



## BRIEFING PAPER

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# Northern Ireland (Ministerial Appointments and Regional Rates) Bill 2016-17

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## Summary

The [Northern Ireland \(Ministerial Appointments and Regional Rates\) Bill 2016-17](#), Bill 171, seeks to do two things:

- it extends the time period for the creation of an Executive after the most recent Assembly election, and
- it sets a regional rate for domestic and non-domestic rates in Northern Ireland.

The Bill is a response to events that have unfolded in the Northern Ireland Assembly in the first part of 2017. The Executive collapsed when Martin McGuinness resigned as deputy First Minister, mainly in protest at the role of the First Minister, Arlene Foster, in a controversial energy subsidy scheme, an extraordinary election was called, and the parties failed to agree on a new Executive within the statutory time limit (this is explained in Section 2). However, rather than call another election immediately, the Secretary of State for Northern Ireland, James Brokenshire, left a pause for further negotiations aimed at bringing the two largest parties, the Democratic Unionist Party (DUP) and Sinn Féin, to an agreement.

Under existing legislation it is not possible for an Executive to be formed on the basis of the March 2017 election, even if an agreement were reached. A new election would be needed, or a change to the *Northern Ireland Act 1998*. The Bill therefore provides for the possibility that the ongoing negotiations bear fruit, by changing the effect of the 1998 Act in this instance to provide interim arrangements.

Without an Executive to set the regional rate, rate bills cannot be issued and revenue cannot be collected. The Bill addresses this by setting a regional rate itself.

The Government casts the Bill as a practical measure allowing a new Executive to be formed and allowing rates to be collected. At the same time, the Secretary of State is under a statutory obligation to name a date for another election. There is no time limit in the *Northern Ireland Act 1998* within which he has to do this. Gerry Adams, President of Sinn Féin, has called on the Irish Government to apply pressure for a new Assembly election to be held if the current talks do not lead to an Executive being formed.

The [text of the Bill](#) is available on the Bills before Parliament webpage, as are the [Explanatory Notes](#).

The Bill has three clauses and no schedules.

**Clause 1** extends the period during which an Executive can be formed after the Assembly election on 2 March 2017. This period is currently 14 days after the first meeting of the Assembly (itself 8 days after the election). Under the Bill it will be 108 days.

The existing statutory period expired on 27 March 2017: it will now be extended to 29 June 2017. This provision has retrospective effect.

**Clause 2** sets a regional rate for the coming financial year, allowing rate bills to be issued, and thus providing ongoing finance to local government and to the Executive.

**Clause 3** covers extent, commencement and the short title. The Bill extends only to Northern Ireland and will come into force on the day it is passed.

The Bill had its First Reading on 20 April 2017 and will have its remaining stages in the House of Commons on 24 April 2017. The Government justifies this on the basis that public revenues must be safeguarded, and ratepayers paying by instalment will have to

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pay fewer but larger instalments if rates are further delayed. Also, any agreement between the parties to form an Executive would have to wait until after the UK general election for legislation to allow it to come into being.

# 1. Introduction

The Northern Ireland Assembly was elected on its normal electoral cycle in May 2016. An Executive was formed with Arlene Foster of the Democratic Unionist Party (DUP) as First Minister and Martin McGuinness of Sinn Féin as deputy First Minister. The DUP had secured 38 seats and Sinn Féin 28.

In the later part of 2016 cooperation broke down and by the beginning of January 2017 Martin McGuinness had resigned as deputy First Minister in protest at the conduct of Arlene Foster in respect of the controversial RHI energy subsidy scheme, which was launched when she was Enterprise, Trade and Investment Minister. This is discussed further in CBP 7860, [\*Northern Ireland: resignation of deputy First Minister\*](#), 11 January 2017.

As a result of provisions in the *Northern Ireland Act 1998* the two First Minister posts were vacated. Sinn Féin did not put forward a candidate for deputy First Minister, and the Secretary of State fulfilled his statutory duty to call an extraordinary election.

That election also did not lead to the formation of an Executive. As a result, Northern Ireland has been without an Executive since January 2017, a budget for the new financial year has not been agreed, and regional rates have not been set.

