Dublin. If devolution cannot be sustained after the election, it will be very hard to put back in place at a later date, and there will be a political vacuum. Traditionally such vacuums have brought instability and disorder.

If London comes to be even more unpopular, there might over time be a significant impact on the level of support for Irish unity.

How the debate might interact with that on Scottish independence is unclear, but there are obvious possible consequences in both directions of manifestations of an increased desire to leave the UK.

Instability would also bring reputational consequences for the UK internationally – potentially with significant material results, given the concern of many in US and EU politics about the way London has conducted itself with respect to Northern Ireland over the Brexit years. The Agreement is no longer seen as a triumph of British statecraft in the way that it was.

But it is important to note too that in US government circles, the Agreement is widely seen as an American achievement, and [America as a guarantor of it](#); so what is perceived as the British government's neglect of it is particularly poorly regarded.

At a more pedestrian, but also immediate, level, an unstable Northern Ireland could soon start to become a serious burden on government, inescapably requiring more time at the centre. If London does not engage until there is serious disorder, though, that sends out messages of potentially disastrous portent.

If a government were fixated purely on short-term politics, it might not worry at the moment. But in a few months, it may have cause to regret not having done so. And, though Northern Ireland generally plays little into Westminster politics, the Agreement appearing to collapse risks being seen as government incompetence. On the other hand, setting the Agreement on stable foundations may add to what is perceived as the government's legacy, as it has with previous governments and prime ministers.

What to do

It is important to redevelop a sense of [what a British government focused on the longer term would do](#).

It would start by relearning the lessons of the late 20th century: recognising the significance of the issue, given the potential consequences, and the need for a strategic, consistent approach.

At times, that would mean that other areas of policy, like Brexit, might need to change to reflect it – not as an overriding priority, of course, but also not one to be brushed away with talk of the tail not wagging the dog.

It would need to review its approach to issues like the Protocol and legacy, with a view to finding solutions that have support and would advance stability and reconciliation in Northern Ireland.

In Northern Ireland, it would seek to redevelop political relationships across the board, with a view in the short term to maintaining and strengthening the institutions. **And it would repair its relationship with Dublin**, recognising that a return to political stability requires the two governments to be working together.

It would emphasise constructively the need for good government in Northern Ireland, and a coherent strategy for economic and social issues, and the public services, whilst not seeking to run competing initiatives.

And it would seek to revive positive politics; it would encourage progress again towards the wider objectives of the Agreement in developing reconciliation, healing social division and banishing the threat of violence from politics.

This requires sustained effort, real and conspicuous understanding and empathy in London, and an even-handed approach between the different communities, identities and outlooks in Northern Ireland.

And it would once again need people who can command trust: an empowered, capable and trusted Secretary of State, with the clear support of the Prime Minister.

The period following the elections will be a critical one: ensuring that devolution survives with the chance ultimately to thrive will require serious commitment from London, and a notably different approach. London will need to work as closely as it can with Dublin (and both with the EU). If it fails to do so then a great many of the benefits the Agreement has brought will be under serious threat, and ever greater doubts may loom over the political future of Northern Ireland.

Chapter 5.

The Need for a Revived Agreement

The argument in this chapter is that in order to keep the Agreement functioning we need much more than short-term fixes: we need something nearer to a new political beginning. How?

The immediate issues certainly need to be addressed, around the Protocol and perhaps the institutions, legacy, language etc. It is essential the institutions go on, for fear that the political fabric will be further damaged in what would potentially be a prolonged absence. That in itself may need considerable effort, and new thinking, as well as hard political work.

But the unwinding of constructive politics has now gone so far that a mere sticking plaster solution will not be sufficient. Now that the elections are over, a process is needed on a scale well beyond other recent Northern Ireland political agreements.

This process needs to ensure, first, effective devolved government – a government that might vigorously drive forward policies in line with economic, social and public service need, and make itself indestructible because indispensable.

And there must be, second, a recommitment to the fundamental objectives of the settlement, notably ending social division and removing the threat of violence from politics, on which political stability rests. And a clear programme to advance these objectives.

In short, there is a need for a new political beginning, that captures public support as well as that of the two governments and perhaps, as suggested here, of the EU and US. This may not all be possible within the six-month negotiating period; in which case the obvious target to achieve such a new beginning is the 25th anniversary year of the Agreement in 2023.

Political crisis has in the past been the means of achieving significant change in outlooks. It may bring great difficulties; but it may also be a time when settlement can be set back on the right track.

In proposing this, no assumptions are made about the course of the Union versus unity debate. None of this work on a revived Agreement would be made irrelevant if there were a vote for unity: as will be argued in the later paper, unity does not of itself provide an answer to many of Northern Ireland's worst problems. The unity/union debate will of course go on.

Developing a plan for renewal

Ultimately, such plans must be agreed by a substantial consensus across the community, expressed through the political system.

But it is not clear that politics will be able by itself to do all the hard work of reaching agreement. The constructive voices that are to be found in all parties find their room to

manoeuvre strictly limited by party bases and vested interests, especially in the current polarised atmosphere, and with another election potentially looming at the end of the year.

The British and Irish governments have traditionally done much of the work – identifying ideas (often based on the work of outsiders), analysing them, promoting them, informing discussion; and then the brokerage, putting together political packages, encouraging compromise.

At present, though, the governments are hampered by their differences, by the marked shift we have seen in London's outlook, and by the widespread mistrust towards the British government in Northern Ireland.

As this paper has urged, this needs to change if the Agreement settlement is to have the best prospects, which means in particular a change of outlook in London. The governments need to approach the post-election negotiation with a new commitment.

But it is not clear that this will be sufficient, or can be relied on.

A civil society contribution?

Northern Ireland has indeed often been dependent on the governments to provide the drive for political advance. Can it generate greater capacity for shaping its own destiny? If necessary, can people outside politics and government help advance the process of constructing a revived settlement along the lines above, developing ideas and promoting debate?

While final word will need to rest with the political system and the governments, it may be that the preparation of the ground can only now be done outside politics and government, given the current limitation of those spheres.

This is not straightforward. Non-political figures in Northern Ireland have often been chary of putting their heads above the parapet on matters of great political contention. They thereby put themselves in the firing line; they risk incurring enmities within politics which might dog their other activities – devolved ministers in particular control large amounts of funding, and platforms from which to attack people who annoy them.

But there have been civil society initiatives in the past that help move on the political debate, for example the Opsahl report of 1993.

And people outside Northern Ireland politics – from within Northern Ireland, and beyond – have made a substantial contribution within appointed groups of whatever kind, too. One notable success was the [Patten Commission on Policing](#) established under the Agreement. The [North Report on Parades](#) established the system under which parades have been regulated – so that they are rarely these days the flashpoints that they once were. Senator George Mitchell's work in advance of the Agreement negotiations provided the route map to their establishment. The [Eames–Bradley Report on the Past](#) contributed much to the current debate, and some of the ways forward that at times have commanded substantial agreement. The [Fiscal Commission](#) currently looking at devolution to Northern Ireland of more tax-raising powers is again composed of people from outside politics, some from within Northern Ireland and others experts from further afield.

Meanwhile, business and third sector organisations have overcome initial reluctance, and [been willing to speak publicly in debates about making post-Brexit arrangements work](#).

And much work has been done by academics in areas covered by the Agreement. Academics based [in Northern Ireland](#) and [elsewhere](#) have contributed substantially to public understanding in Northern Ireland of Brexit. There has been much academic input in some, though not all, other areas covered by the Agreement, like legacy. [The ARINS initiative](#), based in the Royal Irish Academy in Dublin, has sought to conduct further research and dialogue on policy options in the post-Brexit context.

This work is often of great value. But it is in certain respects limited. There is no systemic attention to the full range of issues discussed in this paper, on which the future of the Agreement settlement depends. And academic work is often in the nature of analysis, rather than policy prescription.

A wider frame of reference is needed. Can civic society contribute more fully?

One possibility is civic society groupings coming together of their own volition to offer political ways forward – whether comprehensive plans for political advance, like Opsahl, or ones focusing on narrower themes.

The governments might want to encourage broadly based groupings, especially if they find that circumstances constrain them from taking the role that they have played before.

Another possibility is that the governments (or conceivably the parties or Executive) constitute one or more groups to look at the more difficult, longer-term problems, in the hopes of creating a more focused dialogue about them than we have had in the past, and perhaps introducing ideas that politicians would hesitate to put forward. But it would perhaps be best to avoid appointing political nominees, given the fate of the Commission on Flags, Identity, Culture and Tradition (see chapter 7).

Roadmap to a renewed Agreement

What is the sequencing?

The thinking about the longer term will take time. If the post-election negotiation results in a deal to resume devolution, will the political system not lose interest in other work this would be potentially difficult for them or cause division? If civic society bodies, appointed or self-appointed, report after the conclusion of a successful negotiation to restore the Executive, will their reports simply gather dust on the shelves? It is unlikely.

If the 24 weeks elapse without a deal, and a new party line up emerging from further elections cannot reach agreement either, then there will anyway be an increased interest in more far-reaching action to restore functioning politics.

But even if there is a deal within the six months, it would be possible to set in train a political process that would go on afterwards, aiming towards a relaunch of the Agreement at some point in its anniversary year – whether on Good Friday, or, if the processes need longer, before the end

of the year. There may be political advantage in this for both the governments and the parties, apart from the longer-term benefits underpinning the agreement.

The key likely elements are set out above.

The culmination of the process might draw in the same sort of supporters as the original Agreement, including the British and Irish governments at the top level, but also the US.

And, as suggested in chapter 6, there might be an EU element to the final settlement: a new text, replacing the Protocol (which is not to suggest it would be entirely different), or supplementing it; and perhaps also setting out other ways in which Brussels would seek to support Northern Ireland, and the Agreement, in the new context.

The hope would be to recreate the sort of international goodwill that Northern Ireland once enjoyed under the Agreement. There might be immediate material benefits – unlikely to be money, but there is potential for, for example, conferences to encourage investment in Northern Ireland. More might also be made of the softer benefits that the original Agreement bought, such as a degree of access to world figures highly unusual for a region of fewer than 2 million people.

