



# Briefing on: The ‘New Decade, New Approach’ deal in Northern Ireland – Governance and Identity

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## Background

In January 2017, the deputy First Minister, Martin McGuinness, tendered his [resignation](#) from the Northern Ireland Executive, citing issues around equality, trust and abuse of power on the part of the Democratic Unionist Party.

Following 3 years of institutional hiatus, during which civil servants assuming greater responsibilities ultimately prevented a return to direct rule, talks between the 5 main political parties, with a focus on negotiations between Sinn Féin and the DUP, recommenced following the Westminster General Election in December 2019. With the support of the Irish and UK Governments throughout the process, and a commitment to this being maintained thereafter, the text of an agreed [document](#) named ‘New Decade, New Approach’ (NDNA) was released to the general public on 9<sup>th</sup> January 2020.

The NDNA document is divided into two parts, with a series of annexes providing further details, inclusive of a bespoke section outlining the commitments of the UK and Irish Governments.

This briefing presents an overview of the agreement reached and examines key aspects of its content, focusing on the elements addressing governance and identity. As such, there are elements of the NDNA document that are not addressed here as a result of this scoping.

## Part 1: Priorities of the Restored Executive

The first part of the agreement outlined those areas the parties identified were priority areas for a future Executive. This covered several key areas, including:

- Health Service
- Education
- Justice
- Reform of the Civil Service
- Infrastructure
- Poverty
- Reduction of carbon emissions
- Paramilitarism and sectarianism
- Housing
- Programme for Government (PfG)

## Part 2: Northern Ireland Executive Formation Agreement

The second part of the document identified the bases upon which the parties agreed to support the operations of an Executive. The priorities of the Executive, as outlined in Part 1 of the document, identified the areas that the parties agreed necessitated attention, whereas Part 2 detailed the agreements reached regarding how these issues could be addressed in reality.

In doing this, the document had to look more broadly at issues around governance, institutional procedures and the practical management of the PfG so that those goals outlined could be pursued.

### *Governance*

Thematically, the issue of governance was central in the agreement. This was covered over a range of points, including increasing transparency, reform of the Petition of Concern, and sustainability of the institutions in the future.

#### - Transparency [Annex A]

Underpinning this aspect of the document is a recognition of a breakdown in trust between the public and the institutions. This is addressed in a direct intention outlined on Page 11 that each cog in the institutional machines needs to play a part in 'rebuilding the trust of citizens.'

It is evident in this area of the document that the fallout from the Renewable Heat Incentive (RHI) Inquiry was instrumental in the construction of these plans. For instance, they include increased Ministerial accountability, responsibility for SpAds, requirements for record-keeping during meetings, and the creation of a new fiscal council dedicated to examining the Executive's finances and spending proposals. There is also a commitment made to respond quickly to any recommendations that will come through the RHI report when it is published, through the creation of a sub-committee that will address this specifically.

These provisions are necessary and essential, and anything that is a genuine attempt to work towards making the institutions more transparent is to be welcomed. Trust in the way the institutions are functioning is integral to building confidence in politics more generally. In a system using a form of power-sharing, it can be hard to disentangle trust in political representation (in identity-based terms) from trust in political ability (in a generic sense of being able to fulfil one's role as a politician). It is entirely possible to have one and not the other. But, while the institutions in Northern Ireland were able to place more weighting on the former in the years following the establishment of the Northern Ireland Assembly (NIA), arguably, there is a greater need for development of the latter in the context of Brexit, wider UK and Irish politics, and recent elections that suggest a movement of the electorate away from the extremes towards more centre-ground parties, such as the Alliance Party.

While it cannot be concluded that an Assembly election would produce the same outcome, meeting the 13<sup>th</sup> January deadline for an agreement in order to avoid an election was likely a key factor in the talks progressing and reaching conclusion as and when they did.

Parties need to show that they don't just represent their communities well; they must show that they can govern well too. Transparency around how governance works is integral to this.

## - Petition of Concern [Annex B]

The Petition of Concern (PoC) is a mechanism within the institution of the Northern Ireland Assembly which effectively provides a veto power to those that meet the criteria of its use. Its intended purpose was that it was to be used to ensure that neither designated group (i.e. Unionists or Nationalists) would be able to pursue a course of action that would have a potentially detrimental impact on the other community. 30 signatures were required for a PoC to be raised, however, the mechanism was increasingly [used](#) in instances where no discernible link could be found to suggest that an adverse impact on one community would arise.

The NDNA document shows a recognition that this was the case, and an intent is stated on Page 12 that the PoC should be returned to its original use.

