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Northern Ireland (Stormont Agreement and Implementation Plan) Bill 2015-16 [Bill 133]

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Summary

The Stormont House Agreement of December 2014 was intended to meet concerns over welfare reform, to ease rigidities in the Executive's financial position, to reform some aspects of the Assembly, and to address sensitive issues of flags, parading and the past. Implementation ran aground over welfare reform. Sinn Fein wanted to offset the impact of UK Government reforms, but agreement could not be reached and legislation was not passed. The matter continued to create problems in agreeing a balanced budget in Northern Ireland, one of the factors that had given rise to the Stormont House process.

A statement in August 2015 by the Police Service of Northern Ireland (PSNI) implying the continued existence of the IRA led the UUP to leave the Executive and the DUP to adopt a policy of rolling resignations.

By late summer 2015 the political institutions were in crisis, and the UK Government acknowledged a real risk that Northern Ireland would return to direct rule.

Talks between the five largest parties in the Northern Ireland Assembly, those entitled to seats in the Executive, and the UK and Irish Governments took place for ten weeks in the autumn.

At the same time, an independent commission stated that paramilitary groups still existed, and their members engaged in violence, but that their leaderships were committed to political objectives achieved through peaceful means. The DUP returned to its role in the Executive.

In November 2015 the talks ended with the Fresh Start Agreement. This included measures on welfare reform and paramilitarism. It also included material on other aspects of the Stormont House Agreement, such as a start date for the devolution of corporation tax, a draft Northern Ireland Assembly bill to reduce the number of Members for each constituency, a restriction on spending plans that exceeded the block grant or borrowing limits, and an extension of the period between the Assembly meeting and the Executive being formed, to allow agreement on a Programme for Government.

UK legislation had allowed the devolution of corporation tax earlier in 2015, and, after the Fresh Start Agreement, had created powers for the Secretary of State to enact welfare reform.

The present Bill takes forward other commitments in the Fresh Start Agreement on tackling paramilitarism and on balanced budgets. The former includes a new Independent Reporting Commission to monitor progress towards ending paramilitary activity. There are also additions to the ministerial Pledge of Office and an undertaking for Members of the Assembly, which include commitments against paramilitarism, and statements that Ministers/Members accept no control other than their democratic mandate and their personal and party views.

The Bill also creates a longer period between the Assembly meeting after an election and the creation of an Executive. This is to allow greater discussion of a Programme of Government, with the aim of promoting bipartisanship.

Aspects of the Fresh Start Agreement relating to the Stormont House Agreement's provisions on the past await further legislation.

1. Background

The *Northern Ireland (Stormont Agreement and Implementation Plan) Bill 2015-16* (Bill 133, 2015-16) implements aspects of the Fresh Start Agreement of November 2015.

The Fresh Start Agreement was aimed at implementing the earlier Stormont House Agreement and at stabilising the political institutions in Northern Ireland. Implementation of the Stormont House Agreement had been held up by disagreements over welfare reform, while a political crisis had developed over the alleged existence and role of paramilitary groups.

The Stormont House Agreement followed three months of talks between the five largest parties in the Northern Ireland Assembly, with the UK and Irish Governments, and with support from the US in the form of Senator Gary Hart. These considered issues that had been addressed in 2013 in talks chaired by US diplomat Richard Haass. They included welfare, flags, parading and the past, the budget and wider financial position of the Executive, and reform of political institutions.

The agreement included devolution of corporation tax, public sector reform, flexibility in welfare reform implementation, the creation of an opposition in the Assembly and establishment of a number of bodies to consider elements of the legacy of the past. It was accompanied by a package of almost £2 billion in support from the UK Government.

Corporation tax was devolved under the [Corporation Tax \(Northern Ireland\) Act 2015](#).

Implementation of other aspects of the Stormont House Agreement stalled, despite some initial progress with preparatory work. In particular, welfare reforms were not passed. This led to continuing problems in agreeing a balanced budget.