What is possible will depend on the political context that the post-election negotiation throws up. But ambitions should not be set low.

Chapter 6.

The Northern Ireland Protocol

This chapter considers the Northern Ireland Protocol, which is likely to be the primary sticking point in the post-election negotiations. How far are the different players' positions reasonable? Is there hope of finding a way through?

Background

The Agreement chapter set out the strains that Brexit has imposed on Northern Ireland politics. The Ireland–Northern Ireland Protocol to the EU–UK Withdrawal Agreement has brought the issues to a head, and loomed over Northern Ireland politics since it came into effect early last year. It was the cause of the DUP walkout from the First Minister post in February.

Purpose and effect of the Protocol

The Protocol declares itself to be set against the background of the particular bilateral relationships between the UK and EU, especially on the island of Ireland, and the need to protect all parts of the Belfast/Good Friday Agreement. A key objective was to avoid a hard land border within the island (which it was widely agreed would be extremely contentious, and largely ineffective).

It maintains Northern Ireland in the EU Single Market as regards goods, and the EU Customs Code continues to apply to goods entering Northern Ireland. Since Northern Ireland is in the Single Market, EU law, and recourse to the European Court of Justice, to some degree still apply – including new EU law, in the enactment of which no Northern Ireland elected representatives are involved⁷.

To preserve the integrity of the Single Market and Customs Union, checks are made on goods entering Northern Ireland, most conspicuously via the sea ports. Some such checks on agricultural goods already existed, but the new ones have become intensely controversial. Some observers argue that they disrupt the integrity of the United Kingdom and threaten Northern Ireland's constitutional status within it.

Practical problems with the Protocol may become worse. London continues, unilaterally, to maintain some 'grace periods', in which controls required by the Protocol were not initially applied, beyond the point at which they were to end. The EU has for the moment acquiesced; if the controls had been introduced, the material impact of the Protocol would have been more conspicuous. And the nature of the Protocol is that points of friction may increase with time, as regulatory regimes in the EU and UK diverge.

⁷ The Protocol is explained briefly in a [UK in a Changing Europe explainer](#). It is dealt with more fully in Professor Christopher McCrudden's [The Law and Practice of the Ireland–Northern Ireland Protocol](#), which is freely accessible.

The history of the Protocol

The Protocol was negotiated at speed, following a marked departure by the British government of Boris Johnson from the approach to Northern Ireland of Theresa May.

The EU position

The EU's position was to demand strict controls, which were indeed included in the Protocol, and then strict fulfilment of them. Subsequently, following protests from Northern Ireland and London, consultation with business in Northern Ireland and, it appears, heavy encouragement from Dublin, [the Commission proposed](#) in October 2021 a less burdensome approach, and it has legislated itself to change regulations that threatened the supply of medicines from Great Britain to Northern Ireland.

London's position

London conceded the scheme in the Protocol at a late stage in the withdrawal negotiation. But after Brexit had taken effect, it backtracked, mounting steadily intensifying demands. [It proposed in its July 2021 command paper](#) a substantial rewriting of the text it had signed two years before. This included a new insistence on excluding the role of the European Court of Justice, something rarely talked about in Northern Ireland. In October 2021 London appeared to call for [an entirely new Protocol](#).

It repeatedly spoke of the possibility that it would trigger Article 16 of the Protocol. [Article 16](#) permits temporary 'safeguarding measures' to be imposed unilaterally by one of the parties in certain circumstances. In November 2021, the British government appeared close to doing so. This was met by EU briefing that such a step might provoke a [very firm reaction in Brussels](#). There were also the latest of recurrent warnings of concern in the United States, in both [the Administration](#) and [Congress](#) at the implications. Later in November, [London appeared to back down](#). Lord Frost shortly afterwards gave up his position as Brexit minister, and the Foreign Secretary took charge of the negotiations, which appeared for a time to be more productive.

But London is still keen to stress that the Protocol is '[simply not working](#)', and during the election campaign, it repeatedly talked about the issue, on or off the record. [The Prime Minister raised it with the German Chancellor](#), refusing to say he would not invoke Article 16, while a number of [briefings](#) emanated from London that the government would in fact do so after the election. [Later briefings](#) suggested that it might have in mind a more far-reaching departure from the Protocol; legislation, it was suggested, was planned for the new parliamentary session to disapply parts of the Protocol, in apparent violation of international obligations, with provision perhaps also to override an Assembly vote in 2024 confirming the Protocol. The [Prime Minister again declined to rule out such a step](#).

Unionist positions

The unionist parties always opposed the Protocol. But once it had been concluded, DUP leaders, including [Arlene Foster](#) and [Sir Jeffrey Donaldson](#), seemed to recognise its inevitability and talked of making the best of the Protocol, and denied it was constitutionally significant. But in the course of 2021, hardening positions within unionism, the DUP's electoral exposure to them

reflected in a surge in polling for Traditional Unionist Voice, and perhaps indications of the appetite in London for conflict with the EU brought about a profound change in outlook. Many unionists have adopted increasingly [entrenched positions against the Protocol](#), culminating in the DUP withdrawal of the First Minister.

It is unclear what the precise demands of the different unionist parties now are. In September 2021, all of the parties [subscribed to a declaration](#) demanding that the Protocol should be ‘rejected and replaced’. Sir Jeffrey Donaldson has however spoken of [an outcome preserving the ‘best of both worlds’](#) (access to EU and GB markets, presumably). The [DUP list of seven tests for new arrangements](#) implies a substantial rewriting of the Protocol (going beyond anything achievable by invoking Article 16). But he was denounced by the TUV, who [seek a complete repudiation of the Protocol](#).

The UUP joined in the September declaration, but they strongly opposed the DUP withdrawal from the First Minister post and have put forward proposals for alternative arrangements, reiterated in their [manifesto](#). These would require flexibility in London as well as Brussels).

Some unionists make the argument that the Protocol conflicts with the Agreement: specifically, **that it violates the constitutional status provision**, replicated in [section 1 of the Northern Ireland Act 1998](#), as a ‘[diminution in its status](#)’ as part of the UK’.

The DUP leader has [proposed augmenting the Agreement text](#) to provide that any change to Northern Ireland’s constitutional status within the United Kingdom should require a majority in a referendum, or cross-community support in the Assembly (hence a unionist veto). Since no definition is offered of ‘constitutional status’ for these purposes, it is unclear what this proposal means, but it has been seen by others as an attempt to depart from the Agreement.

The unionist parties now put their faith in a range of tactics. These include a court case; a vote against the Protocol when the Assembly, under its provisions, considers it in 2024; and most immediately, persuading London to take unilateral action – in the case of some parties, including the DUP, refusing to participate in the Executive until it acts in line with their demands.

In the court case, which was joined by representatives of all the main unionist parties, and others, it was alleged that the legislation giving effect to the Protocol was invalid on various grounds, including incompatibility with the Act of Union of 1800, and the constitutional status provisions of the Agreement as reflected in UK law. The [court at first instance held](#) against the applicants on all grounds, and so did the [Court of Appeal](#). They are [seeking to appeal](#) to the Supreme Court.

On the constitutional status argument, the [courts have held](#) that the Agreement provision concerns ‘the formal constitutional status of NI and whether it was to remain part of the UK or become part of a united Ireland’: Brexit and its consequences were not ‘catered for’ by section 1.

The Assembly vote on the Protocol due to be held in late 2024 is by a simple majority: if the vote goes against, key elements of the Protocol will be dis-applied two years afterwards. A further period of negotiation between London and Brussels would follow, however.⁸

⁸ [Protocol](#), Article 18, paragraph 4

The immediate pressure on the British government has often been to invoke Article 16, though it has not been entirely clear that this would bring the DUP back into the Executive.

Other Northern Ireland parties

The other main Northern Ireland political parties – Sinn Féin, the SDLP and Alliance – accept the Protocol as necessary in the context of Brexit, which they opposed. They urge action to maximise the advantages that it confers to Northern Ireland and to reduce frictions in its operation. They oppose action under Article 16, or wider repudiation. They set out their views much less fully than unionist parties do, but underlying their position may be a fear that without the Protocol, Ireland's position within the Single Market might raise the possibility again of controls on the land border, which would be potentially politically incendiary.

The Conservative Party

Some in the Conservative Party believe the government should take a stronger line. Lord Frost, since his resignation from government, [has argued that the Protocol must be 'redone'](#), and that, if it is not, there should be further Stormont elections in 2024, ahead of the Assembly vote on the Protocol, with the government campaigning for a 'no' vote. Any such move would be an unprecedented incursion into Northern Ireland politics for a UK government (for which no powers exist). [He has also argued](#) that unilateral action to override the Protocol would be justified, and that such a step would raise no issues of wider UK compliance with international law. Among other prominent Conservatives, Sir Iain Duncan Smith has [called for the government to end the Protocol unilaterally](#).

Analysis: is there a way through?

It can be argued that [the EU could have taken a more flexible position in the special circumstances of Ireland](#) without compromising its fundamental interests in preserving the Single Market and Customs Union. The concessions it has subsequently made may bear out that thesis. But the EU would no doubt respond that many of the problems that the Protocol had to deal with were created by the British government's own negotiating positions, reflecting its preference for a 'hard' Brexit.

Brussels has always sought to portray itself as a friend of peace and political progress in Northern Ireland and was insistent through the Brexit negotiations on preserving the gains of the Agreement. It may find itself in the post-election period under pressure to give more, in the immediate domain of the Protocol and in other fields.

The British government insisted that its position on the Protocol was motivated by a desire to protect the Agreement and secure consensus on new arrangements in Northern Ireland. Others, though, suggested the real motivations derived from English politics – that ministers sought to distract attention from problems consequential on Brexit in Great Britain, or from attacks on the Prime Minister's position; or to maintain a culture war with Brussels for electoral or party management reasons. Lord Frost went out of his way to deny such motivations in terms in a [speech in September](#). But Dominic Cummings' account (see chapter 4) of the outlook of those who signed the Protocol – according low priority to questions of Ireland and

the Union, and viewing cheating on foreigners as part of the job – [raised further doubts about London's good faith](#).