In order to achieve this, reforms have been proposed to how it is used, including the guidance that it cannot be used where a Member's conduct is under question in the Assembly, that it can only be used after a bill has completed the Second Stage of the legislative process, and that the 30 signatures required to trigger its use must come from across at least 2 of the political parties. If successful in meeting these requirements, a 14-day 'period of consideration' commences, after which if the signatories confirm their remaining support for the PoC's use, a cross-community vote is held.

The PoC was a point of [contention](#) for the political parties during the talks ahead of NDNA's publication. The amendments agreed fall short of the reforms that were being [called](#) for in some quarters, which included increasing the number of signatures required. Nonetheless, steps to mitigate the potential for its abuse within the NIA must be welcomed. It will only be when a deeply contentious issue comes to the fore that the robustness of these measures to prevent a solo-run through use of the Petition will become clear.

## - Sustainability [Annex C]

The duration of institutional hiatus between 2017 and 2020, and the challenges this presented for governance in Northern Ireland underpinned this aspect of the document. Creating institutions that are more 'sustainable' and 'resilient' is an alternative way of communicating that the intention is to put plans in place which will enable a better form of governance to exist should political relationships break down again in Northern Ireland.

There are also changes outlined that are aimed at creating opportunities for stronger (working) relationships to form between those representatives working at the highest levels. This includes the creation of a Party Leaders' Forum. This is a positive step and a means to facilitating dialogue between leaders that might not be possible otherwise (for instance, not all party leaders have a seat in the Executive). Opportunities for party leaders to come together can encourage conversations to occur that might not be possible otherwise, where a perception of a leader from one party speaking to another might draw criticism from voter bases, or other parties who may use it tactically for politically motivated reasons depending on the wider political context at the time. In a power-sharing arrangement, reliant on parties working together, this is a positive step.

The practical means that have been designed to aid sustainability are inclusive of an extension in the number of days that can lapse before an election has to be called by the Secretary of State for Northern Ireland to 24 weeks, and obligating committees to continue to function as

usual while Ministers continue in their posts under their scrutiny, until such a time as the political difficulties are resolved.

This extension to the amount of time that can pass before the Secretary of State is obligated to call an election is likely a reflection on the shorter time frame previously in place having created additional challenges following the collapse of the institutions in 2017. Namely, it gave rise to the 2017 Assembly election that ultimately created further divisions between the parties, divisions then compounded by the 2017 General Election shortly afterwards. The inference here is that perhaps with more time and without the divisive pressures that come with an election for the political parties, it might have been possible to find a resolution quicker than was the case. More space and time to resolve political tensions in the future could help to prevent the political inertia that prevailed in Northern Ireland over the last three years.

This is a pragmatic step insofar as there is a recognition that NDNA will not resolve all problems in Northern Ireland, nor is it a guarantee that relationships won't break down to result in institutional hiatus again. As was demonstrated in 2017 and subsequent years, the role of the Secretary of State for Northern Ireland when such instances arise is key in determining the consequences when parties are unable to reach agreement on how to work together. NDNA does not recognise the significance of this role in this regard, however, given the variances in proactivity of Secretaries of State that have been seen over recent years, this is understandable to an extent. However, more clearly demarcating the expected minimum input from future Secretaries might have helped to further enhance the provisions made within NDNA with regard to sustainability of the institutions.

Combined, the aspiration with this two-pronged approach is to create opportunity for better communication and interaction between leaders from the political parties, mitigating the chances of another institutional crisis developing going forward, while also putting in place the safeguards to ensure that should this fail to work, any future political difficulties will not be reciprocated with institutional hiatus. Rather, the institutions will continue to function, albeit in a somewhat reduced form.

### *Rights, Language and Identity [Annex E]*

One of the 'red line' [issues](#) going into the talks was the provision of formal rights for Irish language speakers in Northern Ireland. A deal had come close to passing in 2018, but [fell](#) when the DUP was unable to sell the tripartite language provision suggestion within the [draft](#) deal to its base. Irish language activists, Conradh na Gaeilge, were given [access](#) to the Secretary of State for Northern Ireland during the most recent talks to outline what was being sought, highlighting the importance that rights, language and identity matters held in the success or demise of the talks process.

These provisions agreed upon were ultimately designed as a means to recognising diversity in Northern Ireland. As NDNA notes:

*'This framework will be underpinned by the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, while fully acknowledging and accommodating those within our community who define themselves as 'other', and those from our ethnic communities and newcomer communities.'*

This paragraph in the agreement is carefully worded and is in clear response to the concerns that were emphasised when the details of the draft 2018 agreement emerged. In effect, it emphasises the GFA provisions that a person born in Northern Ireland has the right to choose to identify themselves as they so wish in constitutional terms, with the option of dual national identity or 'other' remaining.

