

Research Briefing

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28 July 2025

## Northern Ireland: Direct Rule



# Northern Ireland Office

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## Summary

Between January 2017 and January 2020, there was neither a fully functioning Assembly nor Executive in Northern Ireland. The Assembly elected on 2 March 2017 was not formally suspended, as in the past, and Members of the Legislative Assembly (MLAs) continued to carry out a range of activities, most significantly constituency work. Nor did Westminster introduce “Direct Rule”, although this was urged by some in Great Britain and Northern Ireland. That would have required fresh primary legislation.

## What is Direct Rule?

In Northern Ireland politics, Direct Rule is the administration of Northern Ireland directly by the Government of the United Kingdom rather than by devolved government. Apart from a short period in 1974, it was in place for 27 years between 1972 and 1999 and has since then been applied temporarily during suspensions of the Northern Ireland Assembly. The most recent period of Direct Rule came to an end on 8 May 2007 when power was restored to the Assembly following the 2006 St Andrews Agreement and April elections.

## Main features of Direct Rule

The primary purpose of Direct Rule is to provide political direction. In 1972, this was transferred from the Governor and Government of Northern Ireland to the new position of Secretary of State for Northern Ireland. Another main feature is the use of Orders in Council to legislate in “transferred” (or devolved) areas. This use of secondary legislation has in the past led to criticism that Direct Rule does not allow for sufficient scrutiny of government proposals and decisions relating to Northern Ireland.

This briefing paper examines the main features of Direct Rule and looks at its two main periods of operation – 1972-98 and 2002-07 – in greater depth.

# 1 Overview

Between January 2017 and January 2020 there was neither a fully functioning [Northern Ireland Assembly](#) nor a [Northern Ireland Executive](#). The Assembly elected on 2 March 2017 was not formally suspended, as in the past, and [Members of the Legislative Assembly](#) (MLAs) continued to carry out a range of activities, most significantly constituency work.<sup>1</sup> But neither did Westminster introduce, as in the past, “Direct Rule”.

## 1.1 What is Direct Rule?

Direct Rule has been defined as “the exercise of all functions of government in Northern Ireland by the UK Government”.<sup>2</sup>

The term “Direct” is used because from the moment Northern Ireland was created in 1921 it was intended to be indirectly governed via the devolved [Government](#) and [Parliament of Northern Ireland](#) established by the [Government of Ireland Act 1920](#).<sup>3</sup>

Following the outbreak of “The Troubles”, and the difficulties faced by the devolved institutions in maintaining law and order, the Parliament of Northern Ireland was at first prorogued by the [Northern Ireland \(Temporary Provisions\) Act 1972](#) and then abolished (on 18 July 1973) by the [Northern Ireland Constitution Act 1973](#). The authority of the Governor and Prime Minister of Northern Ireland passed to the new office of [Secretary of State for Northern Ireland](#), who led a [Northern Ireland Office](#) (NIO) based at Stormont Castle in Belfast and at HM Treasury in London.

The 1973 Act retained three categories of legislative powers: excepted, reserved and transferred. A new power-sharing [Northern Ireland Assembly](#) was to control transferred (or devolved) powers, with the UK Parliament retaining responsibility for reserved and excepted matters. However, in 1974 the Assembly collapsed, and Direct Rule was reintroduced.

The main features of Direct Rule are that:

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<sup>1</sup> See [Advice to the Secretary of State for Northern Ireland Members of the Northern Ireland Assembly Salaries, Expenses and Allowances](#)

<sup>2</sup> Derek Birrell, *Direct Rule and the Governance of Northern Ireland*, Manchester: Manchester University Press, 2009, p1

<sup>3</sup> See Commons Library Briefing Paper CBP8884, [Parliament and Northern Ireland, 1921-2021](#)

- Northern Ireland Office ministers provide political direction to the Northern Ireland Departments in Belfast;
- Orders in Council are laid at Westminster on matters normally “transferred” to the Northern Ireland Assembly;
- Northern Ireland Office ministers answer Parliamentary Questions, either orally or in writing, on all Northern Ireland matters in the UK Parliament.

Direct Rule did not mean the complete integration of Northern Ireland affairs. Between 1972-99 it formed, as in Scotland and Wales, part of a system known as “administrative devolution”, whereby civil servants were largely based in Northern Ireland itself, with a Secretary of State providing political direction from the NIO in Whitehall and in Belfast.<sup>4</sup>

As part of the Belfast / [Good Friday Agreement](#), the [Northern Ireland Act 1998](#) established new devolved institutions in Northern Ireland and Direct Rule formally came to an end on 2 December 1999. A second period of Direct Rule was in place between 2002 and 2007.

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<sup>4</sup> This was not termed “Direct Rule” in Scotland or Wales because in those two parts of the United Kingdom, it was the norm (since 1885 and 1965 respectively) rather than the exception

## 2

## Northern Ireland since 2017

Between 2007-17 there existed the longest uninterrupted period of devolved government in Northern Ireland since 1972. Following the collapse of the devolved institutions in early 2017, however, there was neither direct nor indirect rule in Northern Ireland for a period of three years. Several rounds of talks between the main political parties as well as the UK and Irish governments did not produce agreement until January 2020.

On some transferred issues, for example budgetary matters, the UK Parliament fast-tracked primary legislation. In most other areas, however, the Northern Ireland Civil Service (NICS) continued to administer public services within the context created by judgements in the “Buick” judicial review. These significantly limited the ability of civil servants to make decisions in the absence of ministerial direction and control.<sup>5</sup>

In 2018, the UK Parliament passed the [Northern Ireland \(Executive Formation and Exercise of Functions\) Act 2018](#) to make provision for “the exercise of governmental functions [...] in the absence of Northern Ireland Ministers”.

Northern Ireland was also included in the UK government’s Domestic Abuse Bill, while amendments to the [Northern Ireland \(Executive Formation etc\) Act 2019](#) obliged the laying of regulations to legalise both same-sex marriage and abortion in Northern Ireland. The commentator Jeffrey Dudgeon has called this “stealth direct rule, bringing about changes the Assembly never could or would”.<sup>6</sup>

Direct Rule is not necessary for the UK Parliament to legislate in devolved areas. As in Scotland and Wales, Westminster remains sovereign (or legislatively supreme) in relation to UK law and retains the right to legislate, should it wish to do so, in all areas relating to Northern Ireland.

But as the Institute for Government has stated:

suspending devolution and imposing direct rule would allow UK ministers to direct Northern Ireland departments, and legislate by secondary legislation, rather than needing to take new primary legislation to respond to every crisis.<sup>7</sup>

<sup>5</sup> In the Buick case, the UK Supreme Court ruled that a planning decision on an incinerator required ministerial direction. See [Reference by the Attorney General for Northern Ireland of devolution issues to the Supreme Court pursuant to Paragraph 34 of Schedule 10 to the Northern Ireland Act 1998 \(No 2\) \(Northern Ireland\) \[2019\] UKSC 1](#).

<sup>6</sup> Jeffrey Dudgeon, [“Soapbox: Let’s hear it for Westminster and direct rule”](#), Sluggie O’Toole blog, 25 November 2019

<sup>7</sup> Institute for Government, [“Direct Rule in Northern Ireland”](#), 31 July 2019

## 2.1

# Direct Rule and a no-deal Brexit

The UK Government's [No-Deal Readiness Report](#) recognised that the:

continuing absence of Ministerial decision-making in Northern Ireland has hampered [Brexit] preparations and will critically limit the ability of the Northern Ireland Civil Service (NICS) to implement contingency plans and manage no-deal on a day-to-day basis. Although the Northern Ireland Civil Service (NICS) can take some limited decisions, this is insufficient to manage leaving without a deal.

Restoration of the Northern Ireland Executive, the Report added, was the “best way to ensure that effective governance arrangements are in place”, but if that was not possible then (with added emphasis):

the UK Government will need to consider options to ensure necessary decision-making powers are in place in the event of leaving without a deal [...] In the absence of an Executive, the UK Government continues to work closely with the NICS to prepare, as far as possible, for challenges that might arise in Northern Ireland.<sup>8</sup>

According to a report from the [Institute for Government](#) (IfG), [Governing without ministers](#), unless power-sharing was resumed then a no-deal Brexit would require:

UK ministers to take some sort of legislative control, as officials will not be able to take the fast-pace and wide-ranging policy decisions that will be required to manage the fallout – and cannot be held accountable for those decisions [...] Whether that constitutes full-on direct rule, or more limited Brexit-related powers, is uncertain.