London could have alleviated the problems the Protocol has caused through different policy choices its approach to Brexit – for example by signing up to a food safety agreement, even if only temporarily, as the EU proposed in April last year. And it might find itself under pressures of these sorts after the election.

The preponderant demand from businesses been for policy stability. Some say the Protocol brings significant advantages to Northern Ireland business. Many have played up the unique advantage that Northern Ireland business in principle has through alone being part of the British and European single markets for goods. But some businesses have faced difficulties. One economist suggested the Protocol imposed [heavy costs](#), though the [basis of this research was strongly disputed](#).

What might be the upshot of the threats currently emerging in briefings from London of further action on the Protocol, potentially disapplying it in UK law? It is hard to tell how real they are. Are the briefings simply a political tactic, to help shore up the Prime Minister's delicate position with the right of his party, and perhaps also to help the DUP in the Assembly elections by suggesting their campaigning will bear fruit? Would a Bill, even if published, ultimately be passed and then brought into effect?

If parts of the Protocol were disapplied, reducing border checks, London's standing and trust with some of the parties and with Dublin would be further damaged. But such a step alone might well not stand in the way of political agreement in Northern Ireland; it might indeed help the DUP to join in. If however the consequence was undoing some of Northern Ireland's advantages under the Protocol, reaction might be much harder. As it might if anything were done that so clearly damaged the integrity of the European Single Market that it appeared to risk the EU demanding checks within or around Ireland. It could not be assumed that in that case Brussels, rather than London, would get the blame with most Northern Ireland opinion.

Brexit, the Protocol and the Agreement

On the arguments that either Brexit itself, or the Protocol, conflict with the Agreement, strict construction of the text of the Agreement, – which for the most part was a political rather than a lawyers' document – is difficult. But either claim is quite difficult to make out, because the Agreement text of course does not address these points. Specifically, it is hard to see how the Agreement's provisions on status can be read as preserving every aspect of the relationship between the different parts of the two islands: no such aspiration was voiced at the time the Agreement was negotiated, and might have been strongly contested if it had been.

Will Unionist tactics succeed? Will they strengthen the Union?

Among the unionist political class, the Protocol was [widely regarded as a betrayal, provoking soul-searching](#) among some unionists. It was agreed not long after Boris Johnson, as Conservative leader in waiting, had told the DUP Annual Conference that no Conservative leader should accept borders in the Irish Sea.

Despite the political rhetoric and occasional disturbances, it has been less clear that the unionist public considered the Protocol as the key issue of the moment. A survey conducted in October 2021 by the [University of Liverpool](#) concluded that the tensions were more at the political rather than the social level: in that survey, most supporters of all the main parties attached greater priority to other issues, notably health and Covid recovery, than to the Protocol, and were opposed to the collapse of the institutions. But [recent polling suggests that unionist campaigning has hit home](#), with many more identifying it as the most important issue.

It is much less important for non-unionist voters. Overall, a [Queen's University survey](#), also conducted in October 2021, found that 52% of respondents thought that the Protocol was on balance 'a good thing' for Northern Ireland.

It may be questioned how far the tactics that unionism, or parts of it, now favours are likely to advance their ambitions, and the security of the Union; and some carry dangers. The next report will consider the future of unionism further, but some observations have immediate significance.

The court case on the Protocol discussed above has not so far gone well for the unionist parties as a matter of law.

Politically, of course, the court case has helped raise the profile of the issue, and a finding against the Protocol would certainly have an impact – but that raises the more general question, discussed below, of what, politically, unionism can gain, and lose.

The Assembly vote on the Protocol in late 2024, even if unionism were likely to win it, as on present polling seems unlikely, would be of limited effect. Much would turn on the outlook of a British Government in 2026 – unforeseeable, but it may by then be trying to mend fences with the EU.

The unionist self-interest in preventing the devolved institutions functioning is particularly doubtful.

- *If it is intended to force London's hand towards a more aggressive approach with Brussels, it may have limited effectiveness – unless the government has its own reasons for picking a fight.* There was little immediate sign of the DUP's withdrawal of the First Minister registering in London politics very much at all: it was picked up on none of the physical front pages of the London national newspapers. This may be very regrettable, and it suggests (see chapter 4) that the Westminster political machine, short-sightedly, now sets too little store by political stability in Northern Ireland. But these are the realities for the present. Government policy has not so far changed in response, though it has made increasing noises about invoking Article 16 of the Protocol.
- *And it raises the question what sanction against London the DUP and others are really threatening.* Their not taking part in self-government hardly itself strikes at the heart of London's interests. Is the real leverage here the understanding that Northern Ireland without Stormont will become unstable? [Unionist hardliners have suggested political instability is what will cause the government to think again](#). The wisdom of this approach from the unionist point of view may be questioned. Is it ultimately more than a threat to trash the

place? That impacts on the unionist community among others, of course. It is liable to be counter-productive with centre ground voters in Northern Ireland; and with London opinion. And assuming that London will pick up the cost of the economic damage done may be dangerous.

- *Would government without the institutions benefit unionism?* The DUP may comfort themselves with being the best represented party at Westminster. But outside hung parliaments, their influence is small. So far as the UK authorities take control of Northern Ireland in the absence of devolution (see chapter 3), unionists may on recent precedent think they have little ground for counting on government goodwill – as regards Brexit, or as regards other areas of policy close to their hearts.
- *And in the domestic political argument, does a collapse strengthen the Union, or the case for Irish unity?* It is hard to see how it brings anyone closer to the cause of the Union. On the contrary, it risks inflaming and changing the focus of Northern Ireland politics. Sinn Féin and other proponents of early Irish unity would probably intensify their campaign, suggesting the collapse demonstrated that Northern Ireland was politically a ‘failed entity’. It is far from clear that the centre ground, the swing constituency in a unity vote, would become more pro-Union in such a context.
- *Going a step further, would a complete repudiation of the Protocol work to unionists’ advantage?* The final outcome of the UK abandoning checks on the sea border might, some fear, be the EU requiring Ireland to adopt checks within the island of Ireland, or on its own borders with the EU, to plug the breach in the Single Market and Customs Union protections. Both would be intensely difficult for Irish governments. The first would be a focus for disorder, potentially north and south. The second would call into question Ireland’s own place within the Single Market.

Some among the Brexit hardline may take it that the blame here would be borne by the EU. But the EU position would be likely to be that these were consequences the Protocol was designed to avoid, and that without agreement on them there would have been no Trade and Cooperation Agreement, which, as was hinted a few months ago, they might end.

Within Northern Ireland, it must be seriously questioned whether this would win unionism, the cause of the Union, friends among the centre ground – who might be seriously concerned by the possible ensuing economic and political instability.

And even if the institutions survive, the Protocol issue, unless resolved, is liable to be a running sore, potentially hobbling their ability to govern positively. Continued dysfunction may increasingly lead those who have been content to go along with the current arrangements to look more favourably on fundamental change.

- *And there must be a prospect of political blowback in Great Britain if London does take further steps as the DUP and others urge.* Even invoking Article 16 may clearly provoke serious EU retaliation. There is recent talk of doing more than that. But any such EU reaction would

be liable to have a serious impact on the UK as a whole; which may be why the government has held back.

Would such a reaction endear Northern Ireland to either the political classes or the general public of Great Britain? There are unionists who sometimes assume that the preponderant opinion in Great Britain will in all circumstances continue to support the Union; some perhaps imagine a prevalent goodwill towards them there. But recent polling in Great Britain tends to show [limited feelings of affinity there towards Northern Ireland](#). A succession of conservative-leaning commentators – for example [Max Hastings](#), [George Osborne](#) and [Matthew Parris](#) – have recently expressed the view, in the context of the Protocol dispute, that Irish unity is inevitable, and, it would appear in some cases, thought to be both desirable and painless. Unionists should perhaps reflect more on the state of opinion in Britain.

Unless the British government for its own reasons decides to return to combat with Brussels, with the potential for overturning the Trade and Cooperation Agreement – yielding a ‘no-deal Brexit’ – the likelihood is that something along the lines of the Protocol, though potentially with many fewer frictions in practice, is here to stay. It will probably not favour the unionist cause to make it a running sore. Accommodations are therefore needed.

Possible ways forward

There are good [arguments](#) that the Protocol, properly handled, could bring significant net economic benefit to Northern Ireland, which has unique freedoms in access to both EU and British markets.

With flexibility in Brussels and London, the border in the Irish Sea could become a good deal less burdensome.

There ought to be substantial scope for pressing such flexibility – from Brussels and London – and maximising Northern Ireland’s advantages, in the context of the post-election negotiation.

Brussels has always made great play of its wish to protect the Agreement, before the Brexit referendum and during the withdrawal negotiations. It moved a long way in its autumn proposals, encouraged by Dublin. It is one of the flaws in the dialogue in Northern Ireland that there is little consideration of what the EU could realistically give, consistently with its desire to protect the integrity of the Single Market and Customs Union. Demands around the Protocol appear to be largely driven by domestic politics (in fairness, the [UUP Manifesto for 2022](#) does address the issue).

Conceivably Brussels could also take steps outside the immediate field of the Protocol to enable Northern Ireland to make a success of its position, in pursuit of its objective of sustaining the Agreement process. It has done so in the past (albeit when Northern Ireland as part of the UK was a full member): for example, the Commission acted in support of political advance in

Northern Ireland in 2007 by setting up a Northern Ireland Task Force under the patronage of President Barroso.

There is also little public consideration in the dialogue in Northern Ireland of what London might give. London also claims to be acting in order to protect the Agreement. If that were generally a London policy priority, there would be scope for the British government to show greater flexibility in its Brexit stance – an agreement on food safety standards with the EU, for example, would obviate the need for a substantial proportion of current checks.

It is, here as elsewhere, worth reflecting on what a united Executive could achieve.

The negotiation

How far there are political openings for a settlement on the Protocol, and more ambitiously a united Executive approach on taking fullest advantage of Northern Ireland's position in the post-Brexit world, will turn quite significantly on the election results.