## 2. End of the 2016 Executive

### 2.1 Martin McGuinness resignation

On 9 January 2017 Martin McGuinness of Sinn Féin announced that he was resigning as deputy First Minister of Northern Ireland. This set in train a sequence of statutory provisions that led to early Northern Ireland Assembly elections. Mr McGuinness has since passed away. He had announced that he would not stand again for election, and was replaced as leader of Sinn Féin in the Assembly by Michelle O'Neill.

Mr McGuinness's resignation was in protest at the conduct of the First Minister, Arlene Foster of the DUP. His [resignation letter](#) of 9 January 2017 set out his reasons in detail.<sup>1</sup> They pertained mainly to Ms Foster's reaction to criticism over her role in the Renewable Heat Incentive (RHI) energy subsidy scheme, which has led to significant costs to the taxpayer and criticism from the Northern Ireland Audit Office (NIAO).

#### Implications of resignation

The statutory framework that determined what followed from the resignation of the deputy First Minister had not been used before.

Under s16B(2) of the [Northern Ireland Act 1998](#), as amended by the [Northern Ireland \(St Andrew's Agreement\) Act 2007](#), the resignation of the deputy First Minister implies that the First Minister also ceases to hold office at the same time.

The sub-section provides:

If either the First Minister or the deputy First Minister ceases to hold office at any time, whether by resignation or otherwise, the other—

(a) shall also cease to hold office at that time; but

(b) may continue to exercise the functions of his office until immediately before those offices are filled in accordance with this section.

The section goes on to set out the procedure for filling the two vacant offices of First Minister and deputy First Minister, and it allows a period of seven days from the vacancies arising for this to take place. The process must come to an end during this period. No person may take up office as First Minister or deputy First Minister after the end of that seven day period (s16B(8)).

If the posts are not filled by the end of the seven days, the Secretary of State proposes a date for an election, and an Order in Council dissolves the Assembly and calls the election. This is under ss32(3) and (4).

### 2.2 Secretary of State's position

On 10 January 2017 the Secretary of State for Northern Ireland, James Brokenshire, made a statement to the House of Commons. He

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<sup>1</sup> ["Full text of Martin McGuinness's resignation letter,"](#) *Irish Times*, 9 January 2017.

expressed the likelihood of an early election and the seriousness of the situation:

Under the terms of the Northern Ireland Act 1998 as amended by the Northern Ireland (St Andrews Agreement) Act 2007, the position is clear: should the offices of First and Deputy First Minister not be filled within seven days from Mr McGuinness's resignation, it falls to me as Secretary of State to set a date for an Assembly election. Although there is no fixed timetable in the legislation for me to do that, it needs to be within a reasonable period.

In his resignation letter, Mr McGuinness said:

"In the available period Sinn Féin will not nominate to the position of deputy First Minister."

I am very clear that in the event of the offices not being filled, I have an obligation to follow the legislation. As things stand, therefore, an early Assembly election looks highly likely. I should add that the rules state that, once an election has been held, the Assembly must meet again within one week, with a further two-week period to form a new Executive. Should that not be achieved, as things currently stand I am obliged to call another election. So right hon. and hon. Members should be in no doubt: the situation we face in Northern Ireland today is grave and the Government treat it with the utmost seriousness.<sup>2</sup>

Mr Brokenshire stated that he was in regular contact with the DUP and Sinn Féin, and had also spoken to the Independent Unionist Justice Minister, Claire Sugden, and to the Irish Government. He went on,

The UK and the Irish Governments will continue to provide every possible support and assistance to the Executive parties. However, we have to be realistic. The clock is ticking, and an election is inevitable if there is no resolution, despite the widely held view that an election would deepen divisions and threaten the continuity of the devolved institutions.<sup>3</sup>

Sinn Féin did not put forward a candidate, and no Executive was formed.

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<sup>2</sup> HC Deb 10 January 2017, c175

<sup>3</sup> HC Deb 10 January 2017, c176

## 3. New election and talks process

### 3.1 Assembly Election, 2 March 2017

An extraordinary Assembly election was held on 2 March 2017. Detailed discussion of the results is available in CBP 7920, [Northern Ireland Assembly elections: 2017](#), 9 March 2017.