The IfG believed the “imposition” of Direct Rule would be “controversial” and likely to “attract strong criticism from nationalists, the Irish government and key figures in the US, who would likely argue that this would be an infringement of the GFA”:

In these circumstances, hopes of an imminent return of devolved government would be dashed. A no-deal Brexit would drive a further wedge between the parties, and the difficulties it would create would likely disincentivise any political party from re-entering government. The history of Northern Ireland shows that once imposed, direct rule often remains in place for a long time.<sup>9</sup>

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<sup>8</sup> HM Government, [No-Deal Readiness Report](#), 14 October 2019, p142

<sup>9</sup> Institute for Government, [Governing without ministers](#), p39

## 2.2

## Speculation regarding Direct Rule

Before the end of March 2019, when the UK was first due to exit the European Union, several UK government ministers raised the possibility of a return to Direct Rule in Northern Ireland.<sup>10</sup>

The Financial Times also reported that the Cabinet Secretary, Sir Mark Sedwill, advised the Government in April 2019 that:

The current powers granted to the Northern Irish secretary would not be adequate for the pace, breadth or controversy of the decisions needed to be taken through a no-deal exit. Therefore we would have to introduce direct rule.<sup>11</sup>

In September 2019, the former Deputy Prime Minister David Lidington said there would have to be “some kind of direct rule” for Northern Ireland ahead of Brexit.<sup>12</sup> The then Secretary of State for Northern Ireland, Julian Smith, also said decisions to allow “very tricky decisions” to be made “in the run-up to either a deal or no-deal” would “have to be made at pace”.<sup>13</sup>

In October 2019, a Downing Street spokesperson [told the Financial Times](#) that any “decision on direct rule” would “be kept under review as part of the government’s extensive no-deal preparations”, while in [response to a written question](#) on 30 October, the Secretary of State said he would do everything in his “power” to restore the Executive before the statutory deadline of 13 January 2020, but at “that point, the choices facing us will be very limited indeed”.

Members of the Democratic Unionist Party and Ulster Unionist Party both called on the UK Government to legislate for Direct Rule in the absence of a power-sharing Executive, something opposed by Sinn Féin.<sup>14</sup>

Northern Ireland’s devolved institutions were restored in January 2020 following the [New Decade, New Approach](#) agreement.

<sup>10</sup> See BBC News online, “[Brexit: Would no deal mean the return of direct rule?](#)”, 31 March 2019

<sup>11</sup> “[DUP presses Boris Johnson to introduce direct rule in Northern Ireland](#)”, Financial Times, 10 October 2019

<sup>12</sup> BBC News online, “[Brexit: David Lidington urges 'some kind of direct rule' for NI](#)”, 7 September 2019

<sup>13</sup> [HC Debs 5 Sep 2019 Vol 664 cc363-71](#)

<sup>14</sup> See BBC News online, “[Robin Swann calls for direct rule in NI within two months](#)”, 6 August 2019; Belfast Telegraph, “[No return to direct rule in absence of power sharing: Sinn Féin’s O’Neill](#)”, 11 September 2019

## 2.3

### 2022-24 period

There was another period of what Adam Evans has called an “experiment in indirect rule” between February 2022, when Stormont again collapsed, and February 2024, when the devolved institutions were restored.<sup>15</sup>

In April 2023 the First Division Association trade union wrote to the Secretary of State for Northern Ireland asking that a Northern Ireland Office (NIO) minister “provide ministerial direction” to the Northern Ireland Civil Service, in effect, observed the Belfast Telegraph, “direct rule by an NIO minister”.<sup>16</sup>

Later that year Baroness (Angela) Smith, an NIO minister during the 2002-07 period of Direct Rule, expressed her opposition to direct control from Westminster:

I was a direct rule minister, I was told it could be two or three months and I’d come back to my job, I was there for three-and-a-half years. Once you get direct rule its much harder to get it away from direct rule and set up the institutions again. There has to be a way forward in the interest of Northern Ireland, you can’t just have decisions being made in London.<sup>17</sup>

For a comprehensive account of this period see Commons Library research briefing, [Developments in Northern Ireland, 2022-24](#).

## 2.4

### Would Direct Rule require legislation?

Primary legislation would have been necessary for Direct Rule to be (re)introduced.

The previous legislation enabling Direct Rule, the [Northern Ireland Act 2000](#), was repealed as part of the 2006 [St Andrews Agreement](#) and the subsequent [Northern Ireland \(St Andrews Agreement\) Act 2006](#).<sup>18</sup>

In future, legislation similar to the 2000 Act would be required to allow the Secretary of State to suspend devolution and make Orders in Council on transferred matters. The Institute for Government has also suggested that legislation could:

create delegated legislation powers for the secretary of state in some, but not all, areas of Northern Ireland’s devolved competence without suspending devolution. But UK ministers would not be able to direct Northern Ireland

<sup>15</sup> Adam Evans, [Northern Ireland, 2017-2020: An experiment in indirect rule](#), Public Law 3, July 2021, pp471-80.

<sup>16</sup> [NI civil servants union calls for form of Westminster direct rule if Stormont is not restored](#), Belfast Telegraph, 4 April 2023.

<sup>17</sup> [Stormont crisis: Patience has run out over DUP boycott – O’Neill](#), BBC News online, 8 October 2023.

<sup>18</sup> The Agreement was given legal force by the [Northern Ireland \(St Andrews Agreement\) Act 2006](#). [Schedule 4](#) deals with the repeal of the 2000 Act

departments as they would still technically be responsible to local ministers, even if there are none in post.<sup>19</sup>

## 2.5 Direct Rule and the Belfast / Good Friday Agreement

Some politicians and academics have stated that in their view Direct Rule would contravene the Belfast / Good Friday Agreement.

According to the Financial Times, Sinn Féin's vice-president, Michelle O'Neill, "said any return to direct rule would amount to an abandonment of the Good Friday Agreement and warned such a move would be 'unacceptable'."<sup>20</sup>

The [Belfast / Good Friday Agreement](#) does not refer directly to Direct Rule but makes clear that the UK Parliament's "power to make legislation for Northern Ireland" remains "unaffected" by the Agreement.<sup>21</sup>

Brendan O'Leary, a political scientist, has stated that in his view the 2002-07 period of Direct Rule breached the Agreement. He argued that:

Intermittent suspension of the [devolved] institutions under Labour governments between 2000 and 2006 broke the [Belfast/Good Friday] Agreement because the deed was performed unilaterally, but it was at least plausibly excused by efforts to create the conditions for the 1998 Agreement to work – that is, by a doctrine of necessity.<sup>22</sup>

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<sup>19</sup> Institute for Government, "[Direct Rule in Northern Ireland](#)", 31 July 2019

<sup>20</sup> "[DUP presses Boris Johnson to introduce direct rule in Northern Ireland](#)", Financial Times, 10 October 2019

<sup>21</sup> See Strand One para 33 of the [Belfast / Good Friday Agreement](#)

<sup>22</sup> Brendan O'Leary, p310

## 3 Historical background

Sovereignty over the island of Ireland was claimed by England following the 12<sup>th</sup>-century Norman invasion, although English rule was not completely established until several centuries later. During the 17<sup>th</sup> century, in what is known as “the Plantation”, the northern counties of Ulster<sup>23</sup> were settled by Protestants from Scotland and England. Across Ireland, Catholics were excluded from government and other public bodies.

### 3.1 Great Britain and Ireland

From the late 13<sup>th</sup> century there existed a [Parliament of Ireland](#), although it was generally subordinate to that in England and, after 1707, Great Britain. Following the 1798 Rebellion against British rule, the [Union with Ireland Act 1800](#) and [Act of Union \(Ireland\) 1800](#) (the latter passed by the Irish Parliament) abolished the Irish legislature and from 1 January 1801 Irish MPs and peers sat in the Parliament of the new United Kingdom of Great Britain and Ireland.<sup>24</sup>

Thereafter, the [Dublin Castle](#) administration housed an Irish executive – comprising the [Chief Secretary for Ireland](#), an under-secretary, the Lord Chancellor of Ireland and two other law officers – and the Privy Council of Ireland, all of whom were appointed by the UK government in London. Both the Lord Lieutenant (or Viceroy) of Ireland and Chief Secretary were invariably members of the UK Cabinet, supported by a Whitehall department called the [Irish Office](#).