Stormont House Agreement:

December 2014
Public sector reform, devolving corporation tax, welfare reform, legacy issues.
£2bn from UK Government

Box 1: Commons Library briefings

Several Library briefings cover aspects of the ongoing process of implementing the Stormont House Agreement

[A Fresh Start: The Stormont Agreement and Implementation Plan and the Northern Ireland \(Welfare Reform\) Bill 2015-16 \[Bill 99\]](#), CBP 7389, 20 November 2015

[Northern Ireland update](#), CDP-2015-0070, 8 October 2015

[Northern Ireland: Stormont House Agreement update](#), CBP 7284, 18 August 2015

[Devolution of corporation tax to Northern Ireland](#), SN 7078, 12 February 2015

In summer 2015 a political crisis developed after the PSNI stated that it had evidence that members of the IRA were involved in the murder of a former IRA member, implying that the IRA still existed. The UUP withdrew from the Executive, and the DUP adopted a policy of rolling resignations.

Talks began in September 2015 to resolve these problems and to stabilise the functioning of the political institutions. These involved the

UK and Irish Governments and the five largest parties in the Northern Ireland Assembly, which are those currently eligible for posts in the Executive. At the same time an independent assessment of paramilitary organisations, set up by the UK Government, looked at information from the PSNI and MI5, and reported in October 2015. This concluded that the main paramilitary groups from the Troubles still existed, and their members engaged in violence, but that their leaderships were committed to political objectives achieved through peaceful means.¹ At this point DUP Ministers resumed their posts in the Executive.

An agreement concluding the talks was reached in November 2015. [A Fresh Start: the Stormont Agreement and Implementation Plan](#) included measures on welfare and paramilitarism, the nub of the crisis at that point, and a commitment to a start date and rate for the devolution of corporation tax (April 2018 at 12.5%). It also included material on other aspects of the Stormont House Agreement, including a draft Northern Ireland Assembly bill to reduce the number of Members for each constituency from six to five.

Some other aspects of the Fresh Start agreement required UK legislation, such as a change in the Pledge of Office, a restriction on spending plans that exceed the block grant or borrowing limits, and an extension of the period between the Assembly meeting and the Executive being formed, to allow agreement on a Programme for Government.

The [Northern Ireland \(Welfare Reform\) Act 2015](#) provided a mechanism through secondary legislation to implement welfare reforms.

The present Bill covers the following aspects of the Fresh Start Agreement:

- Paramilitarism: paving provisions for a new Independent Reporting Commission to monitor progress towards ending paramilitary activity
- Extending the period for appointing Ministers so more time can be spent agreeing the Programme for Government
- Modifying the pledge of office for Northern Ireland Ministers to add commitments against paramilitarism, and providing a similar undertaking for Members of the Assembly
- Budget: rules to prevent the adoption of a budget in excess of the UK funding for the year

There are still some aspects of the Fresh Start Agreement and the Stormont House Agreement waiting for implementation. In particular, these cover flags, parades and the past.

The Secretary of State, Theresa Villiers, made [a written statement](#) on one aspect of dealing with the past in January 2016.² She stated that a [treaty between the UK and Ireland](#) had been signed to establish the

Fresh Start Agreement:
November 2015
Implementing Stormont House, welfare reform, paramilitary monitoring body, balanced budgets

Acts devolving corporation tax and allowing welfare reform already passed. Present Bill mainly covers paramilitarism and balanced budgets. Legacy of the Troubles institutions still pending

¹ [Paramilitary Groups in Northern Ireland](#), October 2015, paras 2(i), 2(vi) and 2(viii)

² [HCWS 479](#), 21 January 2016

Independent Commission on Information Retrieval (ICIR),³ but that there was not yet agreement on the necessary legislation to bring this into effect.