This election was held under arrangements brought in by the *Northern Ireland (Miscellaneous Provisions) Act 2014*, and in particular by the *Assembly Members (Reduction of Numbers) Act (Northern Ireland) 2016*. The latter reduced the number of Members elected per constituency from 6 to 5, and thereby reduced the total number of seats to 90.<sup>4</sup>

The DUP remained the largest party in the Assembly with 28 MLAs, down from 38 in 2016. Sinn Féin remained the second largest party with 27 MLAs, down from 28 in 2016. The Ulster Unionist Party (UUP) lost its position as the third largest party in the Assembly (down to 10 from 16), and was replaced by the Social Democratic and Labour Party (SDLP), which remained on 12 seats. The Alliance Party of Northern Ireland kept the same number of seats as it had in 2016.

While the total number of seats in the Assembly was reduced under the 2016 Act mentioned above, the number of Members needed for a Petition of Concern to be successful remains the same, at 30. This is in s42 of the *Northern Ireland Act 1998*, and it is an excepted matter, in other words one on which the Assembly may not legislate.<sup>5</sup>

If a Petition of Concern about a matter to be voted on by the Assembly attracts the support of 30 Members, the vote requires cross-community support in order to be won, effectively allowing a veto.

After the March 2017 election the DUP was two seats short of the number needed to use this procedure on its own.

### 3.2 Executive not formed: next steps

#### The formal process

After an election there is a statutory time period for an Executive to be formed, just as there was after the resignation of the deputy First Minister. This time period expired without a new Executive being formed.

The process for appointing the First and deputy First Ministers after an election is set out in s16A of the 1998 Act. This applies to extraordinary elections such as this one, as well as to elections on the normal cycle.

The first meeting of the Assembly must be within 8 days of the election. Within 14 days of that first meeting, a process takes place to fill the

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<sup>4</sup> Two Library papers are relevant: [Northern Ireland \(Miscellaneous Provisions\) Bill: amendments](#), SN 6843, 11 March 2014, and [Northern Ireland Assembly Elections: 2016](#), CBP 7575, 19 May 2016.

<sup>5</sup> *Northern Ireland Act 1998*, Schedule 2, para 22.

posts of First Minister and deputy First Minister, and another takes place to fill the other ministerial posts.<sup>6</sup>

If the posts are not filled by the end of the 14 day period, then the Secretary of State proposes a date for a new election, under s32(3), and an Order in Council dissolves the Assembly and calls the election.

Any alternative outcome would require new legislation at the UK level.

The Assembly met on 13 March 2017, but the parties were not able to reach agreement on a new Executive by the end of the statutory period, which fell on 27 March.

## The Government's reaction

The Secretary of State, James Brokenshire, made a statement the next day. He said that he would not call another election immediately, but would allow time for further talks. The 1998 Act does not give any time limit by which the Secretary of State must call another election.

Mr Brokenshire indicated the progress that had been made in talks thus far between the parties and the UK and Irish Governments. This included progress on a budget and programme for government, transparency and accountability, and on Northern Ireland representation on matters relating to withdrawal from the EU. In addition, he said that some steps had been taken forward on implementing the legacy bodies from the Stormont House Agreement.<sup>7</sup> Stalled progress on these has been a source of frustration to Unionists:

Progress has been made on a number of issues, including on a budget, a programme for government, and ways of improving transparency and accountability. We have seen further steps forward on agreeing a way to implement the Stormont House agreement legacy bodies to help to provide better outcomes for victims and survivors of the troubles. In addition, progress was made on how the parties might come together to represent Northern Ireland in our negotiations to leave the EU, which is so important in the context of article 50 being triggered tomorrow. That said, it is clear that significant gaps remain between the parties, particularly over issues surrounding culture and identity.

[...]