A campaign for some degree of [Home Rule for Ireland](#), essentially devolution within the UK, grew during the 19<sup>th</sup> century and won Liberal government support in 1886. The first two [attempts to legislate](#) for a devolved parliament in Dublin, however, failed, and while the [Government of Ireland Act 1914](#) (which provided for the establishment of a bicameral parliament in Dublin) did become law, it was suspended for the duration of the First World War.

Following the [Easter Rising](#) of 1916, majority Irish public opinion hardened in favour of complete independence from the UK. Under the [Government of Ireland Act 1920](#) (which repealed the 1914 Act) the UK intended to create two

<sup>23</sup> The province of Ulster has nine counties, six of which are in Northern Ireland. The other three form part of the Republic of Ireland

<sup>24</sup> The Union with Ireland Act 1800 (as amended in 1922 and 1927) remains on the UK statute book. In Ireland, the [Statute Law Revision \(Pre-Union Irish Statutes\) Act, 1962](#) repealed the Act of Union (Ireland) 1800, while the [Statute Law Revision Act, 1983](#) repealed the Union with Ireland Act 1800.

devolved parliaments in Northern and Southern Ireland, but this was overtaken by the [war of independence](#) (1919-21).

The [Anglo-Irish Treaty](#) (“The Treaty”) ended the war and partitioned Ireland. The Treaty was given force by the Irish Free State (Agreement) Act 1922, while the [Irish Free State \(Consequential Provisions\) Act 1922](#) provided that the Government of Ireland Act 1920 ceased to apply to any part of Ireland apart from Northern Ireland.<sup>25</sup>

## 3.2 Northern Ireland

The “Northern Parliament” was constituted on 7 June 1921, meeting initially at Belfast City Hall. Under the terms of the Treaty, Northern Ireland would have, after a period of one month, become part of the Irish Free State – a Dominion within the British Empire – unless it [opted out by presenting an address to King George V](#), which it did on 7 December 1922.

Northern Ireland thus remained a devolved part of the UK with its own House of Commons, Senate, Government (headed by a “Prime Minister”), Civil Service, Governor and Privy Council. As a 1972 Northern Ireland Office publication observed:

In general the view prevailed that, having established responsible if subordinate institutions in Northern Ireland with certain powers, the United Kingdom Parliament and Government should not lightly supersede or override those powers. Thus there developed a convention that the United Kingdom Parliament would legislate within the field of Northern Ireland's 'transferred' powers only by invitation.

This “convention”, however, “did not, and could not, override the clear and unambiguous wording of the Statute”, which – as would be the case with subsequent devolution statutes in 1998 – retained Westminster parliamentary sovereignty in all areas.<sup>26</sup>

The Northern Ireland Parliament, housed at Stormont from 1932, always possessed an [Ulster Unionist Party](#) majority government. In 1948, Ireland (or Eire) legislated to declare itself a Republic with effect from April 1949,<sup>27</sup> a development recognised by the [Ireland Act 1949](#). This also declared that:

Northern Ireland remains part of His Majesty's dominions and of the United Kingdom and it is hereby affirmed that in no event will Northern Ireland or any part thereof cease to be part of His Majesty's dominions and of the United Kingdom without the consent of the Parliament of Northern Ireland.

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<sup>25</sup> See Commons Library Briefing Paper CBP9260, [The Anglo-Irish Treaty, 1921](#)

<sup>26</sup> Northern Ireland Office, [The Future of Northern Ireland: A Paper for Discussion](#), October 1972, p4

<sup>27</sup> Article 2 of [Eire's 1937 constitution](#) asserted that “the whole island of Ireland, its islands and the territorial seas” formed a single “national territory”, while Article 3 asserted that its parliament had a right “to exercise jurisdiction over the whole of that territory”.

## 4 Origins of Direct Rule

A civil rights march in Derry / Londonderry in October 1968 marked the beginning of a period known as [The Troubles](#), a violent conflict concerning the constitutional status of Northern Ireland. This led to the deployment of British troops as well as increasing intervention from the UK government.

In early 1969, what the historian Alvin Jackson called the “foundations of direct rule from London” were laid. UK government contingency planning included “a UK minister with full powers to take up residence and direct Northern Ireland affairs from Stormont Castle”.<sup>28</sup>

During a House of Lords debate on 15 October 1969, Lord Rathcavan, who as Hugh O’Neill was the first Speaker of the Northern Ireland House of Commons from 1921-29, and Lord Gifford used the term “direct rule” for the first time in the UK Parliament.<sup>29</sup>

In early 1971, the first of several draft Bills was prepared by Whitehall. The “Northern Ireland (Transfer of Powers) Bill” had four main elements:

- the transfer of responsibility for law and order from Stormont to Westminster;
- minority representation in the Ulster Unionist-dominated Government of Northern Ireland;
- an expansion of the Northern Ireland House of Commons and the reintroduction of proportional representation; and
- “periodic referenda on the border”.

By March of that year, it had become clear that either the Home Secretary (who had formal responsibility for relations between Great Britain and Northern Ireland) or a new “Secretary of State for Northern Ireland” would have to take responsibility for law and order in Northern Ireland. On 7 October 1971 the Cabinet Secretary, Sir William Armstrong, minuted that the Prime Minister (Edward Heath) was minded towards the second option, although at this stage it “was not tied to the possibility of direct rule”.<sup>30</sup>

In early 1972, relations between the UK and Northern Ireland governments began to break down over the deteriorating security situation. Brian Faulkner,

<sup>28</sup> Alvin Jackson, *Home Rule*, London: Weidenfeld & Nicolson, 2003, pp202 & 253

<sup>29</sup> [HL Debs 15 October 1969 Vol 304 cc1458 & 1514](#)

<sup>30</sup> See David Torrance, “[‘Assuming full and direct responsibility’: 50 years of the Northern Ireland Office](#)”, Mile End Institute blog, 30 March 2022

the last Prime Minister of Northern Ireland, considered what was known as “Bloody Sunday”, which occurred on 30 January 1972, to be “the turning point”.<sup>31</sup>

The UK Cabinet resolved on 14 March to press ahead with the transfer of responsibility for law and order from Belfast to London. Clause 1 of what was now the “Northern Ireland (Law and Order) Bill” listed everything which was to become reserved rather than transferred. One printed version of the Bill deprived Stormont of the power to ban demonstrations but left it with the ability to prohibit certain publications. “Is this wise or necessary?” scribbled an anxious UK official. The ambiguous legal status of British troops in Northern Ireland under this plan also tipped the balance towards complete, rather than partial, Direct Rule.<sup>32</sup>

A week later Edward Heath gave Lord Grey of Naunton, the New Zealand-born Governor of Northern Ireland, an “outline” of the proposals he intended to put to Brian Faulkner. Grey correctly predicted that Faulkner would not agree to the transfer of law and order but assured Heath he would be willing to dismiss his Prime Minister “if necessary”. Grey added that he might have to “go through the motions” of seeing if someone else (even the Reverend Ian Paisley) was “willing or able to form a Government”. Grey went on to say he had “never accepted” the Home Office view that the Governor was “entirely without powers”; the “conventions” regulating relations between the Crown and government in London did not, he claimed, “apply in Northern Ireland”.<sup>33</sup> Another draft Bill was prepared and printed, which was intended to become the “Northern Ireland (Governor’s Powers) Act 1972”.<sup>34</sup>

Upon being told of the UK Cabinet’s proposals on 22 March 1972, Brian Faulkner protested that such a transfer would be in breach of the Government of Ireland Act 1920, which gave the devolved institutions responsibility for the “Peace, Order and Good Government” of Northern Ireland. When Edward Heath reiterated the Cabinet’s unanimous view, Faulkner said he “knew then without any doubt that we must resign, and that direct rule had arrived”. He agreed to remain in office, however, until legislation was passed at Westminster, so that Northern Ireland should not, “even for a few days, be without a lawful government”.<sup>35</sup>

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<sup>31</sup> Brian Faulkner, *Memoirs of a Statesman*, London: Weidenfeld & Nicolson, 1978, pp152-55

<sup>32</sup> David Torrance, [“Assuming full and direct responsibility”: 50 years of the Northern Ireland Office”](#)

<sup>33</sup> David Torrance, [“Assuming full and direct responsibility”: 50 years of the Northern Ireland Office”](#)

<sup>34</sup> David Torrance, [“Assuming full and direct responsibility”: 50 years of the Northern Ireland Office”](#)

<sup>35</sup> Brian Faulkner, pp152-55

## 4.1

# Direct Rule is announced

On Friday 24 March 1972, the Prime Minister informed the House of Commons that the Northern Ireland Government's decision to resign left the UK government with:

no alternative to assuming full and direct responsibility for the administration of Northern Ireland until a political solution to the problems of the Province can be worked out in consultation with all those concerned.

