



RESEARCH PAPER 03/69
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The Northern Ireland (Monitoring Commission etc) Bill [HL]

Bill no 158 of 2002-3

All stages of this bill are due to be considered in the Commons on Wednesday 17 September. Its principal object is to make provisions in connection with the establishment of the Independent Monitoring Commission which, among other functions can recommend the exclusion of Ministers or parties from the Northern Ireland Executive. This Bill will allow the Secretary of State to exclude Ministers where a motion before the Assembly does not attract sufficient cross-community support. But he may only take action after a recommendation from the Commission, and a motion has been unsuccessful in the Assembly. The Bill does not set a date for elections to the Northern Ireland Assembly, which remains dissolved. The Bill received its remaining stages in the Lords on Monday 15 September where amendments were passed to give the Secretary of State power to exclude for two week periods before the Commission reports, or the Assembly considers an excluding motion.

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Summary of main points

Devolution in Northern Ireland has been in suspension since 14 October 2002. The Northern Ireland Assembly was dissolved on 28 April 2003 and no date has yet been set for elections to the body. The *Northern Ireland Assembly (Elections and Periods of Suspension) Act 2003* postponed the election due on 29 May and gave the Secretary of State power to specify the new date in an order.¹ The Secretary of State was also given power to determine the amounts of salaries and allowances payable to Members of the Assembly during the dissolution period.

The Joint Declaration of 1 May 2003 included a draft international agreement between the UK and Ireland to establish an Independent International Monitoring Commission. Its functions would be to:

- Monitor and report on continuing activity by paramilitary groups
- Report on the progress of implementation of normalisation measures by the British Government, in the context of acts of completion by paramilitaries
- Consider allegations from a party represented in the Assembly that another party represented in the Northern Ireland Assembly, or a Minister of the devolved administration was not committed to non-violence, or had breached the terms of the pledge of office.

The draft Agreement recognised that the *Northern Ireland Act 1998* would need amendment to provide the necessary powers for the Northern Ireland Assembly and for the British Government to respond to the Commission's recommendations. This is the purpose behind the Bill.

Under the *Northern Ireland Act 1998*, a Minister or party represented in the Assembly may only be excluded from the Northern Ireland Executive where a motion to that effect is carried in the Assembly, using the cross-community voting requirements of that Act. The Bill would allow the Secretary of State to exclude Ministers where a motion before the Assembly does not attract sufficient cross-community support. But he may only take action after a recommendation from the Commission, and where a motion has been unsuccessful in the Assembly.

The Bill also introduces a minimum exclusion period – 3 months for individual Ministers, 6 months for parties – and allows the Secretary of State to vary provisions on pay and allowances for Assembly Members, and financial support to political parties represented in the Assembly during their suspension.

¹ Detail on this is in *The Northern Ireland Assembly (Elections and Periods of Suspension) Bill*, Research Paper 03/43, 9 May 2003, <http://www.parliament.uk/commons/lib/research/rp2003/rp03-043.pdf>

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I Background

A. Suspension of devolution

Background to the Belfast (Good Friday) Agreement² and the *Northern Ireland Act 1998* is given in Library Research Papers 98/57 and 98/76. One of the most complex areas of the implementation of the Agreement has been progress on the decommissioning of paramilitary weapons. Perceived failures have led to a number of periods when the Northern Ireland Assembly and associated aspects of devolution have been suspended. Details of the suspension of devolution in February 2000 following the passage of the *Northern Ireland Act 2000* are given in Library Research Paper 00/13. This Act allows further suspensions by order under s2.