In law, the period allowed to form an Executive is 14 days from the date of the first sitting of the Assembly after an election. That 14-day period expired at 4 pm yesterday with no agreement, and therefore no Executive.<sup>8</sup>

Mr Brokenshire said that talks would continue:

I am encouraged that there remains a strong willingness to continue engaging in dialogue with a view to resolving outstanding issues and forming an Executive, and that must absolutely remain the priority. However, the window of opportunity is short. It is essential therefore that the intensity of

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<sup>6</sup> *Northern Ireland Act 1998*, s16A(3). NB that this was amended by the *Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016*, and some online versions of the 1998 Act still show the unamended text with a period of seven days.

<sup>7</sup> See CDP-2017-0008, [Implementation of the Stormont House Agreement](#), 5 January 2017.

<sup>8</sup> HC Deb 28 March 2017, c127

discussions is stepped up with renewed intent and focus. A positive outcome remains possible.<sup>9</sup>

If an agreement were reached, it would not be possible to form an Executive on the basis of the March 2017 election without further UK legislation, since the time period allowed in the *Northern Ireland Act 1998* has expired.

Mr Brokenshire addressed this possibility:

If those talks are successful, it would be my intention, quickly, to bring forward legislation after the Easter recess to allow an Executive to be formed, avoiding a second Assembly election for which I detect little public appetite.<sup>10</sup>

He also flagged up the possibility of legislation to set a regional rate and to address the budget:

Should the talks not succeed in their objectives, the Government will have to consider all options. I therefore want to give the House notice that, following the Easter recess, as a minimum it would be my intention to bring forward legislation to set a regional rate to enable local councils to carry out their functions and to provide further assurance around the budget for Northern Ireland.<sup>11</sup>

## Interim arrangements

Mr Brokenshire indicated interim measures that would allow everyday administration to continue in the meantime:

From tomorrow, a civil servant, the permanent secretary at the Department of Finance, will exercise powers to allocate cash to Northern Ireland Departments. This is an interim measure designed to ensure that services are maintained until such time as a budget is agreed. We are keeping in close contact with the head of the Northern Ireland civil service on these matters, and I understand that the Department of Finance will be setting out more details later today.<sup>12</sup>

David Sterling, Permanent Secretary at the Department of Finance, has responsibilities under s59 of the 1998 Act. In the event that a budget is not passed within three days of the end of the financial year, he may authorise payments from the Northern Ireland consolidated fund up to a maximum of 75% of the payments in the previous year. If there is still no budget by the end of July, the sum goes up to 95% of the previous year's total.

Mr Sterling explained his approach:

While the legislation limits the amount that may be approved to 75%, of the previous year, up to the end of July and 95% thereafter, this does not mean that departmental budgets for 2017-18 will be reduced by 25% or even 5%. Rather the powers available are simply an interim measure designed to ensure that services are maintained until such times as a budget is agreed and a Budget Act passed. At which point departments will have access to the full level of funding available.

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<sup>9</sup> HC Deb 28 March 2017, c128

<sup>10</sup> HC Deb 28 March 2017, c128

<sup>11</sup> HC Deb 28 March 2017, c128

<sup>12</sup> HC Deb 28 March 2017, c127

These Section 59 measures enable cash to continue to flow to maintain the provision of public services and will provide a degree of certainty to departments. They are not a substitute for a Budget agreed by an Executive. Indeed we are very clear that the prioritisation and allocation of financial resources is a matter for Ministers. There is also co-ordinated engagement between departments to ensure that key stakeholders are fully informed about these interim financial measures. Departments are currently writing out to community and voluntary bodies to confirm interim funding designed to maintain the ongoing integrity of the key services they provide until an agreed budget is in place.

With regard to capital expenditure, all Executive Flagship and ongoing contractual capital commitments will be honoured into 2017-18.<sup>13</sup>

### 3.3 The problem for regional rates<sup>14</sup>

The Northern Ireland Assembly, and the eleven local authorities in Northern Ireland, are jointly responsible for a system of local rates. The absence of an Executive is delaying the issue of rate bills.

Rates are levied on both domestic and non-domestic properties. They are the equivalent of council tax (for domestic properties) and the National Non-Domestic Rate (for non-domestic properties) in Great Britain. This is because the rating system which operated across the UK until 1990 was never changed in Northern Ireland.