The UK Parliament, continued Heath, would therefore be invited to pass:

before Easter a Measure transferring all legislative and executive powers now vested in the Northern Ireland Parliament and Government to the United Kingdom Parliament and a United Kingdom Minister. This provision will expire after one year unless this Parliament resolves otherwise. The Parliament of Northern Ireland would stand prorogued but would not be dissolved.

The “increased burden” this transfer of responsibilities entailed meant it would no longer be possible for the Home Secretary to discharge duties in relation to Northern Ireland:

A new Office of Secretary of State for Northern Ireland is, therefore, being created. My right hon. Friend the Lord President [William Whitelaw] is to be appointed to this office, together with the necessary junior Ministers.<sup>36</sup>

Harold Wilson, the Leader of the Opposition, said in response that Direct Rule had always been:

regarded by [...] both of us in Opposition, as the very last resort, not an objective to be sought for itself, and we have all of us maintained this. But the fact that that last resort was there and that in the last resort neither of the Governments that have been concerned with this would have flinched from it has, I believe, been a central element in the strength of this House and of Her Majesty's Government in dealing with the problem.<sup>37</sup>

Members of the Northern Ireland Parliament at Stormont debated and passed an adjournment motion on 28 March 1972.<sup>38</sup>

The same day, the UK House of Commons considered the second reading of the Northern Ireland (Temporary Provisions) Bill.<sup>39</sup> This did not repeal the Government of Ireland Act 1920 but superimposed certain temporary provisions. Its main elements were:

- Prorogation but not dissolution of the Parliament of Northern Ireland;

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<sup>36</sup> [HC Debs 24 March 1972 Vol 833 cc1860-61](#)

<sup>37</sup> [HC Debs 24 March 1972 Vol 833 c1864](#)

<sup>38</sup> NI HC Debs 28 March 1972 Vol 84 cc1585-86

<sup>39</sup> [HC Debs 28 March 1972 Vol 834 cc238-368](#)

- Power for Westminster to legislate for Northern Ireland via Orders in Council;
- A new office of Secretary of State for Northern Ireland to take over the executive functions of the Government and Governor of Northern Ireland;
- Provision for the Attorney General for England and Wales to act as Attorney General for Northern Ireland;<sup>40</sup>
- Appointment of a representative commission to advise the Secretary of State in the exercise of his functions (the Northern Ireland Advisory Commission).

As previously indicated by the Prime Minister, the Bill's provisions were to expire after one year but could be extended for a further period of 12 months. The Bill passed its second reading by 483 to 18. Ulster Unionist MPs and some Conservatives opposed it, as did the republican MPs Bernadette Devlin and Frank McManus. It was unopposed in the House of Lords. As the future Northern Ireland Secretary Merlyn Rees recalled in his memoirs, Direct Rule "went through Parliament without serious problems".<sup>41</sup>

The [Northern Ireland \(Temporary Provisions\) Act 1972](#) received Royal Assent on 30 March 1972 and the Parliament of Northern Ireland was prorogued the same day. William Whitelaw, until that point Northern Ireland Secretary designate, also collected his seals of office, therefore assuming the authority of the Government and Governor of Northern Ireland.<sup>42</sup> At this stage, Direct Rule was "intended as a short-term response to crisis management, providing a stable institutional context within which a political solution could evolve".<sup>43</sup>

## The legislative process

The 1972 Act required that legislation on subjects formerly within the competence of Stormont would be laid before the UK Parliament in the form of draft or made affirmative Orders in Council. Draft Orders had to be approved by both Houses of Parliament before they could be made. Made affirmative Orders not approved by both Houses within 40 days ceased to have effect.<sup>44</sup>

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<sup>40</sup> The Attorney General for England and Wales remained [Attorney General for Northern Ireland](#) until 2010, when John Larkin QC was appointed to the politically independent post. Since 2010, the Attorney General for England and Wales has also acted as the [Advocate General for Northern Ireland](#).

<sup>41</sup> Merlyn Rees, *Northern Ireland: A Personal Perspective*, London: Methuen, 1985, p17

<sup>42</sup> The Governor of Northern Ireland had resided at [Hillsborough Castle](#), which became the Secretary of State's residence. It is also the residence of the monarch when in Northern Ireland.

<sup>43</sup> Cornelius O'Leary, Sydney Elliot and Rick Wilford, *The Northern Ireland Assembly 1982-1986: A Constitutional Experiment*, London: C. Hurst & Company, 1988

<sup>44</sup> See Commons Library Briefing Paper CBP6509, [Statutory Instruments](#), 15 December 2016. This 40-day period excluded days when both Houses were dissolved, prorogued or adjourned for more than four days.

Provision was also made to enable local interests to influence proposed legislation. As the Northern Ireland-based academic Professor Derek Birrell explained in his book on Direct Rule:

Initially, a draft Order originating from a Northern Ireland Department would first be considered by a Policy Co-Ordinating Committee of senior civil servants, approved by Ministers and then made available to local interest via the Northern Ireland Advisory Commission. It would also be circulated to interested parties and made available to the public in printed form through the Stationary Office (HMSO). The draft Order was then scrutinised by the Commission at a meeting chaired by the Secretary of State with the responsible Minister and senior departmental officials present. Thereafter the Order was laid in draft at Westminster and referred to the Joint Committee on Statutory Instruments before being debated.<sup>45</sup>

This legislative process for Direct Rule applied between 30 March 1972 and 1 January 1974. The Northern Ireland Advisory Commission was terminated in 1973, in expectation that devolution would be restored and therefore scrutiny of legislation would be transferred to a new Northern Ireland Assembly. The Advisory Commission was never revived.

## 4.2

## Referendum and constitutional proposals

### Northern Ireland “Border Poll”

In October 1972, the Northern Ireland Office published a Green Paper, [The Future of Northern Ireland](#), one part of which was a referendum (known as a “Border Poll”) on Northern Ireland’s constitutional status.

The Border Poll took place on 8 March 1973, held under the [Northern Ireland \(Border Poll\) Order 1973](#). Voters were asked two questions and invited to place an X next to one:

- Do you want Northern Ireland to remain part of the United Kingdom?
- Do you want Northern Ireland to be joined with the Republic of Ireland outside the United Kingdom?

Most Catholic voters boycotted the poll, but on a 58.7% turnout 98.9% of those who did vote favoured the status quo.<sup>46</sup>

### Constitutional proposals

Twelve days after the Border Poll, the UK government published a White Paper, [Northern Ireland Constitutional Proposals](#). This included proposals for

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<sup>45</sup> Derek Birrell, *Direct Rule and the Governance of Northern Ireland*, Manchester: Manchester University Press, 2009, p59

<sup>46</sup> See David Torrance, [“‘Taking the border out of politics’ – the Northern Ireland referendum of March 1973”](#), Constitution Unit blog, 21 November 2019

a 78-member Assembly, a power-sharing Executive headed by a Chief Executive and a cross-border Council of Ireland. The [Northern Ireland Assembly Act 1973](#), debated by MPs in April 1973,<sup>47</sup> made provision for Assembly elections, while the Northern Ireland Constitution Bill, which received its second reading on 24 May 1973,<sup>48</sup> set out a new constitutional settlement for Northern Ireland.