The NDNA document presents an agreed package of measures on this basis which includes:

- A new 'Office of Identity and Cultural Expression'
- An Irish Language Commissioner
- A Commissioner tasked with developing the Ulster Scots / Ulster British tradition
- Repeal of the Administration of Justice (Language) Act (Ireland (1737) - meaning MLAs will now be permitted to speak in Irish in the Northern Ireland Assembly without obligation to translate their contribution into English.
- A central Translation Hub in the Department of Finance, to be established within 3 months.

These measures will all be enshrined in legislation, however, it should be noted that a standalone Irish language bill, as Sinn Fein in particular had hoped to achieve, has not emerged. Rather, a reformed version of what we understand to have been in the failed [draft](#) agreement in 2018, which is inclusive of but not limited to the Irish language, is ultimately where the parties have been able to find consensus.

This framework goes some way to satiating concerns that the provisions would give a position of privilege to Irish speakers that is not afforded to speakers of other minority languages in Northern Ireland. But, by enhancing rights for Irish speakers within the institutions and creating the post of an Irish Language Commissioner, NDNA represents a compromised position on the Irish language having emerged between Sinn Féin and the DUP. Further, there is also provision made for legislation to include a requirement that the Department of Education 'must encourage and facilitate the use and understanding of Ulster Scots in the education system'. Both parties can claim that the agreement is a success in this sense.

While nothing wholly surprising has emerged from this framework, one point of ambiguity is the use of the term 'Ulster British' in conjunction with 'Ulster Scots'. Where exactly the distinction lies between the two is not clear, and the term Ulster British itself is not a commonly used one. With ambiguity around the terminology, it is unclear how the traditions and interests of those that identify as such can be recognised and accommodated, to paraphrase language used within this area of the agreement. The use of Ulster Scots in the document is done mainly in terms of spoken word, so it is perhaps that Ulster British, therefore, is used to denote an identity as opposed to the attributes that necessarily come with such. It could also be a recognition of diversity in unionism within the devolved areas of United Kingdom, with Scottish-British, Welsh-British potentially also being manifestations of this. But there is no certainty within NDNA as to what is meant by this.

In practical terms, and in parity of esteem terms, it is not evident if those that reached the NDNA agreement view Ulster British as a synonymous phrase with Ulster Scots, or if it has been included as a way of reflecting diversity within Northern Ireland. It could also be used as a means of constructive ambiguity that opens the potential for non-Irish language provisions

to gain more support than might otherwise have been the case, by expanding beyond Ulster Scots in terminology and so becoming applicable to citizens that may feel this is a better reflection of their identity.

In any eventuality, the uncertainty about what is meant by Ulster British raises a question as to how a commissioner tasked with advancing the interests of this group would identify targets to work towards and how their effectiveness in their role could be gauged. Such ambiguity, while somewhat beneficial in allowing a new commissioner to shape the role when the post is filled, could present problems further down the line.

### *Bill of Rights*

In addressing rights, language and identity, the NDNA also considers the question of a Bill of Rights for Northern Ireland. Such a bill has been recommended by the (Northern Ireland Human Rights Commission ([NIHRC](#))). The purpose of such a bill would be to consolidate the currently fragmented equality framework that exists in Northern Ireland, in contrast to the rest of the UK where a single [Equality Act](#) is in place.

The proposals within NDNA to this end reflect these same ideas. In the context of Brexit, there is an added impetus to strengthen the equality law framework in Northern Ireland. The agreement reached outlines that an Ad-Hoc Assembly Committee will be created to look into this, taking account of the 'particular circumstances' of Northern Ireland in doing so.

It is outlined in Paragraph 5.27 that this committee will be supported and assisted by:

*'a Panel of five experts appointed jointly by the First Minister and deputy First Minister.'*

While this seems a positive step towards a Bill of Rights being given fulsome consideration within the NIA, the proposal gives rise to a number of pertinent questions. Of particular concern is that there is no procedure outlined for how the individuals that will sit on the expert panel will be selected. While we know who will appoint the members, we do not know the criteria that will be applied to this process or what will constitute an 'expert' in the area.

From this, there stems another question on the panel's membership and if there will be an expectation that members will speak for different communities. If it is the case the members will be neutral arbiters in their positions, then where does the distinction arise between what this panel will do and the NIHRC's mandate regarding a Bill of Rights under the 1998 settlement?

If the aim of the panel is, in effect, to do work that the NIHRC can or is already doing, then it must be asked why a duplication of work is being advocated. Fracturing expertise on human rights and identity in Northern Ireland could, ultimately, have the impact of expertise becoming lost as voices from different sources clamour to be heard. Five experts might also be insufficient to capture the breadth of knowledge needed across civil, political, economic and social rights.