Devolution returned to Northern Ireland on 30 May 2000, but ran into further difficulties after the 2001 general election.³ The Assembly had been suspended for a twenty four hour period on 11 August 2001 following the resignation of David Trimble as First Minister on 2 July 2001. The Order did not need to be debated in Parliament,⁴ since its effect was rescinded by the restoration of devolution at midnight on 11 August through another statutory instrument.⁵ Devolution was again suspended for a day on 21 September, using similar procedures.⁶

A motion from the UUP to exclude Sinn Fein from the Executive under s30 of the *Northern Ireland Act 1998* was unsuccessful in the Assembly on 8 October 2001, despite DUP backing, because it failed to achieve sufficient cross community support.⁷ Following some movement in their position towards decommissioning from the IRA, and an announcement of progress from the Decommissioning Commission,⁸ the UUP Ministers rejoined the Executive. Mr Trimble initially failed to gain sufficient votes in the Assembly on 2 November 2001 for his re-election. Two UUP members, Peter Weir and Pauline Armitage, voted against his appointment. Following a controversial change in standing orders to allow immediate re-designation, the two members of the Women's

² Cm 3883 published 10 April 1998

³ More details are provided in SN/PC/2112 *Northern Ireland Political Developments January 2002-March 2003* at <http://hcl1.hclibrary.parliament.uk/notes/pcc/snpc-02112.pdf>

⁴ *The Northern Ireland Act 2000 (Suspension of Devolved Government) Order 2001* SI 2884

⁵ *The Northern Ireland Act 2000 (Restoration of Devolved Government Order) 2001* SI 2895

⁶ *Northern Ireland Act 2000 (Suspension of Devolved Government) (no2) Order 2001* SI 2001/3230; *Northern Ireland Act 2000 (Restoration of Devolved Government) (No 2) Order 2001* SI 2001 3231 <http://www.niassembly.gov.uk/record/011008.htm#1> The vote was as follows: Total Votes 99 Total Ayes 54 (54.5%)Nationalist Votes 39 Nationalist Ayes 0 (0.0%)Unionist Votes 54 Unionist Ayes 54 (100.0%)

⁸ On 22 October 2001 Gerry Adams and Martin McGuinness made statements indicating that they had asked the IRA to begin the decommissioning process.

Coalition had re-designated themselves as one Unionist and one Nationalist in an effort to gain sufficient votes for Mr Trimble.⁹

The election of the First Minister, David Trimble, and Deputy First Minister, Mark Durkan, on 6 November 2001 marked a resumption of more normal relations. The election followed the re-designation of three members of the Alliance Party as Unionists.¹⁰

A judicial review challenge by the DUP in November 2001 against the decision of the Secretary of State that the next election of the Assembly would not be until May 1 2002 was not upheld by the High Court in Belfast.¹¹ The DUP had argued that the election of Mr Trimble and Mr Durkan was unlawful, as having taken place after the statutory six week period. The case was subsequently heard by the House of Lords and judgment given against the DUP by 3-2 on 25 July 2002.¹²

Throughout 2002, sectarian violence and allegations that the IRA had broken their ceasefire caused significant pressure on the devolution settlement in Northern Ireland. The arrest in August 2001 and subsequent trial of three Irishmen in Columbia, all allegedly linked to the IRA, added to this pressure. It was seen as evidence that Republican paramilitaries continued to train, gather intelligence and test weapons.¹³

On 15 June 2002, Jeffrey Donaldson put a motion before the UUP's executive, calling for a withdrawal of the party's ministers from the Executive by 1 July if Sinn Fein were not expelled. The motion was defeated.¹⁴ However, the motion was seen as a challenge to Mr Trimble's leadership of the UUP, and as a result, David Trimble said on 16 June 2002 that he would consider resigning as First Minister to try to make progress with the Good Friday Agreement.¹⁵

The crisis deepened on 4 October 2002 when Sinn Fein's offices at Stormont were raided as part of a major police investigation into intelligence gathering by Republicans. Furthermore, on 6 October, Sinn Fein's head of administration at Stormont, Dennis Donaldson, was remanded in custody. Those arrested were charged with possessing documents likely to be of use to terrorists. Following the arrests, David Trimble

⁹ Full details on the debate and the redesignation are available from the Assembly Official Report at <http://www.niassembly.gov.uk/record/011102.htm>

¹⁰ BBC News 6 November 2001 'Trimble re-elected as Northern Ireland First Minister'

¹¹ *Newsletter* 8 November 2001 'Judgment today on DUP move'. See also statement by John Reid at <http://www.nio.gov.uk/press/011105b.htm> and *Irish News* 9 November 2001 'DUP wins first round in election legal battle'