In Northern Ireland, two rates or 'poundages' are set: one by the eleven local authorities (the 'district rate') and one by the Northern Ireland Executive (the 'regional rate'). These are rolled into a single rating demand to domestic and non-domestic ratepayers. The district and regional rates for 2016-17 can be viewed on the website of the Department of Finance and Personnel Northern Ireland (DFPNI).<sup>15</sup>

Both regional and district rates are collected by the Rate Collection Agency. Property valuations for rating purposes are carried out by [Land and Property Services Northern Ireland](#) (a public body responsible to the Department of Finance and Personnel Northern Ireland). Land and Property Services is also responsible for sending rate demands to ratepayers, and for collecting rates.

Revenue from the district rate is passed to the relevant local council, and revenue from the regional rate is retained by the Northern Ireland Executive.

The power to set a regional rate can be found in article 7 of the [Rates \(Northern Ireland\) Order 1977](#) (SI 1977/2157). This Order gives the power to the Department of Finance and Personnel Northern Ireland. Thus, if the Northern Ireland Executive has not been appointed, it is not possible for a regional rate to be set under this provision. There has been a delay in the issue of rate bills for Northern Ireland as a result.<sup>16</sup> If this situation persisted, it would affect the revenue available to the

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<sup>13</sup> "[Department provides Budget clarification](#)," Department of Finance, 28 March 2017

<sup>14</sup> This section, and the relevant clause commentary, by Mark Sandford.

<sup>15</sup> See DFPNI, [Poundages 2016-17](#).

<sup>16</sup> See DFPNI, [Delay in issue of Rate Bills for 2017/2018](#), 28 March 2017

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Executive. If there were further delays in sending out rate bills, funding for local authorities would also be affected.

It is this problem that the Bill seeks to remedy, by setting a regional rate itself.

## 4. The Bill

### 4.1 Timing of the Bill

The Secretary of State paused the talks between the parties and the UK and Irish Governments over the Easter period in mid-April 2017. They were to be resumed with the intention of giving the parties what Mr Brokenshire called “a final opportunity to reach agreement.”<sup>17</sup> As mentioned above, this would imply legislation to allow the formation of an Executive.

In addition, there is a need to set a regional rate for Northern Ireland in order to enable rate bills to be issued.

Given the impending UK general election, any legislation would have to be put in place either before dissolution of Parliament, or it would have to wait until June 2017.

Mr Brokenshire decided to bring legislation forward before dissolution, in the form of the present Bill. He made a statement on 18 April 2017, immediately after the announcement of the general election:

Since the Northern Ireland Assembly election on 2 March I have been engaged in talks with the political parties and the Irish Government, in accordance with the well-established three-stranded approach. These talks have had one clear purpose: to re-establish an inclusive, devolved administration in line with the 1998 Belfast Agreement and its successors. Throughout this process the UK Government has played an active role in working with the parties and putting forward proposals to build consensus.

The first phase of talks, led by the parties, concluded without an agreement on 27 March. Following consultation with the parties and the Irish Government, I then invited the parties to a further phase of intensive roundtable talks to help resolve the key outstanding issues.

Mr Brokenshire reported some progress, but added that there was a lack of agreement on issues surrounding culture and identity, and on trust and confidence within the Executive. He pointed to the next phase:

The parties will now have a final opportunity to reach agreement, building on the discussions which have taken place over the past six weeks. On 2 March, the people of Northern Ireland voted clearly for devolved government. The parties mandated by that election still have a duty to provide the government for which they campaigned. Discussions between the parties, and the UK and Irish Governments, will continue, in accordance with the three-stranded approach. The prospect of a forthcoming UK General Election does not change this approach.

It remains my intention to introduce legislation into Parliament to address immediate requirements. I have already indicated that I will legislate to set this year's regional rate to address the urgent need for rates bills to be issued by Councils. In addition, I believe it is also right to introduce provisions that would enable an Executive to be formed in early May should agreement be

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<sup>17</sup> HC Deb 18 April 2017, c37WS

reached. To have this legislation in force in time, I will be requesting that its progress through Parliament be fast-tracked.<sup>18</sup>

The Secretary of State has stressed the pragmatic benefit of the Bill, in creating the possibility of forming an Executive if agreement can be reached, in helping to smooth revenue streams and in avoiding any negative impact on Northern Ireland from the UK general election. In addition, the parties are still involved in the talks process, suggesting an ongoing attempt to create an agreement, so that the provisions of the Bill can be employed and a functioning Executive can come into being. However, Gerry Adams, the President of Sinn Féin, has said, "Sinn Féin wants a deal. But if there is no deal then there has to be an election."<sup>19</sup> Mr Brokenshire has also, as noted above, spoken of a final opportunity to make progress.