In very practical terms, it has also not been established in NDNA if this panel will comprise of paid posts (in which case, the financial support being received will need to be revisited), or how long a term of membership would last. These are factors also that need to be taken account of in determining the appropriateness of the panel's size.



## UK Government and Irish Government Commitments

Spanning 11 pages, in broad terms, both Governments made commitments to support the Northern Ireland Assembly and Executive in fulfilling the ambitions outlined in the NDNA agreement, and through the Brexit unpredictability that lies ahead.

With specific regard to the matters of governance and identity, both Governments make commitments in practical ways.

The UK Government explicitly commits to marking the centenary of Northern Ireland in 2021 ‘in a spirit of mutual respect, inclusiveness and reconciliation, in line with the principles for remembering.’ It also outlines a financial commitment to the Ulster Scots Broadcasting Fund and the Irish Language Broadcasting Fund to assist with the broadening of their remit (reflecting the enhanced formal status for both within NDNA). The formal recognition of Ulster Scots as a national minority under the Framework Convention for the Protection of National Minorities also goes some way in allaying fears that Irish language provisions would be given precedence.

The Irish Government also outlines commitments to supporting Northern Ireland. Almost mirroring the input of the UK Government with regard to Ulster Scots, the Irish Government makes an explicit commitment to ‘the promotion of the Irish language.’ This will come in the form of increased funding over the next 3 years, with funds going to the Irish Language Broadcasting Fund, a promotional programme by An Ciste Infheistíochta Gaeilge, and the development of Irish Language Networks.

In addition, there are a number of significant themes which run through the NDNA document that are worth extrapolating if the governance and identity implications of the agreement are to be understood in more depth. These are explored in the remainder of this paper.

### *Brexit*

There are 15 references to Brexit in the NDNA document.<sup>1</sup> What is perhaps surprising about this deal, given the wider political context within which it has been drafted, is the limited reference that is made to Brexit within it. While there are points addressed which implicitly pertain to Brexit-related matters (such as Paragraphs 8-12 under the UK Government commitments to Northern Ireland where there is reference made to Northern Ireland being supported in its ‘future relationship with the European Union’), Brexit itself does not feature as heavily as might be expected.

The UK and Irish Governments both made commitments to supporting Northern Ireland through Brexit. Certainly, their role in bringing the political parties back together and facilitating their reaching the NDNA agreement has been intrinsic to the institutions restarting.

The Brexit question is only one point on which the political parties, and particularly Sinn Féin and the DUP, differ. The DUP took a clear ‘Leave’ position during the Brexit referendum, while Sinn Féin held an anti-Brexit position. The majority of MLAs in Northern Ireland were from Remain-supporting parties, and throughout the Brexit negotiations (and particularly [during](#) the 2019 General Election campaign), there were notable cross-party efforts to project a Remain

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<sup>1</sup> For reference, the word ‘Brexit’ has been mentioned more times in this document than in the 62-page NDNA agreement.

perspective from Northern Ireland. The Confidence and Supply arrangement in place between the DUP and the Conservative Party between 2017 and 2019 arguably created an additional hurdle to other parties from Northern Ireland being able to engage in constructive negotiations about the future of a Northern Ireland Assembly and Executive, given the party's importance to the Brexit process in the Westminster arena, and the influence that was seen to be exerted on the Prime Minister, Theresa May, during negotiations. It is curious, therefore, that something so central to the perpetuation of division between the political parties at the domestic level in Northern Ireland could be so absent from the agreement that brought them back together again.

In some ways the secondary role that Brexit played in these negotiations and in the final iteration of the NDNA agreement can be viewed positively. In theory, building a strong basis for power-sharing should make it possible for the elected representatives to navigate the challenges that Brexit will present. Further, Brexit itself was not the reason the institutions ceased to function in 2017 – internal problems with the functioning of the institutions and acrimonies between parties ultimately led to its downfall.

Brexit is also a fluid issue, in constant flux and symbolically meaningful in different ways to different people and parties in Northern Ireland. At the moment, the most significant Brexit factor spurring a restoration of power sharing is the united dissatisfaction amongst Northern Ireland's parties with the Brexit deal. But if power sharing does collapse again, the UK's NDNA commitment to the Northern Ireland Executive having a place on UK delegations before the Specialised Committee on the Withdrawal Agreement's Ireland/Northern Ireland Protocol and the Joint Committee where Northern Ireland is at issue (the Brexit deal's key dispute settlement architecture) goes with it. So, there is a clear Brexit-related incentive to ensure the institutions remain operational.