¹² The full judgment is available at <http://pubs1.tso.parliament.uk/pa/ld200102/ldjudgmt/jd020725/robin-1.htm>

¹³ "New Threats to peace process", *The Scotsman*, 7 October 2002

¹⁴ "Trimble holds off Donaldson challenge with ease", *Irish Times*, 17 June 2002, p6

¹⁵ "Trimble in fresh threat to quit executive role", *Financial Times*, 17 June 2002, p2

threatened to withdraw from the Executive if Sinn Fein were not excluded. Motions agreed at the Ulster Unionist Council meeting on 22 September 2002 had already stated:

3. The Ulster Unionist Party supports devolution and has worked hard in the Assembly to deliver good government for all the people of Northern Ireland. Whilst we wish to sustain the institutions of government through the Assembly, we are equally determined to protect the democratic integrity of those institutions. In view of the failure of Sinn Fein/IRA to honour their commitment to exclusively peaceful means, the Ulster Unionist Party will, with immediate effect, adopt a policy of non-participation in meetings of the North-South Ministerial Council involving Sinn Fein, at both plenary and bilateral level. In the absence of Ulster Unionist ministers, the NSMC will cease to function.

4. The Ulster Unionist Party will seek an urgent meeting with our Prime Minister to place before him our demand that he honours the pledge he gave on April 10th, 1998, to provide an effective exclusion mechanism to enable Sinn Fein/IRA to be removed from ministerial office. The Prime Minister will be informed that the UUP will not return to the NSMC and will take further action in relation to our participation in the executive unless he honours his pledge.

5. The Ulster Unionist Party will initiate talks with the other parties and the Government over the next three months to ensure that there is a viable basis for the future governance of Northern Ireland and that unless upon the conclusion of such talks it has been demonstrably established that a real and genuine transition is proceeding to a conclusion, the party leader will recommend to a reconvened UUC meeting on January 18th, 2003, the immediate resignation of all Ulster Unionist ministers from the administration.¹⁶

Particularly important to the UUP and the DUP was the issue of decommissioning of weapons. Sinn Fein, meanwhile, protested at the methods used in the police search of Sinn Fein's offices at Stormont. This in turn led to an apology from the Chief Constable, Hugh Orde, who said that the raid could have been done "in a more sensitive and appropriate style".¹⁷ On Tuesday 8 October, the DUP leader, Rev Ian Paisley, confirmed that his party's two ministers, Regional Development minister Peter Robinson and the Social Development minister Nigel Dodds, would resign from the Executive. These resignations took effect on 11 October 2002.

As the two DUP Ministers had resigned, it was clear that the Assembly would be unlikely to last more than a few days without action being taken to exclude Sinn Fein from the Executive. This would have required motions in the Assembly to exclude Sinn Fein from the Executive, but this was unlikely to happen in the face of likely opposition from the Irish Government and from the SDLP. The SDLP's opposition to such exclusion would

¹⁶ Ulster Unionist Party press release, *What the UU delegates agreed*, 23 September 2002, <http://www.uup.org/current/displayfullpress.asp?pressid=466>

¹⁷ "Police chief says sorry for manner of Stormont raid," *The Times*, 8 October 2002, p4

in any case have made it highly unlikely that any such motion would have been passed. Two previous attempts at passing exclusion motions had failed to pass the Assembly. Alternatively, the UK Government could have called fresh elections but the resulting campaign could have damaged relations between the two communities even further.

The Northern Ireland Assembly was therefore suspended at midnight on 14 October 2002 following what the then Secretary of State, John Reid, called a "loss of trust on both sides".¹⁸ Suspension was effected by an order laid under the *Northern Ireland Act 2000*. The Order came into force on 15 October.¹⁹

All the functions of the Assembly and the power-sharing executive were therefore transferred back to the British Government. The number of ministers at the Northern Ireland Office was increased from two to four. Under the terms of the suspension, the ministers and members of the Assembly had their pay cut by one-third, and later to one half. However, Members of the Legislative Assembly continue to be able to use their offices for constituency work.