Such a shift might in some possible post-election contexts be impossible. In others, it might take a good deal of political engineering. Unionists (and the British government) can, though, take the line that their robust approach to date has delivered significant movement from the EU (although others will say that that is the result of the British government being willing to risk stability in Northern Ireland for its Brexit agenda, and that Dublin influence on Brussels has also been large).

As part of the engineering, might it possible to envisage a new agreement to replace the Protocol, and embodying other measures for the benefit of Northern Ireland (though carrying over the elements of the original Protocol still considered necessary); or an agreement to supplement the Protocol, just as the St Andrews Agreement supplemented the Agreement of 1998? This could all, perhaps, be part of a wider framework involving the renewal of the Agreement, restoration of devolved government and the other strands, and action to pursue the fundamental objectives of the Agreement proposed elsewhere in this report.

Fresh thinking is needed here. In the past, the British and Irish governments together would have been working for compromise. For the moment, unfortunately, we are far from that position. It is essential, now the elections are over, that they do seek to combine their efforts.

Brexit, and subsequently the Protocol, are areas in which there has been significant civic society effort towards a constructive outcome, including from business and academia. Examples include a notable open letter last year from [civic and business leaders](#), [a paper](#) by University of Liverpool academics examining opportunities created by the Protocol, and the work of academics at Queen's University on [post-Brexit governance](#).

There might be even more continuing value in further such efforts, perhaps more coordinated, and perhaps, as suggested in chapter 5, with official blessing, after the election.

Chapter 7. Underpinning the Stability of the Settlement

This chapter is about a number of issues relating to the Agreement's underlying objectives – promoting reconciliation, tolerance and mutual trust; partnership, equality and respect for rights; and rejection of the use or threat of force. As was suggested earlier, these underpinnings are important if the Agreement settlement is to survive, and its institutions operate most effectively.

Background

In recent years, increasingly, the objectives of reducing social division and removing the threat of violence from politics have seemed to be in danger. Some of this was discussed in chapter 1. The [Peace Monitoring Reports](#) produced annually for a number of years by the Community Relations Council bring out the progress that has stalled and the things that have gone wrong. The [continued existence of peace walls](#) separating largely segregated neighbourhoods, especially in Belfast (whose necessity is reflected in the wish of residents on either side to keep them in place, despite an official target that they should all be removed by 2023) is a sign of the continuing failure.

There is no room in this report for exhaustive consideration of wider problems here. But it identifies a few issues, which appear to be areas of priority from the point of view of societal health and political stability. Some have formed a regular part of the political dialogue, others less so. But in some of these cases, there may be room for new thinking, different from the framework of analysis that Northern Ireland politics at present brings to them.

Legacy

Argument about handling the legacy of the Troubles has been a feature of Northern Ireland politics since 1998. The term 'legacy' covers a wide range of issues. They include, within the justice system, prosecutions for Troubles offences, inquests relating to that period (of which some going back several decades remain, remarkably, outstanding, and some have been reopened), civil cases, and public inquiries; and more broadly provision for victims (whose definition is contested).

It is recognised worldwide that coming to terms with the past is an essential element of emerging successfully from conflict. Done well, it aids reconciliation. Done badly, it may inhibit it. Northern Ireland has always found this difficult.

Some of the legacy processes have established grave and fatal misconduct during the Troubles on the part of the security forces – notably the [Bloody Sunday Inquiry](#) that reported a decade ago, and the [Ballymurphy Inquest](#) last year.

But there has been a perception on the part of some, particularly unionists, of attempts, through the legacy machinery, to rewrite the history of the Troubles in favour of republican paramilitaries. The security forces were responsible for only a small proportion of Troubles deaths, but their actions are more fully documented and more easily reopened than those of terrorists.

Others, though, see in the hesitations over legacy processes state efforts to conceal the truth about security force actions.

Following much debate and examination by outside bodies and individuals, a wide measure of agreement on handling these issues appeared to have been reached by the governments and parties in the Stormont House Agreement of 2014. This was painful for some. Nevertheless, proposals to take the Stormont House Agreement forward were embodied in *New Decade, New Approach* in early 2020.

But the British government brought forward new, quite different, proposals of its own in a [paper of July 2021](#). They were remarkably far-reaching: besides ending criminal investigations and prosecutions for Troubles offences, they proposed suppressing inquests and civil actions. They established other mechanisms of truth recovery, drawing on the previous agreements, claimed by the government to be superior to the conventional justice processes.

The proposals are at odds with previous agreements involving the UK government, and [doubtfully compliant with international obligations](#). They were opposed by all the main Northern Ireland political parties and the Irish Government, and [unanimously rejected by the Assembly](#).

They were widely seen as a response not to any Northern Ireland factors, but to London political and newspaper campaigns about prosecution of (a small number of) soldiers from Great Britain for long-past offences. [Former members of the security forces have been scathing about the government's proposals](#), and their motivation.

They would effectively grant an amnesty to perpetrators of terrorist offences. Yet, paradoxically, in addition to granting former paramilitaries that benefit, their consequence would be to bolster the campaign that has in recent years ([with Sinn Féin involvement](#)) more and more openly sought to portray republican paramilitaries as heroes, and the police and army as villains – who, it is now suggested, are seeking to avoid prosecution for and conceal the evidence of their wrongdoing.

No more definite proposals have emerged from London since last July. In February this year, [suggestions emerged from government 'sources'](#) that it was considering changes to the plans in its paper. During the campaign, it was [briefed that legislation on the subject would feature in the Queen's Speech](#). Legacy may be added to the issues that will feature in negotiations on resumed devolution.

What is to be made of all this?

There are arguments that Northern Ireland looks back too much, and in doing so fails sufficiently to focus on current problems: the continuing social division, and failure despite professions of intent to tackle sectarianism and promote reconciliation.

There are [arguments](#) too that conducting criminal investigations and prosecutions now for far-distant Troubles offences is largely fruitless, offering victims little realistic hope of justice, and potentially damaging community relations. In the current climate, though, these are difficult arguments to make publicly.

It may also – there are precedents – be right at times for governments to do necessary but unpopular things against the public opposition, though perhaps with the tacit consent, of political parties.

But in present circumstances, the current initiative risks making matters far worse, the more so because of the perceived motivation. It is difficult to see these proposals in any way assisting reconciliation.

The conclusion after all the debate may well be that there is no overall satisfactory answer to legacy issues. In the short term at least, sensitive handling, in particular showing the greatest consideration for victims, is at a premium, whilst trying to find areas of agreement. That, essentially, has been the approach for some years.

If London hopes to find ways of resolving legacy issues sufficiently for the broader politics to move on after the election, it will need to come ready to modify its position on legacy radically. Whatever the appeal in London of its proposals, they have none in Northern Ireland. And they risk doing grave damage in various respects to the UK national interest – notably the reputation of its armed forces, and the country's international reputation for upholding the rule of law.

Because there are no right answers, it may be unlikely that the post-election engagement will find a comprehensive way forward on legacy that commands support across the parties. **The objective must be to ensure that it is not a roadblock to political progress in the short term;** and in the longer term that all is done that can be to show sensitivity to victims, but also to promote a climate of broader reconciliation in which these issues cause less pain.

Identity and language

Respect for different identities is central to the Agreement, with its principle of parity of esteem for unionist and nationalist aspirations. The associated symbology has often caused division: devolved government was seriously shaken starting from 2012 over what to outsiders might seem fairly secondary questions about the frequency with which the Union Flag was displayed at the Belfast City Hall.

The [Commission on Flags, Identity, Culture and Tradition](#) was established by the Executive in 2016 to examine these issues (or perhaps, more realistically, to kick them into the long grass). [Its report](#) was delayed by the absence of devolution, but submitted in July 2020. The Commission included political appointees, and [found itself unable to reach consensus](#) on especially sensitive issues, though it made a number of recommendations on others. The report lay for a year-and-a-half [unpublished by the Executive](#): the parties were [apparently in dispute](#) over an action plan to implement even the Commission's agreed recommendations; it emerged in December 2021 without one.

Little of the media discussion around the report's launch concerned the substance of its recommendations: almost all of it was about the dysfunction of the process.

But the questions it considered ought not to be set aside, until they erupt again in anger. The Commission elicited many contributions – it consulted widely. Its recommendations are a starting point. There is constructive work to be done in ventilating the recommendations that were agreed, and options in areas where there was no agreement, and perhaps eventually floating packages that might move the debate on and ultimately command enough consent across the community.

Related to identity is the question of language. For a significant number of people, the Irish language is a mark of identity, and important in symbolic contexts. So it has become acutely political. And so, in response, have become the language and other cultural manifestations of the Ulster-Scots tradition. Both were acknowledged in the Agreement, and in subsequent negotiations.

These issues bear the hallmarks of politicisation. The question of an Irish Language Act was for long one of the totems: the passing of such an Act was a demand of various nationalist interests, resisted by all the main unionist parties, with little discussion in either about what provision might actually be made.

Interparty discussion went on during the hiatus in devolution after 2017, facilitated by the governments. A good part of this apparently turned not on the substance, but on how many Acts there should be, making provision for both Irish and Ulster Scots. In political terms, the issue appeared to be whether there would, or would not, be something called an Irish Language Act, the content being a secondary issue. [*New Decade, New Approach*](#) set out some stipulations for action by the resumed Assembly and Executive, in a passage redolent of long and painful drafting sessions. But the institutions were unable to make any progress.

The UK government, at the demand of Sinn Féin in mid-2021, [committed to bring forward legislation at Westminster in the autumn](#), if Stormont had not advanced its own proposals. It later revised this to a commitment to [bringing forward legislation](#) before the Assembly election. This was [poorly received by the DUP](#). Then the [commitment was revised again](#), precluding legislation before the elections. Dispute apparently continues among political parties over the [titles of Commissioners](#) to be established by the legislation.

The question of an Irish Language Act (however named) is thus likely to become a significant issue in negotiation.

The fact that the institutions were not able to make progress here themselves is a bad omen, and an Act imposed from outside would risk to be a continuing irritant. It might be hoped that a Northern Ireland becoming politically more mature could accept use of Irish in symbolic contexts, names of places, institutions and the like, as a manifestation of parity of esteem in line with the Agreement. Wider use of Irish in public service may be more contentious, implying, crudely, job creation largely for the benefit of one part of the community (and perhaps also complicating the management of already heavily stressed public services). The issue may still need serious attention before it is resolved.