The 1973 Bill retained the Government of Ireland Act 1920's tripartite division of powers for the new Northern Ireland Assembly. These were:

- **excepted matters**, over which Westminster was to retain permanent control, i.e. the Crown, elections, international relations, fiscal matters, the Armed Forces, nationality and the appointment of judges;
- **reserved matters**, areas over which Westminster was to retain responsibility, but which could be exercised by the Assembly with the consent of the Secretary of State, including policing, public order, criminal law and courts, firearms and explosives, foreign trade, navigation and broadcasting.
- **transferred matters**, which covered everything else, for example, education, transport, health and agriculture.

The number of transferred (or devolved matters) were fewer than those for which the Parliament of Northern Ireland had previously possessed responsibility.

Elections to the Northern Ireland Assembly were held on 28 June 1973, and Royal Assent granted to the [Northern Ireland Constitution Act 1973](#) on 18 July 1973. The Parliament of Northern Ireland, prorogued the previous year, was abolished the same day. Members of the Legislative Assembly (MLAs) met for the first time on 31 July 1973. Executive power continued to be vested in the Queen, with the Secretary of State exercising prerogative powers in respect of transferred matters.

There was disagreement over the cross-border Council of Ireland, which delayed the formation of a power-sharing Executive. The [Sunningdale Agreement](#) was signed on 9 December 1973 and the Executive took over the government of Northern Ireland on 1 January 1974, ending almost two years of Direct Rule from Westminster. However, the Executive collapsed on 28 May 1974 following a Loyalist general strike.<sup>49</sup> Brian Faulkner resigned as Chief Executive the same day.

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<sup>47</sup> [HC Debs 16 April 1973 Vol 855 cc31-131](#)

<sup>48</sup> [HC Debs 24 May 1973 Vol 857 cc680-802](#)

<sup>49</sup> See Paddy Devlin, *The Fall of the N.I. Executive*, Belfast: The Kerryman, 1975

## 5 Direct Rule in Northern Ireland, 1974-99

The Northern Ireland Constitution Act 1973 had made provision for the UK government to prorogue or dissolve the new Northern Ireland Assembly. [Section 27](#) enabled dissolution by Order in Council, while [Section 8](#) provided a means for dealing with transferred matters under those circumstances. In essence, this meant the Secretary of State for Northern Ireland could appoint UK ministers to act as heads of the Northern Ireland Departments, a provision originally intended to cover short periods between power-sharing Executives.

Following the collapse of the Executive and Assembly, the [Northern Ireland Act 1974](#) prorogued the Assembly and transferred its legislative powers to the Queen in Council (or Privy Council),<sup>50</sup> subject to the direction of the Secretary of State. This meant a return to the system of Direct Rule first introduced by the Northern Ireland (Temporary Provisions) Act 1972.

### 5.1 Legal framework for Direct Rule

The 1974 Act received Royal Assent on 17 July 1974 and was intended to be temporary, thus the provision for the Secretary of State to make annual Orders extending its duration. In fact, it was to remain in place for 25 years and would provide the legal framework – in conjunction with the Northern Ireland Constitution Act 1973 – for the first long-term phase of Direct Rule.

This meant that **excepted matters** (listed in Schedule 2 to the 1973 Act) were still the subject of primary legislation at Westminster, while [Orders in Council](#) could be made on certain **reserved matters** (listed in Schedule 3) and **transferred matters**.

### 5.2 Orders in Council

Between 1974-99, Orders in Council were laid before Parliament under the affirmative procedure included in Schedule 1 of the 1974 Act.<sup>51</sup> As in the Northern Ireland (Temporary Provisions) Act 1972, either draft or made affirmative Orders could be laid before the UK Parliament. Once approved, they were published as [Northern Ireland statutes](#), a continuation of pre-1972 Acts of the Parliament of Northern Ireland.

<sup>50</sup> See Commons Library Briefing Paper CBP7460, [The Privy Council](#)

<sup>51</sup> Orders dealing with Great Britain matters were usually subject to the negative procedure

Professor Derek Birrell explains that:

Orders-in-council were originally laid before Parliament as a draft order representing the government's definitive legislative intent. In the case of the vast majority of draft orders the next stage was the approval of the order by both Houses of Parliament within forty sitting days of the draft order being laid. The normal gap was two or three weeks. An exception to this process was if a draft order was required to come into effect for urgent and emergency reasons. In such cases the order was made and came into effect immediately and the order remained in force only if approved by both Houses within forty sitting days of its being laid.<sup>52</sup>

A Northern Ireland Examiner of Statutory Rules was appointed to monitor Northern Ireland Orders.<sup>53</sup> Professor Vernon Bogdanor, an expert on constitutional affairs and devolution, calculated that between 1972 and 1997, 557 Orders in Council relating to Northern Ireland were laid at Westminster.<sup>54</sup>

In 1976, the Government provided for extended debates on draft Orders and agreed to transmit legislative proposals to the major parties before their introduction to Parliament.<sup>55</sup>

## 5.3 Policy making under Direct Rule

Before the introduction of Direct Rule in 1972, UK primary legislation on matters listed as reserved or excepted under the Government of Ireland Act 1920 usually applied automatically.

Derek Birrell has referred to the post-1974 period of Direct Rule as “integration by statute”, a general trend towards convergence (in transferred areas) between Northern Ireland and Great Britain or, more accurately, England, given that Scotland and often Wales often had distinct legislation.<sup>56</sup>

The first period of Direct Rule in 1972-73 has been described as “passive”, in that it did not seek to bring Northern Ireland into line with British legislation and practice, while after 1976 it was considered as more “positive”, in that a conscious effort was made to harmonise Northern Ireland legislation and policy with the rest of the UK.<sup>57</sup> In May 1976, the then Northern Ireland Secretary Merlyn Rees argued that to remain acceptable Direct Rule needed to be seen as “positive”, emphasising “good government” over “constitutional aspirations and hobgoblins”.<sup>58</sup>

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<sup>52</sup> Derek Birrell, p41

<sup>53</sup> Derek Birrell, p45

<sup>54</sup> Vernon Bogdanor, *Devolution in the United Kingdom*, Oxford: Oxford University Press, 1999

<sup>55</sup> Brendan O'Leary, p59

<sup>56</sup> Vernon Bogdanor, pp230-31

<sup>57</sup> Brendan O'Leary, pp61-62

<sup>58</sup> Quoted in S. C. Aveyard, *No Solution: The Labour Government and the Northern Ireland Conflict, 1974-79*, Manchester: Manchester University Press, 2020, p173

The “parity principle”, under which it was assumed that citizens in Northern Ireland would enjoy similar welfare provision to those in Great Britain, continued, even though health and social security were both transferred.<sup>59</sup>

In a few policy areas, there was a tradition of divergence which remained unaltered by Direct Rule. Derek Birrell described these as:

- ethical/cultural issues;
- administrative differences; and
- strongly-held policy ideas.

Birrell gave abortion (which remained illegal in Northern Ireland) as an example of the first, the centralised [Housing Executive](#) of the second and academically-selective grammar schools of the third.<sup>60</sup> In 1976, for example, Merlyn Rees withdrew [proposals to decriminalise homosexuality](#) in Northern Ireland following a backlash.<sup>61</sup>

Several Northern Ireland-only measures were introduced between 1972-99, but mainly in reserved and excepted areas. Many of these related to the security situation or to constitutional and equality matters. The [Fair Employment \(Northern Ireland\) Act 1976](#) was passed as primary legislation and not as an Order in Council (employment was a transferred matter), an indication of how significant the then UK government considered it to be in its efforts to address discrimination.<sup>62</sup>

According to Vernon Bogdanor, between 1972 and 1997 the UK Parliament passed 33 Acts which applied wholly or mainly to Northern Ireland.<sup>63</sup> These were often fast tracked.

## 5.4 The Northern Ireland Office

Responsible for both primary (Acts of Parliament) and secondary legislation (Orders in Council) was the Northern Ireland Office (NIO), established on 1 April 1972. This was based at [Stormont Castle](#) in Belfast – previously home to the Government of Northern Ireland – and at HM Treasury in Whitehall.

Initially, the NIO took over responsibility for law-and-order functions from the former Northern Ireland Ministry of Home Affairs, and then most of its other responsibilities when that ceased to exist on 1 January 1974. The seven

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<sup>59</sup> This principle was first articulated by Chancellor Sir John Simon in May 1938, see [HC Deb 12 May 1938 Vol 335 cc1707-09](#)

<sup>60</sup> Derek Birrell, p235

<sup>61</sup> Derek Birrell, p235. The law was changed in 1982 following a challenge under the European Convention on Human Rights.