The relative lack of reference to Brexit and its implications for Northern Ireland is nonetheless concerning. Exiting the EU presents one of the most fundamental constitutional changes for the UK as a whole and for Northern Ireland in particular since the creation of the institutions post-1998. This raises a question as to how pragmatically the deal has been approached given the challenges Brexit bears the potential to give rise to. While these cannot be predicted, and while it is undoubtable that to have focused on Brexit would have been to overlook the core obstacles to restoring the institutions, it is difficult not to wonder about the extent to which the steps taken will be enough to ensure the working relationship between the parties in the Executive can remain intact.

## *Funding*

It appears that discussions on funding within the negotiations were not conducted in depth with, particularly, the UK Government, and repeated statements from Executive ministers in the days afterwards suggesting that the funding being offered is insufficient indicates that the agreement reached contains elements that simply will not be affordable for the Executive to be able to implement in the short term. The likely elements to suffer will be those around identity and language, as has been seen before with previous agreements.

However, despite approaching the matter from very different perspectives, the DUP and Sinn Féin have a commonality in that both share an interest in securing as much money from the UK Government for Northern Ireland as possible. This has been further reinforced through the public [statements](#) made in the days after the NIA reconvened, prompting a [response](#) on Twitter from the Secretary of State outlining the reasons why more money would not be made



available to Northern Ireland. At the time of writing, it appears these discussions remain [ongoing](#).

Aside from the obvious consequence of not being able to fulfil the commitments made in NDNA, financial limitations inevitably mean that funding will need to be prioritised. How this prioritisation happens will itself present challenges and will inevitably mean that difficult conversations will have to be had around how the available money should be used. Having gone through the difficult process of producing the NDNA agreement, the next stage could prove to be where the real difficulties set in. It is not yet clear if the relationship between the parties has been sufficiently restored to be able to cope with confronting this challenge, or if it could shake the very foundations of the working relationship that is being rebuilt to the point where another institutional crisis becomes inevitable. In a worst-case scenario, the easier option may be just to renege on some of the commitments made, or at the very least postpone their implementation. This would be a worrying step given the importance and significance of the agreement for underpinning governance in Northern Ireland.

## **Concluding Remarks**

Overall, the parties have reached what is a relatively pragmatic and positive agreement from the perspective of identity and governance, but previous agreements on this front set a notably low bar. It evidences movement from the parties and the DUP and Sinn Féin in particular, and it is clear that even for the other parties, compromises have had to be made in order to get this deal over the line.

The emphasis placed on the DUP and Sinn Féin in negotiations and in formulating NDNA has been necessary insofar as the working relationship between these two parties was intrinsic to the institutional strife that had dominated the years leading up to this point, and were integral to the success of any deal going forward. That said, the talks were projected as a 5-party negotiation, and to the public, this is a clear misrepresentation of what happened in reality when they got underway.

It is not clear that if any of the smaller parties were unhappy with aspects of the deal they would have had much influence in being able to make changes happen, given the centrality of the two largest parties to the negotiations. That said, while all parties might not have been happy that everything they sought from these negotiations was achieved, all accepted that NDNA was a document that they could agree to. This is the essence of a negotiation, and it is evident on this occasion that compromises were made on all sides.

While the language and concepts presented in NDNA with regard to identity issues have been refined, the underpinning ideas are not drastically removed from what we understand to have been the broad content of the agreement nearly reached in 2018. This begs the question, on the one hand, as to what has changed in the interim to make these concessions acceptable now, and on the other, why this point could not have been reached sooner. There is a lot to learn from this experience.

There are gaps and points of ambiguity throughout the agreement text, and within the scope of this briefing, it is evident that there is genuine potential for these areas to present real challenges for Northern Ireland's politicians going forward. The difficulty with this is that the agreement speaks to such core issues for all the parties, and Sinn Féin and the DUP in particular, that challenges that arise along any of these lines bear the potential to completely destabilise the institutions once more. The easiest way to avoid this in light of insufficient

funding for bringing all commitments made to reality is to either not do everything that was promised or to postpone their enactment indefinitely. Only time will tell on how this unfolds.

Ultimately, however, this is an agreement which saw Northern Ireland's political representatives finally reconvene, and whatever the shortcomings of NDNA, after three years of hiatus this marks welcome progress. In the short term, the honeymoon phase will be relatively straightforward and procedural, but in the weeks and months ahead the ambiguity of core elements of this agreement will begin to challenge the strength of resolve among the parties to push through shared governance without resorting to a return to institutional crisis or abandoning some of the commitments made in NDNA altogether.