³ *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing the Independent Commission on Information Retrieval*, 15 October 2015, DEP 2016-0057, 21 January 2016

2. The Bill

2.1 Overview

The Bill is intended to implement some aspects of the Fresh Start Agreement of November 2015. There is a detailed commentary on that Agreement in the Library briefing on the first Bill that came out of it, [A Fresh Start: The Stormont Agreement and Implementation Plan and the Northern Ireland \(Welfare Reform\) Bill 2015-16 \[Bill 99\]](#), CBP 7389, 20 November 2015.

The main thrust of this Bill is to strengthen efforts to end paramilitary activity, and to achieve balanced budgets. Further legislation will be needed to implement other parts of the Fresh Start Agreement, for instance on dealing with the legacy of the past.

The Bill has 11 clauses and two schedules. It covers a new Independent Reporting Commission to promote progress towards ending paramilitary activity, which will also require a treaty between the UK and Ireland, and legislation in Ireland. It extends the time for the appointment of Ministers after an election. It modifies the Pledge of Office for Northern Ireland Ministers to include commitments against paramilitarism, and it applies a similar undertaking to Members of the Assembly. It requires the Finance Minister to make a statement showing that the draft budget does not exceed the amount of UK funding for the year.

The Bill extends to the whole of the UK, but has effect only in Northern Ireland. Some aspects cover devolved subjects, so the Government will seek a legislative consent motion from the Northern Ireland Assembly. The Explanatory Notes do not explain the reasoning for using UK legislation.

The main cost implication of the Bill is the provision of funding for the Independent Reporting Commission, which will be shared with Ireland. In addition, the provisions on the budget are designed to increase fiscal transparency and responsibility.

2.2 Details

Independent Reporting Commission

Clauses 1 to 5 of the Bill cover the Independent Reporting Commission. This was described in Section A of the Fresh Start Agreement. This Section is headed “Ending Paramilitarism and Tackling Organised Crime”, and it consists of a variety of moves in this direction, concluding with a body to report on progress towards ending paramilitary activity:

Monitoring and Implementation

5.1 A four member international body including persons of international standing will be established by the UK and Irish Governments. The UK Government and the Irish Government will nominate one member each and the Executive shall nominate two members. The body will:

- report annually on progress towards ending continuing paramilitary activity connected with NI (or on such further occasions as required);
- report on the implementation of the relevant measures of the three administrations; and
- consult the UK Government and relevant law enforcement agencies, the Irish Government and relevant law enforcement agencies and, in Northern Ireland, the Executive, PSNI, statutory agencies, local councils, communities and civic society organisations.

5.2 The reports of the body will inform future Executive Programme for Government priorities and commitments through to 2021.

Clause 1 refers to an Independent Reporting Commission established by an agreement relating to paramilitary activity. Clause 4 explains that this agreement is a treaty to be concluded between the UK and Ireland pursuant to paragraph 5.1 of Section A of the Fresh Start Agreement quoted above.

The Independent Reporting Commission's functions will include those described in paragraph 5.1.⁴

The Commission will have the legal capacities of a body corporate. Funds may be supplied by the UK Government, although in practice there will also be funding from the Irish Government.⁵

The Fresh Start provisions cited above state that the two Governments will nominate one member each and the Executive will nominate two members. The Bill provides that the First Minister and the deputy First Minister "acting jointly have the power to nominate two persons" for appointment to the Commission, "in accordance with" the treaty between the UK and Ireland.⁶

Clause 2 covers the functions of the Commission. Its objective is "to promote progress towards ending paramilitary activity connected with Northern Ireland."⁷

The Commission will have freedom to choose its own way to fulfil its objectives, but it must not do anything that risks the national security of the UK or Ireland, the life or safety of any person, the prevention, investigation or detection of crime, or legal proceedings.⁸

In support of this the Secretary of State must issue guidance about how the Commission handles and uses information which, if disclosed, might prejudice national security or put a person's life or safety at risk.⁹

Clause 3 confers legal immunity on the Commission from suit and process. This means not only that it is immune from prosecution, but also that it is free from the potential for civil action or judicial review.¹⁰

⁴ Clause 1(1)

⁵ Clause 1(2) and (3)

⁶ Clause 1(4)

⁷ Clause 2(1)

⁸ Clause 2(2) and (3)

⁹ Clause 2(5) – (8) and see Explanatory Notes, para 22.