Rights

As with Irish language, the debate we have had on rights – ever since the Agreement – has tended to be totemic: there has been repeated engagement about whether to have a Bill of Rights, but much less discussion about what it might say, or what problems it was to solve.

The Agreement required the European Convention to be directly applicable in Northern Ireland, and this was achieved promptly in 1998. There has been [concern whether proposals put forward at times for reform of the Human Rights Act](#), most recently the [one advanced by the Justice Secretary last December](#), would cut across these obligations.

A Bill of Rights: the Agreement also provided for the Human Rights Commission to advise on the scope for defining supplementary rights to reflect the particular circumstances of Northern Ireland, and in particular the principles of mutual respect for the identity and ethos of both communities, and parity of esteem, to constitute a Bill of Rights for Northern Ireland – though there was not an express commitment to the enactment of the Bill of Rights. In 2009, the Commission [produced an extremely ambitious specification for a Bill of Rights](#), including a range of social and economic rights. It said quite little about the mutual respect and parity of esteem points. Nor was there much discussion about the way making such a wide range of economic and social policy justiciable would impact on the operation of the institutions; or what the costs would be and how they would be met.

The full history of the debate is given in the report of an ad hoc [Assembly Committee](#) on the issue, established in the *New Decade, New Approach*. The Committee itself reported in February 2022. It was unable to reach consensus on the key issues, essentially being split between the DUP and the other parties. An advisory panel of experts to assist the Committee was in the event never constituted, because [the First and deputy First Ministers disagreed on appointees](#).

A number of Northern Ireland voices then demanded that Westminster enacted a Bill of Rights – though those making this call would not generally be ones who had great trust in the British government. At all events, [London said that it could not act in the absence of consensus](#).

Beyond the Bill of Rights debate, Northern Ireland has lagged the rest of the UK on issues that many regard as crucial matters of human rights. Notably, equal marriage and abortion law reform (Northern Ireland never adopted the 1967 reforms in Great Britain) only occurred through Westminster action during the 2017–20 devolution hiatus (and the implementation of the new abortion provisions was again stalled at Stormont, [causing the Secretary of State to intervene](#)).

But can we move on from this, and focus on what kind of rights protection is most useful in present circumstances, and might command a significant measure of support across the community? The primary focus of the Agreement stipulations for a Bill of Rights, set out above, is quite narrow. If it were possible to define ground rules in relation to respect for identity and parity of esteem, that might serve a valuable purpose in taking the heat out of difficult issues, and promoting greater political stability and societal well-being.

Whether immediate further discussions in political fora would serve much purpose is unclear.

Education

The Agreement included, as an ‘essential aspect of the reconciliation process’, a specific commitment to facilitate and encourage integrated education. There has been limited progress towards this: primary and secondary education remains largely segregated along community lines, with [only about 7% of pupils attending integrated schools](#), a figure that has changed little in recent years. Many schools not in that category, however, have some degree of community mixing among their pupils, and partnerships between schools with the objective of encouraging such mixing have been promoted under the rubric of ‘shared education’.

Despite apparent wide public support for further integration, however, it remains politically contentious, and progress has proved difficult. A [Private Member’s Bill seeking to renew the impetus was passed by the Assembly](#), though against unionist opposition, in March. But, as is clear from the deliberations on that Bill, there are substantial vested interests in the current system which are hard to displace.

Outsiders sometimes have simplistic perceptions of segregation in Northern Ireland education, and see its removal as a panacea. The issues are complex. But the lack of progress is clearly bound up with the limited advances made in overcoming social division.

Lack of integration is not at all the only serious problem with Northern Ireland’s school-level education: notably [there is a serious issue of underachievement by pupils from poorer families](#), which despite large amounts of funding does not appear to be reducing.

The ‘prospects of moving towards a single education system’ is one of the issues being considered by an [Independent Review of Education](#), provided for under *New Decade, New Approach*. It aims to report next spring. This may at least provide the impetus, and the evidence base, for a fuller debate on integration.

Paramilitarism

The Agreement reaffirmed ‘total and absolute commitment to exclusively democratic and peaceful means’. But paramilitary activity among various groups of loyalists and republicans continues. In 2015 manifestations of continuing activity shook the institutions severely, leading to the establishment of an [Independent Reporting Commission](#). The killing in 2019 of the journalist Lyra McKee by dissident republican paramilitaries (who were seeking to kill police officers) caused great shock.

For the moment the capacity of the paramilitary campaigns of shootings and bombings appears largely contained, following significant successes against dissident republicans, leading to a [recent reduction in the overall threat level](#).

But there is still substantial paramilitary activity to reinforce control of neighbourhoods and facilitate gangsterism, including regular ‘punishment beatings’ by both [loyalists](#) and [republicans](#), though it these days attracts regrettably limited attention.

And there are continued allegations about the extent to which current or former paramilitaries exert influence on major political parties – whether that is [Sinn Féin deferring to members of the old Provisional IRA Army Council](#), as has been alleged at various times in recent years; or the [DUP engaging with people close to loyalist paramilitaries](#) – as it did shortly before its decision to withdraw from the First Minister post, which was in line with loyalist demands for boycotting Stormont.

Most recently, [loyalist paramilitaries appear to have perpetrated a hoax bomb](#), hijacking a van and obliging the driver to drive at gunpoint with a supposed bomb in it, in order to disrupt a visit to Northern Ireland by the Irish Foreign Minister, Simon Coveney. And they [briefed the media that more such acts were coming](#). This is a serious escalation in terrorist activity.

Paramilitary activity, and in particular links between paramilitaries and politicians, corrode public confidence in the institutions, and in the future of Northern Ireland; as well as jeopardising other aspects of public welfare, such as securing inward investment. What may jar with the public in particular is the apparent impunity of some involved in continuing paramilitary activity, especially when they are seen to have political influence.

Paramilitary activity by people with political connections crashed devolution in 2002, and came near to doing so in 2015. The danger remains, and the problems need to be more resolutely addressed.

Policing

The reform of policing in Northern Ireland may be among the Agreement's greatest achievements. It emerged after the Agreement, from a Committee under Lord Patten that the Agreement established. The former Royal Ulster Constabulary always lacked consent across the community, and, despite much effort in recruitment, it barely at any stage had more than 10% of Catholics among its regular force (fewer in the reserves, though slightly more among senior officers). The Police Service of Northern Ireland (PSNI) which emerged from it, reshaped for ten years (until 2011) by a regime of 50:50 Protestant/Catholic recruitment, and overseen by a Policing Board with cross-community political involvement, achieved substantial support in both communities.

There are, however, increasingly signs of this support crumbling. The leader of Sinn Féin in 2019 said [she did not believe that any current PSNI officer was suitable to take on the role of Chief Constable](#) (for which recruitment was going on) – and in the event a candidate from England was chosen. In 2021, three leaders of unionist parties (two DUP and one UUP) called for the resignation of the Chief Constable, over alleged failures properly to pursue potential breaches of Covid lockdown regulations at the Bobby Storey funeral. In the end the Chief Constable remained. Meanwhile, [Catholic recruitment is down](#), though [Catholic representation among officers remains over 30%](#).

This is another area where foundations of the 1998 settlement are potentially in danger. Political attacks on policing are not unknown elsewhere, but they matter much more in the Northern

Ireland context. And PSNI's position will be increasingly challenged if it becomes unrepresentative of the community.

This is another issue that needs to be addressed squarely in contemplating the injection of new life into the Agreement to permit it to survive and prosper.

To conclude: the chief objective here is to flag up these issues as ones that need to be looked at, because in these areas the foundations of the 1998 settlement may be increasingly shaky. To come up with answers, much more thought is needed. Such thought is not at present being given in any coordinated way in politics, among the governments or elsewhere, though useful work is being done in individual areas. It is important that a way is found to build on that, and produce workable proposals that might at some stage brought back to the political arena.

Chapter 8.

The Good Government Deficit

This chapter discusses the performance of the institutions of government – delivering on economic and social policy, maintaining good public services, upholding standards of propriety. The record is patchy at best. It is essential to the political future that performance improves: there are serious challenges that are not receiving the proper response. But beyond that, an Executive that as a serious record of achievement is likely to survive: institutional stability requires better government.

Background

Northern Ireland continues to have [serious issues](#) of economic underperformance, and social fractures leading on to other deep-rooted problems; while many public services struggle.

Issues around the NHS get much attention, with waiting lists for many treatments much longer than those elsewhere in the UK even before Covid. But in other areas where Northern Ireland's performance falls short, there is much less attention in political debate and the media than the traditional themes of Northern Ireland political dialogue. A [recent report sets out some of the shortcomings](#) in health, infrastructure, educational provision and climate change strategy; and in economic policy, where skills gaps and low productivity require serious action.

And there are serious [questions about governance and lapses in standards of propriety](#), some of them pointed up by the Renewable Heat Incentive scheme, the issue on which the Executive collapsed in 2017. That involved serious lapses by civil servants, Special Advisers and ministers. But the issues raised in the [report of the Inquiry](#) in early 2020 were never properly discussed: the outbreak of Covid shortly after the report appeared displaced all discussion of it, for which the political and administrative system had anyway little appetite. *New Decade, New Approach* proposed some changes in consequence of RHI, and some work has been done on the report's recommendations. But the [Comptroller and Auditor General recorded his disappointment](#) in March that 'there are only 18 [out of 44] recommendations that we can regard as fully implemented'; and he warned against 'mere tick box improvements', as opposed to changes in culture.

The neglect of economic, social and governance issues is, however, traditional. In the Troubles years, public debate had been dominated by the established themes of intra-communal disagreement, sharpened up by the paramilitary conflict.

Good government questions hence had little place in the Agreement. That may have been understandable in the context, when the essential first step towards any sort of devolved government was rightly seen as finding a political arrangement to bridge community divides. But there was probably too ready an assumption that ordinary good government questions would

naturally command the attention they needed in the politics of the peaceful Northern Ireland. That expectation has often been disappointed.