<sup>62</sup> Derek Birrell, p233

<sup>63</sup> Vernon Bogdanor, 236

Northern Ireland Ministries were renamed Departments in 1973, and the Office of the Prime Minister abolished.

Only in a few cases did a UK government department assume functions previously exercised by a Northern Ireland Department, for example estate and stamp duties were transferred from the Northern Ireland Ministry of Finance to the UK Inland Revenue.

The NIO had a permanent secretary, as did each Northern Ireland Department, which each had a separate legal existence under Northern Ireland statutes dating from 1921.

Legally, junior NIO ministers acted on behalf of the Secretary of State and did not themselves discharge the functions of Northern Ireland Departments, as “legally all powers were vested exclusively in the Secretary of State”, although this meant little in practice. The number of junior NIO ministers varied during the first long-term phase of Direct Rule.<sup>64</sup>

According to Derek Birrell, Direct Rule equipped the Secretary of State with “an important range of executive, policy-making, administrative and financial powers”.<sup>65</sup>

The Northern Ireland Secretary and junior NIO ministers also answered Parliamentary Questions (PQs) on all Northern Ireland matters either orally or in writing. Oral Questions took place in the House of Commons once a month. Direct Rule meant a large increase in Northern Ireland-related PQs, as a previous [Speaker’s ruling from 1923](#) had prohibited discussion of transferred matters at Westminster.<sup>66</sup>

The number of PQs increased from 140 in 1970 to 1,221 in 1974/75 and 1,766 in 1983/84, although by 1994/95 the number had decreased to 1,051.<sup>67</sup>

## 5.5

## Northern Ireland Civil Service

The Northern Ireland Office had its own officials either drawn from the [Home Civil Service](#) (HCS), or transferred from the separate Northern Ireland Civil Service (NICS) in Belfast, which had been established to support the Government of Northern Ireland in 1921. Although independent, the NICS followed HCS practice quite closely.

As the political scientist Brendan O’Leary has observed:

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<sup>64</sup> Derek Birrell, p25

<sup>65</sup> Derek Birrell, pp19-20

<sup>66</sup> This ruling was superseded in 1968, when the then Prime Minister, Harold Wilson, indicated that he would deal with questions on all Northern Ireland matters

<sup>67</sup> Derek Birrell, p54

Administrative dualism was retained: key NIO civil servants were part of the British civil service; but the NI departments remained staffed by the locally recruited civil service.<sup>68</sup>

Direct Rule left much of the NICS unchanged. Maurice Hayes, a long-standing official in Northern Ireland, “was struck by the ease with which the Civil Service machine [in Northern Ireland] adapted to direct rule”.<sup>69</sup> The NICS had never experienced a change in government and now found itself supporting ministers of Conservative and Labour governments at Westminster rather than Ulster Unionist governments at Stormont.<sup>70</sup>

## 5.6 Westminster committees and Direct Rule

The Northern Ireland Civil Service also became accountable to Westminster committees, which played a role in Direct Rule.

After 1974, there was pressure in the UK Parliament for pre-legislative scrutiny of Orders in Council. A Northern Ireland Committee was established in 1975, one function of which was discussion of draft Orders. This standing committee of the House lapsed in 1985 but was revived in 1991. Some Orders were altered as a result of the Committee’s recommendations.<sup>71</sup>

The Northern Ireland Committee became the [Northern Ireland Grand Committee](#) (NIGC) in 1994. This comprised all Northern Ireland MPs and not more than 25 other Members.<sup>72</sup> It continued to have deliberative and scrutiny powers, debating draft Orders for up to 2.5 hours.<sup>73</sup>

A [Northern Ireland Affairs Committee](#) was created in 1994.<sup>74</sup> This Select Committee had the authority to request that Orders be considered by the NIGC.

## 5.7 Fiscal matters and funding

In 1973, the system of financial agreements between Northern Ireland and Great Britain were set aside in favour of a simpler “block grant” method such

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<sup>68</sup> Brendan O’Leary, *A Treatise on Northern Ireland Volume 3: Consociation and Confederalism*, Oxford: Oxford University Press, 2019, p35

<sup>69</sup> Maurice Hayes, *Minority Verdict: Experiences of a Catholic Public Servant*, 1995, Belfast: Blackstaff Press, p163

<sup>70</sup> Derek Birrell, p98

<sup>71</sup> Derek Birrell, p52

<sup>72</sup> Another consequence of Direct Rule was an increase in the number of Northern Ireland MPs in the UK House of Commons, from 12 to 17 at the 1979 general election and to 18 in 1997

<sup>73</sup> See House of Commons Information Office Factsheet L8, [Northern Ireland Legislation](#)

<sup>74</sup> See David Torrance and Adam Evans, [“The Territorial Select Committees, 40 Years On”](#), *Parliamentary Affairs* 72:4, October 2019, pp860–78

as that used to fund the Scottish and Welsh Offices, although a separate [Northern Ireland Consolidated Fund](#) remained in place.

The 1973 Act abolished the Joint Exchequer Board, which had previously determined levels of funding from the UK government and Northern Ireland's "Imperial contribution" to the UK Exchequer. Thereafter revenue came from three sources:

- An attributed share of UK taxes minus reductions for reserved services;
- Non-tax revenue; and
- A grant-in-aid approved by the Treasury.

According to Derek Birrell, under Direct Rule this grant-in-aid – and thus public expenditure generally – increased.<sup>75</sup> Only local government, reform of which had coincided with Direct Rule,<sup>76</sup> raised revenue locally via rates.

It was anticipated that the block grant system would enable a restored power-sharing Executive to determine priorities, but with the fall of the Executive in May 1974 the new financial arrangements continued under the guidance of UK ministers.

## 5.8 Attempts to restore devolved government

There were two main attempts to restore devolved government to Northern Ireland, the first in 1975 and the second in 1982.

### Northern Ireland Constitutional Convention

The July 1974 UK government White Paper, [The Northern Ireland Constitution](#), had proposed an elected Northern Ireland Constitutional Convention (NICC), for which the Northern Ireland Act 1974 made provision. This was established in 1975 and charged with producing new devolution proposals.

The Convention, however, failed to reach cross-community consensus, its report instead [proposing a return to majority rule](#). Merlyn Rees, the then Secretary of State for Northern Ireland, reconvened the NICC on 3 February 1976, but it once again failed to reach agreement. It was dissolved by Order in Council on 6 March 1976 and so Northern Ireland remained under Direct Rule, which became the only remaining operative provision of the 1974 Act.

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<sup>75</sup> Derek Birrell, p165

<sup>76</sup> As a result of these reforms, most major public services were removed from local councils in Northern Ireland and transferred to new arms-length bodies, for example the [Housing Executive](#) and (what later became) the [Education Authority](#). Other services, for example roads, were absorbed into the existing Northern Ireland Departments.

## “Rolling devolution”

A 1982 White Paper, [Northern Ireland: A Framework for Devolution](#), stated that:

Direct rule has served Northern Ireland well. It has won a measure of acceptance from all parts of the community and it is recognised to be impartial. It is, however, generally and rightly regarded as an unsatisfactory long-term arrangement – a view shared by all the major political parties in Northern Ireland [...] The direct rule arrangements rely upon Westminster to provide democratic safeguards on executive authority. They provide no other opportunity for Northern Ireland politicians to play a major part in the decisions affecting the Province.<sup>77</sup>

The [Northern Ireland Act 1982](#), therefore, made provision for the election and establishment of a new Northern Ireland Assembly to monitor the activities of the Northern Ireland Departments, and for it to make proposals for the resumption by the Assembly of its former functions under the two 1973 Acts, subject to approval by the UK Parliament. This was known as “rolling devolution”.<sup>78</sup>

Between 1982-86, Northern Ireland Office ministers introduced debates or conveyed information to the Assembly at Stormont, something Derek Birrell called a “potential hybrid model of direct rule”.<sup>79</sup> The 1982 Act also established a system of statutory committees in the Assembly with the power to preview planned Orders in Council before they were laid at Westminster.