¹⁰ Clause 3(1), EN para 24

At the same time, the Commission may waive these immunities.¹¹ The Explanatory Notes suggest that this might be appropriate should an employment dispute arise and a member of staff wishes to take the Commission to a tribunal. The Commission's archives and premises have the same inviolability as a diplomatic mission such as an Embassy under the *Vienna Convention on Diplomatic Relations 1961*.¹²

In addition, the Secretary of State has a discretionary order-making power in clause 3(3) to confer additional immunities and privileges, drawn from the *International Organisations Act 1968*.¹³ These may cover the immunities of the Commission, the Commissioners, their staff, and family members within their household.

Clause 4 gives definitions of the terms used elsewhere in the clauses on the Commission, and gives the Secretary of State power to make further regulations to give effect to the treaty on paramilitary activity.

Clause 5 gives the Secretary of State power to wind up the Commission by regulation. Before doing so s/he must consult the First Minister and deputy First Minister, the relevant Irish Minister and anybody else the Secretary of State feels is appropriate. A notable feature of the regulations is that they may provide for the destruction of information held by the Commission.¹⁴

Ministers and Assembly Members

Clauses 6 – 8 concern the appointment of Ministers, and commitments by Ministers and Members against paramilitarism.

Clause 6 amends the *Northern Ireland Act 1998* to change the period allowed for appointing Ministers after an election. At present, there is a period of seven days after the first meeting of the Assembly following an election before the First Minister, deputy First Minister and other Ministers must be chosen. The Bill would change this to 14 days. The idea behind this is to allow more time for parties to agree a Programme for Government, and therefore to encourage a more bipartisan approach.¹⁵ This reflects paragraph 61 of the Stormont House Agreement.

Clause 7 amends the Pledge of Office which Ministers make, and which is contained in Schedule 4 to the *Northern Ireland Act 1998*. It adds a number of commitments connected to supporting the rule of law, challenging paramilitarism, working with the rest of the Executive to achieve a society free of paramilitarism and to achieve the disbandment of all paramilitary organisations, and supporting those who wish to move away from paramilitarism. It also includes the following:

To accept no authority, direction or control on my political activities other than my democratic mandate alongside my own personal and party judgment.

¹¹ Clause 3(1), EN para 26

¹² Clause 3(2)

¹³ Clause 3(3)(a)

¹⁴ Clause 5(3)(c)

¹⁵ EN para 32

This reflects paragraphs 2.5 and 2.6 of the Fresh Start Agreement.

Clause 8 introduces a new “undertaking” by Members of the Assembly, reflecting paragraph 2.7 of the Fresh Start Agreement. It consists of the same commitments as those in Clause 7, modified slightly to fit the case of Members rather than Ministers. Members of the Assembly would not be able to participate in proceedings nor have any rights or privileges until they had given the undertaking. While it will be for Standing Orders to determine the procedure for this, the Bill provides that there must be no time limit for giving the undertaking.

Schedule 1 applies transitional provisions to the appointment of Ministers for the 2016 election. **Schedule 2** applies a transitional process for Members making the undertaking after the 2016 election.

Budget

Clause 9 creates arrangements to ensure a balanced budget. It does this by amending section 64 of the *Northern Ireland Act 1998*.

The Minister of Finance and Personnel will have to lay a statement before the Assembly showing how much money the UK Government is providing to the Assembly that year. This must be done at least 14 days before laying a draft budget.

The draft budget itself must be accompanied by a statement showing that the amount of UK funding required by the budget does not exceed the amount of such funding actually to be provided.

There are also provisions to ensure that the budget is revised to stay within limits if the UK funding is revised.

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