The problem is not lack of public concern about economic and social issues. A [poll for Queen's University in February](#), for example, invited respondents to rank 10 issues as political priorities; more people identified the future of the health service as their top priority than any other issue.

Nor has the problem been a lack of processes to develop public policy. The Executive has established elaborate mechanisms for public consultation over Programmes for Government. Successive reports have urged substantial reforms, including extensive (painful) restructuring of the health service. *New Decade, New Approach*, the deal that restored devolution in early 2020, proposed developing many strategies to improve performance. The problem is not the absence of processes, but of commitment and delivery. The outgoing Executive for whatever reason failed to agree a Programme for Government in the two years it was in being, despite much ground work having been done.

There have been some steps towards the promotion of analysis and informed debate. A [Fiscal Council](#) has been established, a commitment of *New Decade, New Approach* after many years' pressure from the Treasury. The Council has some similar functions to the Office for Budget Responsibility in London. As one of its first acts, it [reviewed the Executive's three-year draft budget](#) (which did not in the event proceed, following the resignation of the First Minister). It concluded that the budget would 'balance', but lacked evidence of strategic priority setting in most areas, and of concrete proposals as to efficiencies and charging: much remained for the Executive to do.

There is also a commitment to [establish an 'Infrastructure Commission](#) for [an] expert led, strategic and public engagement approach to long term infrastructure planning': valuable in principle, but again all turns on delivery.

And Northern Ireland for long had no independent think tank operating in this field, but now it has [Pivotal](#). Pivotal has sought from a nonpartisan standpoint to develop informed public debate about the neglected issues. But for the moment it remains a small-scale operation.

In principle, an inhibition on the Executive's ability to take action is lack of control over most of its financial resources. It can raise some through the Regional Rate, but the bulk of its money comes from the Treasury in London ([powers to devolve Corporation Tax](#) to the Northern Ireland Assembly have never been invoked – though they would likely have led to a reduction in revenue). A Fiscal Commission appointed by the Finance Minister [appears likely after the election to recommend pursuit of more fiscal devolution](#) for Northern Ireland. Some have been sceptical, given the Executive's record, that it should be entrusted with further such powers. [The debate is still to be had](#).

Complicating matters, the Executive is not the only actor in the social and economic field. The UK government is increasingly involved. The Department for Levelling Up, Housing & Communities oversees the Shared Prosperity Fund, which replaces a number of payments from European funds: devolved ministers have [lamented their lack of involvement in decisions](#) here. The inward investment agency [Invest NI has lost a proportion of its funding](#) previously derived

from the EU as a result of allocation elsewhere under UK auspices. Meanwhile, the Northern Ireland Office has a [Social Development Fund](#). There appears to be little coordination with the Executive in these programmes.

Analysis: ensuring the institutions deliver

Good government and sound public policy are evidently valid objectives in their own right. The questions here are ones that carry significant human consequences and neglect of them risks future peace and prosperity.

But they have a broader significance in Northern Ireland: successful devolved institutions underpin stability. If they are delivering, the public – which has not been greatly impressed with their performance⁹ – and the players within them will be more resistant to seeing them overturned.

But the lack of political or public traction for economic and social policy questions in Northern Ireland has had lamentable results. Successive expert reports proposing significant restructuring of the NHS passed by without action, for example, leading in good part to the current position of the service.

In the last few years, it has often been hard to discern what objectives the Executive was pursuing, even before the withdrawal of the First Minister, beyond keeping going from day-to-day. It had no Programme for Government for its five-year term, and there was certainly no sign of any long-term vision.

It lacked, therefore, the significant cohesive force that shared responsibility for delivering results might have imparted.

And action on the *New Decade, New Approach* commitments has been distinctly limited – for which Covid is only a limited excuse. Although how much impact they would have had is anyway questionable: developing a strategy is a starting point, but the real challenge in Northern Ireland has often been determined implementation. The problem has not been lack of process or lack of strategies, but lack of political will leading to lack of outcomes. It is a problem with the political culture.

What can be done?

It is essential for the future well-being of Northern Ireland to find ways of ensuring that the administration works effectively towards longer-term objectives on the key public policy challenges – which can fairly objectively be identified.

That is all the more important in a context like Northern Ireland, where Executives are formed on the basis of no shared manifesto, with a composition dictated by the d'Hondt algorithm.

⁹ In [polling in March](#), 63% reckoned the Executive's performance 'bad' or 'awful', against 11% considering it 'good' or 'great'.

What is needed is serious cultural change: a greater priority for these real-world issues. There are many in political parties across the board who would like to focus more on these issues.

But the current state of politics makes this difficult. Executives have often dodged difficult decisions: curiously, even having the main parties in government and no obvious opposition has not made such decisions easier. Indeed the political context may enable, perhaps encourage, politicians to collapse government over single issues – RHI with Sinn Féin in 2017, the Protocol with the DUP in 2022 – when this is not the general public wish.

It is essential that the post-election negotiation period is used to conclude a serious Programme for Government, as argued elsewhere in this report. A mere set of commitments is not enough: there needs to be a serious timetable, and machinery to ensure that the commitments are seen through. It is also essential that the UK government works in the same sense, rather than operating some alternative economic and social strategy, or distributing funds without one.

But what can be added to the current mix to help develop analysis and dialogue on doing economic and social policy and delivery better?

There is potentially a valuable role for outside actors to put forward unpopular and difficult ideas that would not emerge from the institutions or that would be stifled the moment they arose.

Think tanks and other bodies do this elsewhere: until recently, Northern Ireland has lacked many such inputs. It now has, for example, the Fiscal Council and Pivotal. But their scope and resources are limited.

There is a good argument for a body insulated from short-term political pressure to seek to bring more fully into the public debate the key public policy options, and the choices for a longer-term vision. It has too often been the response to a problem in Northern Ireland to set up a new institution, but here the rationale is good. The [Institute for Government put forward recommendations](#) for ‘buttressing institutions’ in 2019, based on institutions elsewhere; and the [present author did so last year](#), proposing a body that would research economic, social and public service issues, make them accessible to public debate, and make proposals to the Executive and Assembly.

An institution of this sort could organise informed debate around economic and social priorities, and make recommendations. Indeed it could produce draft Programmes for Government for consideration by the Executive. And it could have a valuable role in monitoring implementation.

Contributions like this might permit public debate to focus more clearly on issues that, as is clear from polling, matter very much to the public; the political machine would have concrete propositions to deal with, which would increase the prospects of action being started; and it would be held to account for progress in keeping them moving. In short, such an institution could start to change the culture.

Any such institution must have a degree of independence from the Executive of the day, so that it cannot be leaned on – which might, as with the Fiscal Council and Fiscal Commission, point to chairs from outside Northern Ireland. But it needs to be the friend of constructive politicians: it must not appear to be sneering from its ivory tower.

A single public body, however, ought not to be the whole answer. An important part of changing the culture is supporting a range of contributors to debate; which requires them to be drawn out of an understandable reluctance to raise their heads in a potentially unwelcoming political environment. On this analysis, think tanks and similar bodies, in which such views can be expressed collectively and with the benefit of analysis and communications resources, have an important part to play, and should be encouraged.

More might be done, too, by Assembly committees. With a few notable exceptions, Northern Ireland Assembly committees have had little impact on policy: for the party machines, they have been simply another forum for traditional political debate, often kept in line by strict party discipline which brooked no criticism of those in government. Westminster and Dublin committees have at times done useful work, and point the way.

The media also have an essential role in support of constructive politics. Much current media reporting is set up to respond to the political dingdong. It has not often ventured into the areas of neglected public policy. In part, this is no doubt because those issues are more difficult and less accessible. And their coverage might demand resources that most media organisations in Northern Ireland lack – though the BBC at least has substantial funding. Such a change in focus is potentially part of the necessary response to public dissatisfaction with the way government operates at the moment.

On the standards and competence issues exemplified by RHI, a number of reforms and initiatives have derived from the lessons learned, including through the RHI Inquiry report. Politicians may be for the moment chastened over standards issues. But the lack of any sustained attention to these issues makes it more likely that they may arise again, and potentially destabilise politics.

And the RHI Inquiry essentially looked backwards at one (very atypical) policy development process. There is scope for more searching consideration of the way public policy needs to be done in the future, by civil servants, ministers and their advisers.

To conclude: **fundamental change to the way Northern Ireland does government is essential to future well-being and prosperity; but also future political stability and order.** It is essential that there is proper informed discussion about what needs to be done. That discussion cannot be a matter simply for those already within the system.

And action is needed during the post-election negotiation. The aim should be to establish a new Executive with a coherent programme that can command the public imagination, and keep participants in government committed. The dissolution of the Executive would then become unthinkable. By the end of its term, it should have delivered indisputably beneficial results across the whole of its responsibilities.

All the changes necessary may not come about in the six-month post-election period, but they should be set in motion with determination.

Chapter 9. Institutional Challenges and Opportunities

This chapter considers questions about the internal institutional framework, the machinery of government, established by the Agreement, that may arise in the post-election negotiation. There may be a search for tweaks to get off political hooks; but changed voting patterns may also raise bigger questions of principle. It is important that there is public discussion of any changes, and that in making them, beside broader politics, some regard is paid to ensuring government can make decisions effectively.

Background

Issues to do with the shape and functioning of the institutions are generally little explored in public, or indeed anywhere outside the parties and governments. Changes have often emerged from negotiation, sometimes only with the largest parties, and immediately been enacted. The issues may be regarded as geeky, but they may have a profound impact on whether the Agreement settlement can continue.

The internal, Strand One, power-sharing government structures are especially complex, but these arrangements are central to what may happen in politics after the next election, so they need to be considered in detail. (The North–South (Strand Two) and East–West (Strand Three) institutions are not immediately the focus of much contention in themselves (although the DUP boycott of the former certainly is): they will be considered in the later report.

The First Minister and deputy First Minister posts

Significant potential arguments about the institutions centre around arrangements for appointing the Executive, especially those for selecting the First and deputy First Ministers. These two jointly head the Executive: despite the difference in titles, their powers are precisely identical, and all have to be exercised jointly. They control the Executive agenda. The appointment arrangements have changed over time.