Since suspension, several rounds of talks have taken place between the various parties involved.²⁰ A series of talks aimed at restoring devolution to Northern Ireland took place on 3 and 4 March 2003 between the British and Irish Government and pro Agreement parties. The Prime Minister, Tony Blair, announced on 5 March that the Northern Ireland Assembly elections, due on 1 May 2003, were to be postponed to 29 May 2003.²¹ In order for the elections to be postponed, legislation revoking the *Northern Ireland (Date of Next Assembly Poll) Order 2001* was required.²² Although the *Northern Ireland Act 1998* gave the Secretary of State the power, under section 31(2) of the Act, to vary the election date by up to two months,²³ the Order specified that the Northern Ireland Assembly elections would take place on the date specified in section 31(3) of the Act, namely 1 May 2003. The suspended Assembly was dissolved on 28 April in accordance with this Act.

On 1 May the British Government announced that it would postpone elections further until the autumn, on the grounds that outstanding issues about the position of the IRA could not be resolved during an election campaign. This decision was not supported by the Irish Government. The *Northern Ireland Assembly (Elections and Periods of Suspension) Act 2003* postponed the election due on 29 May and gave the Secretary of

¹⁸ Northern Ireland Office press release, *Statement on suspension by the Secretary of State*, 14 October 2002, available at <http://www.nio.gov.uk/press/021014a.htm>

¹⁹ *Northern Ireland Act 2000 (Suspension of Devolved Government) Order 2002*, SI 2002/2574, available at <http://www.legislation.hmso.gov.uk/si/si2002/20022574.htm>

²⁰ HC Deb 20 November 2002 vol 394 cc640-1

²¹ HC Deb 5 March 2003 vol 400 c811. Further information on the decommissioning process is available in Library Standard Note SN/PC/1227, *Northern Ireland Decommissioning*, 24 October 2001

²² SI 2001/3959, available at <http://www.legislation.hmso.gov.uk/si/si2001/20013959.htm>

²³ section 31(2)

State power to specify the new date in an order.²⁴ The Bill, as passed, provided for the temporary suspension of elections until 15 November 2003, but with power for the Secretary of State to continue the suspension for further periods of 6 months maximum. This order is subject to the affirmative resolution procedure. The Act also shortened the electoral timetable to 20 days. At the time of writing, there are no indications that any date for a poll has been set. The Secretary of State was also given power to determine the amounts of salaries and allowances payable to MLAs during dissolution.

II Key Aspects of the Belfast Agreement

A number of different mechanisms exist within the *Northern Ireland Act 1998* designed to ensure the smooth operation of the Northern Ireland executive which are referred to in the Bill. These are described below. This section of the Paper also summarises the role of the existing Independent International Commission on Decommissioning, created under earlier legislation.

A. The Pledge of Office

As a condition of appointment Ministers affirm the terms of a Pledge of Office and can be removed from office following a decision by the Assembly taken on a cross community basis if the responsibilities of the Pledge are not met.²⁵ The Belfast Agreement noted "Those who hold office should use only democratic non-violent means, and those who do not should be excluded or removed from office under these provisions" (para 25).

The Pledge of Office is set out in Schedule 4 to the *Northern Ireland Act 1998* as follows:

To pledge:

- (a) to discharge in good faith all the duties of office;
- (b) commitment to non-violence and exclusively peaceful and democratic means;
- (c) to serve all the people of Northern Ireland equally, and to act in accordance with the general obligations on government to promote equality and prevent discrimination;
- (d) to participate with colleagues in the preparation of a programme for government;

²⁴ Detail on this is in *The Northern Ireland Assembly (Elections and Periods of Suspension) Bill*, Research Paper 03/43, 9 May 2003, <http://www.parliament.uk/commons/lib/research/rp2003/rp03-043.pdf>

²⁵ Ministers are defined as First Minister, Deputy First Minister or Northern Ireland Minister under section 7(3) of the 1998 Act

- (e) to operate within the framework of that programme when agreed within the Executive Committee and endorsed by the Assembly;
- (f) to support, and to act in accordance with, all decisions of the Executive Committee and Assembly;
- (g) to comply with the Ministerial Code of Conduct.