The Assembly was dissolved on 23 June 1986 by the [Northern Ireland Assembly \(Dissolution\) Order 1986](#) before any devolution of functions had taken place. Thereafter, the 1973 and 1982 Acts remained in force, which left open the possibility of a new Assembly being elected.

## 5.9

## Strengths and weaknesses of Direct Rule

Direct Rule led to greater cross-border co-operation and engagement between the UK and Ireland. The main manifestation of this engagement was the [Anglo-Irish Agreement](#) of 1985.

This established the Anglo-Irish Intergovernmental Conference, which was to be concerned with political, legal and security matters in Northern Ireland, as well as “the promotion of cross-border cooperation”. It met with opposition from Ulster and Democratic Unionist MPs, who resigned their seats in protest in early 1986.<sup>80</sup>

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<sup>77</sup> [Northern Ireland: A Framework for Devolution](#), Cmnd 8541, April 1982, London: HMSO, p3

<sup>78</sup> See Cornelius O’Leary, Sydney Elliott and Rick Wilford, *The Northern Ireland Assembly, 1982-1986: A Constitutional Experiment*, London: Hurst, 1988

<sup>79</sup> Derek Birrell, p32

<sup>80</sup> Fifteen MPs stood in by elections. All but one were re-elected.

Direct Rule was also subject to criticism. Derek Birrell said it:

resulted in extra pressure on the Westminster timetable with the increased workload from orders-in-council, statutory instruments, Northern Ireland bills, debates, ministerial statements, parliamentary questions and the work of committees.<sup>81</sup>

A major criticism was the lack of scrutiny. Many Orders were debated early in the morning or late at night and for no more than 90 minutes, even on controversial subjects such as electricity privatisation.

Jim Prior, Secretary of State for Northern Ireland between 1981-84, considered scrutiny of Northern Ireland affairs at Westminster to be “lamentable”:

the usual ration, year-in, year-out, was monthly forty-five minute question time on the floor of the Commons, a few poorly attended debates usually held late at night, and the occasional statement to the House following some particularly awful atrocity.

In his memoirs, Prior also claimed Direct Rule gave political parties in Northern Ireland “all the advantages of political activity with none of the disadvantages of responsibility”, and that it denied “elected representatives in Northern Ireland virtually any say in running their own affairs”. He was:

disturbed that direct rule from Westminster was coming to be seen as permanent. It had brought fair, impartial government to Northern Ireland, and was broadly acceptable to the majority of both communities. It was in fact everyone’s second choice, although in a sense there was some virtue in this since everyone’s first choice was totally unacceptable to someone else.<sup>82</sup>

One alternative, supported by the Ulster Unionist MP Enoch Powell and several Conservative MPs, was a policy of “integration”. This approach would have abandoned any attempt to restore devolution in Northern Ireland and instead pass more power to local government.<sup>83</sup> Speaking in the Commons in 1982, Powell said:

There is no remedy for direct rule other than getting rid of direct rule altogether [...] but there is only one way within the United Kingdom of getting rid of direct rule altogether—I will pronounce it in as low and hushed a tone as I can manage [...]—and that is integration.<sup>84</sup>

In 1993, the Northern Ireland Standing Advisory Commission on Human Rights commissioned a paper, *Legislating for Northern Ireland: Options for Reform*. Its author, the constitutional academic Brigid Hadfield, concluded that the simplest reform would involve passing primary legislation rather than laying Orders in Council, though she rejected this as unrealistic due to its likely impact on the parliamentary timetable. Instead, Hadfield proposed changes to pre-parliamentary consideration. Reforms followed, although Derek Birrell

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<sup>81</sup> Derek Birrell, p67

<sup>82</sup> Jim Prior, *A Balance of Power*, London: Hamish Hamilton, pp190-91

<sup>83</sup> Vernon Bogdanor, p101

<sup>84</sup> [HC Deb 9 June 1982 Vol 25 cc342-43](#)

considered these to be Parliament-wide rather than Northern Ireland specific. They also did not address the main criticisms of Direct Rule.<sup>85</sup>

According to research conducted by Colin Irwin, public support for Direct Rule in 1996 was higher than that for devolution, at 38 to 20 per cent.<sup>86</sup>

For an examination of the 1974-99 period of Direct Rule in the context of a 2023 application for judicial review, see [Anurag Deb: Direct Rule in Northern Ireland and the Power to Make Irrational Laws](#).<sup>87</sup>

## 5.10

### The end of the first phase of Direct Rule

As Derek Birrell has observed, the legal basis for Direct Rule was never “put on a permanent or settled foundation”, something he called “a form of government which on a temporary basis was to last for decades”.<sup>88</sup> But its temporary nature provided the flexibility quickly to return to devolved government in Northern Ireland if agreed.

The [Northern Ireland Act 1998](#) implemented the Belfast / Good Friday Agreement and made provisions for another devolved Assembly and power-sharing Executive. These were elected and formed in 1998-99.

On 2 December 1999, the [Departments \(Transfer and Assignment of Functions\) Order \(Northern Ireland\) 1999](#) and [Departments \(Northern Ireland\) Order 1999](#) were passed at Westminster and thus “finalised the replacement of direct rule”.<sup>89</sup>

A Secretary of State and two junior ministers remained at the Northern Ireland Office. The Northern Ireland Secretary retained certain responsibilities even after the restoration of devolution, for example policing, prisons and justice, which were not devolved to the Assembly until 2010. The Secretary of State was also responsible for the submission of Assembly Bills for Royal Assent.

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<sup>85</sup> Derek Birrell, pp67-68

<sup>86</sup> Colin Irwin, *The People’s Peace Process in Northern Ireland*, Basingstoke: Palgrave, 2002

<sup>87</sup> UK Constitutional Law Association blog, 17 February 2023. The relevant judgment is [Re Oliver Hughes’ application for judicial review\[2023\] NIKB 5](#)

<sup>88</sup> Derek Birrell, pp19-20

<sup>89</sup> Derek Birrell, p17

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## 6 Direct Rule, 2002-07

The early years of the Northern Ireland Assembly proved unstable. Section 1 of the [Northern Ireland Act 2000](#), which received Royal Assent on 10 February 2000, provided a mechanism for a return to Direct Rule. A Schedule to the Act stated that while section 1 was in force, “Her Majesty may by Order in Council make provision for any matter for which the 1998 Act authorises or requires provision to be made by Act of the Assembly”.

The 2000 Act enabled the Secretary of State to make a “restoration order” resuming the Assembly and Executive, but it also granted the power to revoke that Order so that section 1 could enter into force once again. The UK government used these provisions to impose Direct Rule and resume devolution several times between 2000 and 2007. In this respect, the institutions were suspended but never removed.

### 6.1 Resumption of Direct Rule

The first suspension of the Northern Ireland Assembly lasted from 11 February until 30 May 2000, with two further 24-hour suspensions on 10 August 2001 and 22 September 2001.

Following a police raid of Sinn Féin’s offices at Stormont in October 2002, and the resignation of two Democratic Unionist Party (DUP) ministers from the Executive, the Assembly was suspended again from midnight on 14 October 2002. The [Northern Ireland Act 2000 \(Suspension of Devolved Government\) Order 2002](#) revoked a previous Order which had restored devolution following a one-day suspension in September 2001.

This phase of Direct Rule was to last five years while negotiations continued between the UK and Irish governments and political parties in Northern Ireland to secure an agreed basis for the renewal of devolution. Assembly elections were held on 26 November 2003 (having been delayed from May), despite the body having been suspended for more than a year.

Meanwhile, and as between 1974-99, Orders in Council were made on transferred matters, although this time under [paragraph 1\(1\)](#) of the Schedule to the 2000 Act. The same distinction between ordinary Orders and those made under the urgency procedure was retained. Direct Rule was renewed for six months (rather than a year) at a time.<sup>90</sup>

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<sup>90</sup> Previously, Orders in Council had been covered by [Section 85](#) of the Northern Ireland Act 1998

Orders in Council were often preceded by a proposed draft Order, sometimes accompanied by an explanatory document. This was effectively a consultative stage, which gave interested parties the opportunity to comment on the proposed legislation. The next stage was the laying of a draft Order before Parliament for subsequent approval by both the House of Commons and House of Lords, under the affirmative procedure. Orders could be considered on the floor of the House, in a Delegated Legislation Committee or by the Northern Ireland Grand Committee.<sup>91</sup>

Assembly Bills which were either passing through the Assembly or were due to be introduced at the point of the 2002 suspension were instead introduced to Parliament as Orders in Council.<sup>92</sup>

It was also possible to legislate for Northern Ireland by means of primary legislation. This practice continued in areas where the power to make legislation was “reserved” to the UK Parliament under the terms of the [Northern Ireland Act 1998](#), for example the [Police \(Northern Ireland\) Act 2003](#).