## 4.2 Contents of the Bill

The Bill has three clauses.

**Clause 1** creates a longer period in which the Executive can be formed after the 2017 Assembly election. As explained above, the existing statutory period for creating an Executive on the basis of that election has expired. If the ongoing talks led to an agreement that could give rise to an Executive, new provisions would be needed in order for it to be formed.

Clause 1 does not amend the *Northern Ireland Act 1998*. Instead it provides that, for the purpose of creating an Executive on this occasion only, the Act is to be read as if the period for appointing Ministers were 108 days from the first meeting of the Assembly instead of 14 days.

Given that this is retrospective, under clause 1(2), the period of 108 days will last until 29 June 2017. The extended period applies to the filling of all Ministerial offices, including the First and deputy First Ministers and the other Ministers.

The clause does not apply to the creation of any future Executives (for instance if there were another resignation by one of the First Ministers): it applies to the filling of ministerial offices on the first occasion after the March 2017 election.

**Clause 2** sets a regional rate for financial year 2017-18. Clause 2(2) sets a rate of 32.92 pence in the pound on the "rateable net annual values of hereditaments", whilst clause 2(3) sets a rate of 0.4177 on the "rateable capital values of hereditaments".

These two sub-sections set the regional rate for non-domestic properties and domestic properties respectively. In Northern Ireland, non-domestic properties are assigned a rateable value based on their annual rental value, as with the business rates system in Great Britain. Meanwhile, domestic properties are assigned a rateable value based on their capital

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<sup>18</sup> HC Deb 18 April 2017, c37WS

<sup>19</sup> ["Sinn Féin's Gerry Adams: election must happen if there's no Stormont deal," BBC News](#), 16 April 2017

value (ie, the price that they would sell for on the open market). The maximum capital value that can be assigned is £400,000.

Clause 2(4) provides that the DFPNI may vary the rate set for 2017-18 by the Bill via an Order (following the standard procedure). Clause 2(5) provides that this may only be done when all of the Ministerial offices in the Executive have been filled, in other words when a new Executive has been appointed.

The Explanatory Notes state in paragraph 9 that the rates set in clause 2 represent a 1.6% increase for both domestic and non-domestic rates, which reflects the current level of inflation.

The Bill does not provide for any change in the way in which the Northern Ireland regional rate may be set in subsequent years: it affects only the 2017-18 financial year.

Under **Clause 3** the Bill extends to Northern Ireland only, and it comes into force on the day on which it is passed.

### Fast-tracking

The Government wishes to expedite the progress of the Bill in Parliament. The Explanatory Notes give an explanation for this:

- It is necessary to fast-track Clause 2 in order to safeguard public revenues, and to protect those ratepayers who pay by instalment from the prospect of a late bill to be paid in fewer, and thus larger, instalments.
- Without Clause 1 an agreement between the parties could not give rise to a new Executive without a further election. This would mean that any agreement reached soon could not be implemented until after the UK general election.<sup>20</sup>

### Legislative consent

Clause 2 falls within devolved competence, and would ordinarily give rise to the need for legislative consent from the Northern Ireland Assembly under the Sewel Convention. According to the Explanatory Notes, in the absence of an Executive (which would normally move the consent motion), and an Assembly to give consent, it is not practical to obtain consent. The Sewel Convention holds that the Government will not normally invite Parliament to legislate in an area of devolved competence without consent. The Government is "satisfied that the circumstances of this Bill come within the exception ["normally"] allowed by the Convention".<sup>21</sup>

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<sup>20</sup> Explanatory Notes, paras 14 and 15.

<sup>21</sup> Explanatory Notes, para 34.



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