Code of conduct

Ministers must at all times:

observe the highest standards of propriety and regularity involving impartiality, integrity and objectivity in relationship to the stewardship of public funds;}

be accountable to users of services, the community and, through the Assembly, for the activities within their responsibilities, their stewardship of public funds and the extent to which key performance targets and objectives have been met;

ensure all reasonable requests for information from the Assembly, users of services and individual citizens are complied with; and that Departments and their staff conduct their dealings with the public in an open and responsible way;

follow the seven principles of public life set out by the Committee on Standards in Public Life;

comply with this code and with rules relating to the use of public funds;
operate in a way conducive to promoting good community relations and equality of treatment;

not use information gained in the course of their service for personal gain; nor seek to use the opportunity of public service to promote their private interests; observe the highest standards of propriety and regularity involving impartiality, integrity and ensure they comply with any rules on the acceptance of gifts and hospitality that might be offered;

declare any personal or business interests which may conflict with their responsibilities. The Assembly will retain a Register of Interests. Individuals must ensure that any direct or indirect pecuniary interests which members of the public might reasonably think could influence their judgement are listed in the Register of Interests;

The Pledge requires Ministers to have commitment to non-violent and exclusively peaceful and democratic means but there is no specific linkage to decommissioning. It was one of the more controversial aspects of the Belfast Agreement, and no Minister has yet been found to have broken the Pledge.

B. Cross-community support

The Belfast Agreement provided for key decisions to be taken on a cross community basis including the election of the Chair and Deputy Chair and the First Minister and Deputy First Minister. In addition an individual may be removed from office for failing to meet his responsibilities including those in the Pledge of Office, but only on a cross community basis.

Section 4(5) of the *Northern Ireland Act 1998* defines 'cross community support' as follows:

"cross-community support", in relation to a vote on any matter, means-

- (a) the support of a majority of the members voting, a majority of the designated Nationalists voting and a majority of the designated Unionists voting; or
 - (b) the support of 60 per cent of the members voting, 40 per cent of the designated Nationalists voting and 40 per cent of the designated Unionists voting;
- "designated Nationalist" means a member designated as a Nationalist in accordance with standing orders of the Assembly and "designated Unionist" shall be construed accordingly.

At their first meeting Assembly members registered a designation of identity - nationalist, unionist or other, to measure cross community support. The UUP, DUP, UKUP and three independent Unionists designated themselves as Unionist; The SDLP and Sinn Fein designated themselves as Nationalist and the Alliance and Women's Coalition were designated as 'other'. Re-designations have occurred as noted above.²⁶

C. Exclusion from ministerial office

Section 30 of the 1998 Act enabled the Assembly to exclude a Minister from office for a term of 12 months, beginning with the date of the resolution of the Assembly, with the opportunity to extend for periods of one year at a time. These periods would end with dissolution, or an Assembly resolution to rescind the exclusion. The motion for a resolution had to be:

- Supported by at least 30 Members of the Assembly
- Moved by the First Minister and Deputy First Minister, acting jointly, or
- Moved by the Presiding Officer, following a notice served on him by the Secretary of State

Motions are subject to the cross community support procedures.

²⁶ See the Northern Ireland Assembly website for changes to Standing Orders at <http://www.niassembly.gov.uk/sopdf/so.htm>

D. The Independent International Commission on Decommissioning

An Independent International Commission on Decommissioning had been established before the Belfast Agreement. The *Northern Ireland Arms Decommissioning Act 1997*²⁷ set out the framework for a decommissioning scheme. Similar legislation was passed in the Republic of Ireland.²⁸ On 26 August 1997 the British and Irish Governments signed the agreement establishing the International Commission on Decommissioning. It has issued a series of reports assessing the extent to which paramilitaries have decommissioned. Section 2 of the 1997 Act had limited the extent of the amnesty period established for the handing in of decommissioned weapons to a final date of 27 February 2002. This period was extended in the *Northern Ireland Decommissioning (Amendment) Act 2002* to a maximum period of 27 February 2007. Further details of the operation of the Commission are contained in Library Research Paper 01/114. The establishment of a new international monitoring commission does not affect the existence of the Decommissioning Commission, as made clear in the Joint Declaration issued on 1 May 2003:

14. All paramilitary groups should actively engage with the Independent International Commission on Decommissioning with a view to putting arms beyond use in a manner that is conducive to creating public confidence and all parties should, in accordance with the Agreement, use their influence to encourage and support the completion of that process. In accordance with its mandate, the Independent International Commission on Decommissioning will continue its existing functions. The two Governments continue to believe that putting all arms beyond use remains an indispensable part of implementing the Agreement.