No cross-community consent was required during this period of Direct Rule.

## 6.2 Ministers and Direct Rule

The Northern Ireland Office took over executive responsibilities previously executed by the Northern Ireland Executive. Two additional junior ministers were added to the existing ministerial team, which resulted in the NIO having five ministers including the Northern Ireland Secretary.

These NIO ministers were responsible for answering Parliamentary Questions (PQs) on all matters (transferred, reserved and excepted), either orally or in writing. During devolution, PQs could not be tabled on transferred matters, but there was no such restriction given the reintroduction of Direct Rule.

NIO ministers also took over ten rather than six Northern Ireland Departments, due to the reorganisation of the Northern Ireland Civil Service in 1999. The NIO was by now based at Stormont House, close to Stormont Castle, the latter having been vacated by the NIO to house the Executive.

The areas which had been “transferred” to the Assembly before this period, as reflected in the departmental structure, were:

- finance and personnel;
- health, social services and public safety;

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<sup>91</sup> See House of Commons Information Office Factsheet L8, [Northern Ireland Legislation](#)

<sup>92</sup> See Commons Library Standard Note, Northern Ireland political developments, January 2002 – October 2003

- education;
- agriculture and rural development;
- enterprise, trade and investment;
- environment;
- culture, arts and leisure;
- employment and learning;
- regional development;
- social development.<sup>93</sup>

A complete list of Orders relating to devolved / transferred areas between 2002-07 was made available on the Northern Ireland Assembly's website, although this page is no longer active.<sup>94</sup>

Perhaps the most significant was the [Education \(Northern Ireland\) Order 2006](#), which sought to prohibit post-primary academic selection.

Peter Hain, the then Secretary of State for Northern Ireland, told the Commons in 2006 that he was “being very cautious about Orders in Council; I know there is sensitivity to them in Parliament, both in this place and the House of Lords”.<sup>95</sup>

As between 1974 and 1999, some transferred matters were dealt with via primary legislation. In 2003, for example, UK ministers announced support for civil partnerships and included provisions for Northern Ireland in the relevant UK Act passed the following year. The UK government also extended legislation on consumer credit and tobacco advertising, both also transferred matters.

## 6.3 Westminster committees

Between 2002-07, the Northern Ireland Affairs Committee took on a more proactive role in scrutinising the work of the Northern Ireland Departments. It also established a sub-committee to consider matters previously dealt with by the Northern Ireland Assembly.

The Northern Ireland Grand Committee (NIGC) considered Orders on transferred as well as excepted/reserved matters. The NIGC could also

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<sup>93</sup> See House of Commons Research Paper 03/84, [An introduction to devolution in the UK](#), 17 November 2003

<sup>94</sup> See Commons Library Standard Note, Northern Ireland political developments, January 2002 – October 2003

<sup>95</sup> [HC Debs 18 April 2006 Vol 445 c25](#)

consider primary legislation relating to Northern Ireland at second reading and other stages, as well as on general matters of concern. A draft Higher Education Order was rejected by the NIGC in 2005.

## 6.4

### Criticisms of Direct Rule, 2002-07

In his 2009 book, *Direct Rule and the Governance of Northern Ireland*, Derek Birrell summarised the main criticisms of Direct Rule as:

- The democratic deficit: transferred or devolved matters were not dealt with by a devolved government elected by the people of Northern Ireland;
- Limited accountability: Direct Rule ministers were not accountable to a local electorate, which could not vote them out of office;
- Partial government: NIO ministers had to divide their time between Northern Ireland and Westminster (and their own constituencies). One Secretary of State, Peter Hain, was also Welsh Secretary;
- Inadequate treatment of Northern Ireland business at Westminster: little time for scrutiny of Orders in Council by the Commons, Lords and parliamentary committees;
- The temporary nature of Direct Rule: this meant some policy decisions were put off and longer-term thinking generally absent.<sup>96</sup>

Birrell, however, also concluded that Direct Rule had “provided elements of good governance which devolution, on evidence to date, will struggle to meet”.<sup>97</sup>

The Northern Ireland Affairs Committee’s report, [Devolution and democracy in Northern Ireland – dealing with the deficit](#), included criticisms from witnesses regarding the 2002-07 period of Direct Rule. For example, Professor Christopher McCrudden told the Committee that:

There wasn’t the scrutiny and a lot of Northern Ireland legislation issues would have been at 11 o’clock at night to an empty House of Commons Chamber. You never got the detailed scrutiny of Northern Ireland legislation that you did get in Stormont.

The Committee’s report observed that:

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<sup>96</sup> Derek Birrell, pp244-45

<sup>97</sup> Derek Birrell, p245

The Government's practice was to process Orders on then reserved matters, which avoided consultation and removed the opportunity to amend the Order once formally laid.<sup>98</sup>

The Committee also heard that “the heavy reliance on Orders in Council is rarely entirely satisfactory given that Orders cannot be amended”. Professor Jonathan Tonge stated that:

We cannot go back to the days in the 1980s of undemocratic Orders in Council, half of which were not even debated at Westminster. The average length of debate on an Order in Council was 90 minutes. There was a huge democratic deficit.

Professor McCrudden told the Committee that this weaker level of parliamentary scrutiny had led to criticisms that Northern Ireland was “being governed in a quasi-colonial fashion”.<sup>99</sup>

## 6.5 St Andrews Agreement, 2006

As part of the St Andrews Agreement, which paved the way for the restoration of devolved government in 2007, [it was agreed](#) that the 2000 Act would be repealed. This meant that any future reversion to Direct Rule would require fresh primary legislation.

The second long-term phase of Direct Rule came to an end on 8 May 2007 when power was restored to the Northern Ireland Assembly following April elections and a power-sharing agreement between the DUP, Sinn Féin and other political parties in Northern Ireland.

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<sup>98</sup> Northern Ireland Affairs Committee, [Devolution and democracy in Northern Ireland – dealing with the deficit](#), 22 May 2018

<sup>99</sup> Northern Ireland Affairs Committee, [Devolution and democracy in Northern Ireland](#)

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## 7 Secretaries of State for Northern Ireland

William Whitelaw MP (24 March 1972 – 2 December 1973)

Francis Pym MP (2 December 1973 – 4 March 1974)

Merlyn Rees MP (5 March 1974 – 10 September 1976)

Roy Mason MP (10 September 1976 – 4 May 1979)

Humphrey Atkins MP (5 May 1979 – 14 September 1981)

Jim Prior MP (14 September 1981 – 11 September 1984)

Douglas Hurd MP (11 September 1984 – 3 September 1985)

Tom King MP (3 September 1985 – 24 July 1989)

Peter Brooke MP (24 July 1989 – 10 April 1992)

Sir Patrick Mayhew MP (10 April 1992 – 2 May 1997)

Mo Mowlam MP (3 May 1997 – 11 October 1999)

Peter Mandelson MP (11 October – 24 January 2001)

John Reid MP (25 January 2001 – 24 October 2002)

Paul Murphy MP (24 October 2002 – 6 May 2005)

Peter Hain MP (6 May 2005 – 27 June 2007)

Shaun Woodward MP (28 June 2007 – 11 May 2010)

Owen Paterson MP (12 May 2010 – 4 September 2012)

Theresa Villiers MP (4 September 2012 – 14 July 2016)

James Brokenshire MP (14 July 2016 – 8 January 2018)

Karen Bradley MP (8 January 2018 – 24 July 2019)

Julian Smith MP (24 July 2019 – 13 February 2020)

Brandon Lewis MP (13 February 2020 – )

## 7.1

# Direct Rule legislation, 1972-2000

[Northern Ireland \(Temporary Provisions\) Act 1972](#)

[Northern Ireland Act 1974](#)

[Northern Ireland Act 2000](#)

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