- **Originally under the Agreement, they were elected by the Assembly on a joint slate subject to cross-community support** (with a majority of nationalists and a majority of unionists, as well as an overall majority, reflecting the traditional binary conception of Northern Ireland politics – see below). It was nowhere stipulated that the larger designation¹⁰, which has so far always been unionism, provided the First Minister, but that was the outcome.

¹⁰ MLAs on entering the Assembly may designate themselves as ‘nationalist’, ‘unionist’, or ‘other’ (they are deemed under standing orders to be ‘other’ if they do not).

- Devolution collapsed in 2002, the DUP and Sinn Féin displaced the UUP and SDLP as the largest parties, and the new politics led to a conference at St Andrews in 2006. **In the text that first emerged there appeared a new mechanism:** the largest party in the largest designation in the Assembly (unionist, nationalist or ‘other’ – but seen as likely to be unionist for the foreseeable future) would select the First Minister, and the largest in the second largest designation the deputy First Minister (this was proposed by the DUP, apparently to avoid the obligation to vote for a Sinn Féin deputy First Minister).
- But following further negotiation, this mechanism changed in the arrangements enacted at Westminster under which devolution was resumed in 2007. **Now the largest party in the Assembly selects the First Minister, and the largest party in the largest designation apart from the First Minister’s selects the deputy First Minister.** This was apparently a Sinn Féin demand, in return for flexibility on other issues. But the DUP has successfully exploited it in election campaigns, and is seeking to do so again: they maintain that it is essential for unionism to hold the First Minister role and that unionists should therefore vote for one party, viz the DUP, to ensure it comes out the largest.¹¹

Until this year, the nominating parties for First and deputy First Minister could quickly bring down the system: if either failed to provide a First Minister or deputy First Minister following an election, or if, when in government, one of their post-holders resigned, elections had by law to follow in short order.

But now, under the [Northern Ireland \(Ministers, Elections and Petitions of Concern\) Act 2022](#) (a belated outworking of the *New Decade, New Approach* agreement by which devolution was restored in early 2020), the crunch is delayed. There is a 24-week period following an election, or a 48-week period if the post-holder pulls out of an Executive once appointed, to give time for a political deal to be done.

But, as the law stands, the parties holding the First Minister and deputy First Minister positions can still ultimately crash the system – no other party can take their place if they pull out, in contrast to the position with other ministerial posts. All the law prescribes is a succession of elections.

Other ministerial posts

Most ministerial posts are filled by the d’Hondt procedure, which provides an order in which parties can select posts in the Executive and nominate people to them (whom they alone can remove), and yields a ministerial line-up roughly in proportion to party strengths in the Assembly. It is thus a government constituted by a mathematical formula. Negotiation on a Programme for Government is supposed to follow once the results are clear.

A party may decline one of these posts, and go into opposition, in which case the mechanism allocates unclaimed seats among participating parties. The UUP, SDLP and Alliance chose opposition in 2016, but after a year preferred to go back into the Executive. The current state of

¹¹ There may also be, however, especially in the current elections, a countervailing effect from the DUP’s urgings, by which nationalists are moved to vote for Sinn Féin in order to frustrate them.

politics makes it hard to function effectively as an Opposition, and certainly to offer an alternative government.¹²

But the composition of the Executive is otherwise ‘mandatory’: there is limited scope for political negotiation around the composition of the Executive, and there are no votes to endorse the Executive as a whole.

The post of Justice Minister, because of its particular political sensitivity, is filled by [vote of the Assembly approved with 50:50:50 cross-community support](#), as with the original First and deputy First Minister selection – see above.¹³

Cross community support and designation

The designation and cross-community support arrangements in the Assembly may themselves also come under greater scrutiny following the election. Besides the relevance of designation to Executive formation, many important votes require cross-community support. Indeed, under the ‘Petition of Concern’ procedure, decisions on most issues can be required to achieve such support on the request of 30 members. In most cases, cross-community support means *either* the 50:50:50 threshold set out above (50% of nationalists, of unionists, and of the Assembly as a whole), *or* by 60% of the Assembly as a whole, including 40% of each of unionists and of nationalists.

The system thus confers vetoes in Assembly voting on the unionist and nationalist blocs; but it confers no such veto on ‘others’. Similar rules apply to some decision-making in the Executive. The designation system is seen by parties in the recently much-strengthened middle ground as discriminating against them – or as some would put it, enshrining sectarianism.

It is clear that the current arrangements are not ideal from the point of view of effective, responsive government. The way the Executive is constituted through an algorithm by individuals nominated by their parties and removable only by them, makes for lack of cohesion. Since the agreement of both the First and deputy First Ministers is needed for a matter to go before the Executive, and since the [ministerial code](#) requires new controversial and cross-cutting business to be brought there, each of them has a veto over much of the most important activity of government. The cross-community voting rules in the Assembly are also a cause of delay.

Other aspects of current arrangements may also warrant reform. Some were seen in the RHI Inquiry. There is, for example, a strong tendency towards departments working in silos, reinforced by the politics and the legal framework of ‘mandatory’ coalition. The functioning of government in Northern Ireland merits much more consideration than it receives.

¹² [Some extra facilities were granted to opposition parties](#) by a private member’s bill in 2016; others were proposed in *New Decade, New Approach*, though [a number of those were vetoed by the DUP](#) when the Assembly came to consider them.

¹³ [There has occasionally been talk this year about Sinn Féin taking the Justice Minister post](#) if they are the largest party after the election. It is not clear how it is thought this might come about: under the present legislation, unionist consent would be needed.

Party positions

As noted earlier, most of the main parties have some issues with these arrangements. The DUP has traditionally [preferred](#) a ‘voluntary coalition’ subject to a weighted majority threshold. They have tended not to push this, and there has been some acknowledgement in the past that Sinn Féin would be likely to regard it as a means of excluding them from government. But [their leader reverted to it a few months ago](#).

The Alliance party has always [favoured a weighted majority threshold](#), both for Executive formation and for cross-community votes in the Assembly, in preference to what they see as a tribal approach, and to overcome the greater influence given to those who designate themselves nationalist or unionist.

The [UUP](#) and the [SDLP](#) (which have both suffered electorally through the post-2007 arrangements) would like to revert to the original system for selecting the First and deputy First Ministers. The UUP leader has spoken though with few specifics of further reforms that are needed.

The [TUV favours only a voluntary ‘coalition of the willing’](#): it would prefer the absence of devolution to the use of mandatory coalitions.

There is no sign of consensus on any alternatives, however.

The Agreement has no express amendment provision. It was, however, concluded with the possibility of change in mind: it has a number of provisions for review. It has subsequently changed in various ways, notably as a result of the St Andrews Agreement; more recently, the size of the Assembly was reduced from 108 members to 90. The British and Irish governments in political negotiations have generally sought cross-community consensus for changes, in line with the consensus rules by which the Agreement was itself reached.¹⁴

Whether they have quite always achieved that may be debated: but at all events the parties have gone along. To factor in here is the occasional ‘cakeism’ of party leaderships who may privately acknowledge the need for changes and be content with London making them over their heads, so long as they can have the luxury of opposing them in public. This is in the long term to be deprecated, because it discourages responsibility; but in the short term may be necessary.

Arguably, since the Agreement was approved by referendum in both parts of the island, major change should be similarly validated. That has not arisen so far.

Analysis: can the system change?

What demands there may be for change to the system will not be clear until we have the election result. But there are several general principles to bear in mind.

¹⁴ Formally, under rule 34 of the [Rules of Procedure](#) for the Agreement negotiations, the support of political parties commanding a majority by votes cast by both the nationalist and unionist communities; and of both governments, except in the case of Strand One.

It is clear that arrangements for safeguarding power-sharing remain necessary for the legitimacy of the political system in the current state of Northern Ireland politics. Almost no one suggests that simple majority politics will work.

But there is room for greater reflection about how these arrangements are framed. This is especially so in the current context, with changing voting patterns, the possibility of boycotts, and the need for government to operate effectively in dealing with the acute economic and social difficulties facing Northern Ireland – which, as argued above, is itself essential to stability.

The means by which change might come about raises problems. Should parties constituting 50% of one or other community's representatives (or votes) have the right to bring down the Agreement institutions by boycotting them, and at the same time to block all change that might permit them to operate? Would the governments in those circumstances be justified, after giving effect to the Agreement's review provisions ('review will fall to the two Governments in consultation with the parties in the Assembly'), be justified in putting forward changes by which non-boycotting parties might seek to make government function?

There are good arguments that they should, if the changes have a broad measure of support across the community. The Agreement was not intended as a charter for nonparticipation in government; and, as discussed above, the possibility of change in response to difficulties was foreseen.

But there are practical obstacles. Power-sharing is about ensuring that significant strands of opinion are represented in government, and the largest parties have to date always been involved. The political viability of an Executive chosen otherwise may be in doubt. Even if there were a mechanism to put it in place, an Executive without the support of 50% of both unionist and nationalist MLAs might face difficulties in the Assembly; without the support of 60% of members overall, and 40% of each of the unionists and nationalists, they would under present rules be stymied.

There is another possible route to change, in the hands of the parties, and that is the tactical use of the designation system. The [Alliance party in 2001](#), with great reluctance, agreed that several of their members should change their designation to unionist, in order to vote in David Trimble and Mark Durkan as First and deputy First Ministers by cross-community support (under the old rules for appointment to those offices). The rules on changing designation have since been tightened, but this at some stage remains a weapon in the hands of Assembly parties. In the context of commitments to change in the system towards weighted majority, at least, they might be prepared to use it, perhaps after a second election.

The development of institutional changes entirely behind closed doors is a doubtful approach from the point of view of commanding public confidence or producing lasting and effective structures. It has often happened.

In deals since the Agreement, we have often had short-term political fixes which have neglected the deeper underpinnings of political stability embodied in the Agreement. More such fixes may be justified to get us beyond the present difficulties, given the negative consequences that could result from a sustained lapse of devolution. But the longer-term suitability of the arrangements in

a changing political landscape and with increasingly pressing good government challenges also needs attention.

Specific changes

What specific changes to the institutions might be demanded? Potentially there is a long list. These are some. This is very definitely a preliminary analysis: especially as regards more far-reaching steps, whose impact has not seriously been considered.

First Minister/deputy First Minister

Some have argued that First Minister and deputy First Minister should be designated 'Joint First Ministers', which might help the DUP or UUP win acceptability among unionists for taking office despite not becoming the largest party and so gaining the First Minister post. Objectively, the change has merit: the offices have precisely equal and joint powers (and [salaries](#)) and there is no obvious reason why one of the holders should be styled 'deputy' (it was apparently [a demand of the UUP](#), then the largest unionist party, in the Agreement negotiations). Sinn Féin in the person of Martin McGuinness offered such a change in 2011 when it appeared that it might be the largest party in that year's elections, and [again in 2015](#). The party has not repeated the offer in the current campaign, but it regularly [used the term 'Joint Head of Government'](#) to refer to Michelle O'Neill as deputy First Minister.

[Alliance favours this](#). The [SDLP](#) has also at times proposed it, but the [DUP has for the moment said it is not interested](#). But the British government has recently been [briefing](#) that it favours examining the issue. Sinn Féin supporters may see no obligation on them to help the DUP out of a hole. But for Sinn Féin to agree this as a means to enable the institutions to continue could be presented as a gesture of responsibility; and the change itself as a statutory embodiment of equality.

Another possibility is reversion to the arrangement by which the First and deputy First Ministers were voted in on a joint slate, with cross-community support, as was the case until 2007. Only the DUP, among major parties, appears to have sought change to the initial arrangements. Those arrangements would offer the possibility of a unionist First Minister while unionism was the largest designation in the Assembly (or indeed in other circumstances), if there was agreement among the parties. Proponents of this approach argue that it embodies the principle of collaboration in government, whereas the post-2007 arrangements posit opposing camps within politics and society. Whether the DUP (or the largest unionist party) and Sinn Féin would now agree to revert is unclear.

The two changes above could readily be combined.

An agreement to revolve the two leading parties in the First Minister slot may be another possibility, putting off the need for any institutional change. But it may have too many political dangers for the comfort of signatories – at the least, it might need statutory underwriting to work in Northern Ireland circumstances, given the risk that the party occupying the top job first might seek to collapse the Executive when the time came to relinquish it.

Should there be change so that no one party can block formation of an Executive through the mechanism for appointing the First and deputy First Ministers? As noted, only one party is entitled to appoint to each position; whereas with most other ministerial appointments, if a party declines to nominate, the option is passed to another party. The issue has been little discussed so far, but may become very topical. [The Taoiseach has recently said](#) that no one party should have a veto over whether the Executive or Assembly should continue. [The Alliance leader Naomi Long said](#) that if a party ‘decided to take their ball home’, the government would need to reform the institutions so that those who were willing could carry on.

The DUP is the party to which this might most probably apply, if it declines to nominate a First Minister, or deputy First Minister, as it has hinted. If it thought its interests were best served by a period in opposition, in which it might nevertheless have considerable influence in the Assembly, and it therefore agreed to changes taking place, then there might be little problem.

But if, pursuing its attack on the Protocol, it refused consent, could change proceed nevertheless? Some would argue that reverting to the original Agreement provisions on appointing the First and deputy First Ministers would be legitimate, since they were endorsed in the original Agreement negotiations, and in referendums.

But, if unionist parties opposed to the formation of an Executive were a majority, that might not achieve very much. Whether any arrangement could be devised that would permit government to operate depends on the party line-up.

There would be difficult questions to resolve about the details of any change – if the present nomination of system were maintained, but with the right to nominate passing from an abstaining party, where would it go? Within the same designation as the abstaining party, for example? Or to the largest party outside the designation of the person appointed to the other post? In both cases, some would be liable to cry foul.

Recognising the increased centre ground vote

An increased ‘other’ vote might lead to several contingencies:

- One possibility is **Alliance being the largest party**, and so taking the First Minister slot. This has been talked of recently, but goes well beyond the predictions of pre-election polling. In doing so, it would displace a unionist or nationalist from the top line-up, completely upending the Agreement system. Some change would be needed.
- If ‘other’ was the largest designation in the Assembly, and Alliance the largest party in it, it would take the deputy First Minister slot. This is probably more unlikely still.
- A third possibility is **Alliance being the second largest party – but with ‘other’ not being the largest designation**. In that case, it would be excluded from the line-up of First and deputy First Ministers. The size of the Alliance vote in such a scenario, though, would indicate that Northern Ireland politics no longer conformed to the binary model. Many in those circumstances would regard its exclusion from the top table as unfair.

In any of these cases, there might be an argument of logic for a three-person headship of the Executive: unionist, nationalist and ‘other’. Along with, potentially, with a veto role for ‘others’ in Assembly voting.

Such a step is little-advocated and unlikely to be anyone’s first choice; it would risk making the operation of government still more cumbersome and prone to obstruction. It may not however be completely unthinkable: the British government’s [*Framework for Accountable Government document*](#) published in 1995 in advance of the Agreement negotiations envisaged a three-person ‘Panel’ having some head of government functions, although in that case directly elected. If resistance to a move to weighted majorities were great, there might at least be consideration for such measures on an interim basis, while potentially more far-reaching reforms were considered.

The replacement of designation altogether, by a weighted majority criterion for cross-community votes and for the appointment of First Ministers, or for the whole Executive, would be seen by some (though not all those who propose it) as a rejection of the binary model of community and politics in Northern Ireland. Such an approach has been proposed in the past: for example in the *Framework* document.

The immediate implications of moving to such a system, as well perhaps for some as the principle, would be highly contentious. Some parties would fear plots to exclude them – perhaps particularly Sinn Féin. They would therefore press for high voting thresholds, high enough in all circumstances to avoid their exclusion, if they were prepared to entertain the idea at all. That would risk the possibility of creating even more obstruction to decisive government action, and perhaps making it more difficult to secure sufficient votes for First Ministers, or for an Executive.

At some point, though, voting patterns may change to the extent that the present system fails to function – and sufficient muscularity by the centre ground parties in the tactical use of designation could bring the issue to a head. But this is new territory, and the implications of particular thresholds, and particular variations on the scheme, need to be thought through.

Devising effective institutional change

Much further thinking is needed on these issues generally. Ideally, any changes should:

- be fair and balanced so as to be capable of winning consensus;
- be publicly debated;
- be thought through, not just short-term political fixes;
- take account of the requirement for effective government.

Though there may need to be a focus on ad hoc changes, more fundamental changes that may be needed in the future should not be ignored. Further evolution in voting patterns may make the current arrangements unsustainable, and at some stage their poor performance in delivering effective government may also be key to their sustainability, and potentially a serious political issue. So there needs to be study of these possibilities.

Indeed, if the post-election talks do not yield the foundation for devolution resuming, there may be an increasing public willingness to contemplate more radical change.

At all events, there needs to be an informed debate in which potentially difficult changes can be aired publicly, so that, if necessary over time, ways forward might emerge that could command a consensus.

At present, the expertise on the issues is essentially within the institutions and parties. As with other issues, there would be value in having some capacity outside government and politics for analysing them, and surfacing them publicly; all the more because Northern Ireland's institutions are unique: there is very little evidence from elsewhere that can be drawn on about the implications of possible change.

Chapter 10: Conclusion

Some of the questions raised in this paper will feature in the politics of the coming weeks. Others that do not are liable to return at a later date.

Barring longer-term evolutions, which do not seem near, we need the Agreement. But it is limping along.

Without stronger foundations, and without institutional adaptation to changing electoral patterns, it may not survive.

Underperformance on the economy, social policy and public services adds to public misery and despair about the condition of Northern Ireland, and ultimately makes the institutions more unstable.

At some stage, a resolution will be needed for Northern Ireland's position vis-à-vis Europe. It will necessarily be an imperfect answer to an impossible question.

London must before long face up to its responsibilities in Northern Ireland, or the consequences may be severe.

Renewal of the Agreement settlement requires new ideas, and new sources of leadership.

The aim of this paper has not so much been to propose solutions, but to urge that the process begins to find and promote them.

The Northern Ireland political machine in recent years has found it difficult to tackle many of these issues. The governments, which once had an important role as catalysts to constructive political activity, for the moment appear less able to carry it out.

Whatever happens, Northern Ireland needs to generate greater leadership from within. In present circumstances, Northern Ireland civic society needs to do more. Whether it responds could make all the difference to the survival of the current Agreement settlement.

This discussion paper looks at the state of Northern Ireland politics as the 1998 Belfast/ Good Friday Agreement approaches its quarter-century. Is that Agreement still the template for stable government in Northern Ireland? The paper argues that there is no other plausible framework for constructive politics, but that needs its renewal.

The immediate focus is the negotiation on forming a power-sharing government after the Assembly elections. Whether government returns at all is uncertain, with battles in prospect over the Northern Ireland Protocol to the EU Withdrawal Agreement, and potential institutional change.

The paper argues there must also, though, be attention to ensuring that power-sharing government delivers – its performance so far has been patchy – as well as to the underpinnings of the Agreement, reducing sectarian division and ensuring politics is free of paramilitary influence.

The role of London will be key to such endeavours. British and Irish governments used to work closely together to forge political compromise in Northern Ireland, but London in the last two years has been engaged chiefly in battles with Brussels over the Protocol. Polling suggests that it is universally mistrusted in Northern Ireland.

At times civic society in Northern Ireland has played an essential role in ensuring that politics succeeds, and it may need to do so again now. New ideas and leadership are essential.

This paper aims to be accessible to all audiences, including those who know a great deal about Northern Ireland, and – with the crucial London role in mind – those who do not.

About the Constitution Unit

The Constitution Unit is a research centre based in the UCL Department of Political Science. We conduct timely, rigorous, independent research into constitutional change and the reform of political institutions. Since our foundation in 1995, the Unit's research has had significant real-world impact, informing policy-makers engaged in such changes – both in the United Kingdom and around the world.

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