The Ulster Volunteer Force suspended all contact with the Independent International Commission on Decommissioning on 17 January 2003. None of the major paramilitary organisations—the IRA, UVF and the feuding Ulster Defence Association - is now in formal contact with the Commission. Speaking in the House of Commons during Northern Ireland Questions on 12 March 2003, the new Secretary of State, Paul Murphy, said:

The Loyalist Volunteer Force engaged in an act of decommissioning in 1998 and, the Provisional IRA engaged in two acts of decommissioning in 2001 and 2002. However, no paramilitary organisations are currently in contact with the Independent International Commission on Decommissioning. It was clear to all involved in the discussions at Hillsborough last week that much more needs to be done to ensure that both republican and loyalist organisations complete the transition to exclusively peaceful means—real, total and permanent

²⁷ The Act allowed anyone acting in accordance with a decommissioning scheme to hand in arms and explosives to do so without risk of prosecution, the whole process being overseen by an independent commission

²⁸ *Decommissioning Act 1997*

III March 2003 party talks and the IRA statement

Proposals for the various parties to discuss were released to pro-Agreement parties as part of a 28-page document which covered five key areas for discussion in March 2003. This draft Joint Declaration set out a number of “proposals necessary to promote trust, implement the Agreement fully, restore the devolved institutions and attain a fully normal society in Northern Ireland.”²⁹ The Governments were not prepared to publish the document more widely at that stage,³⁰ but they had intended to publish it in Hillsborough on 10 April 2003, the fifth anniversary of the Agreement. In fact, publication was delayed as agreement stalled.

The Ulster Unionist Party and the Social and Democratic Labour Party (SDLP) blamed the IRA for stalling the process by not making a sufficiently clear statement about its future intentions. The Ulster Unionist leader, David Trimble, said that the peace process should not be “held to ransom” by the Republican movement, while the SDLP leader, Mark Durkan, said that the Governments should publish the Joint Declaration and tell the parties to accept it.³¹ The Democratic Unionist Party leader, Ian Paisley, said that the British Government was capitulating to the IRA by continuing to negotiate with it, and that the Government had said there would be no further negotiations over the Declaration.³² Sinn Fein had called for the publication of the Joint Declaration on several occasions, and it repeated that call after the postponement.³³

On 13 April 2003 the IRA passed a statement to the British and Irish Governments.³⁴ On 14 April 2003 Mr Murphy made a statement in the Commons in which he referred to “serious concerns about continuing paramilitary activity.”³⁵ After outlining the nature of the dialogue between the British and Irish Governments over the previous six months, he said that the two Governments had studied carefully the latest IRA statement and had “asked the IRA to clarify a number of questions arising from it.”³⁶ Mr Murphy was not prepared to publish the package of proposals until clarification had been received:

The two Governments will continue to make every effort to bring about a basis for publishing the package of proposals, but it would not be right to publish the

²⁹ *Joint Declaration by the British and Irish Governments*, 13 April 2003, Dep 03/1152 and Northern Ireland Office website, at <http://www.nio.gov.uk/press/030501a.htm>. Also available are the accompanying Proposals in relation to On The Run and Agreement between the British and Irish Governments

³⁰ HC Deb 6 March 2003, c969

³¹ BBC on-line, 10 April 2003, http://news.bbc.co.uk/1/hi/northern_ireland/2936321.stm

³² Ibid

³³ <http://sinnfein.ie/index2.html>

³⁴ The full text of the statement was not made public until 6 May 2003

³⁵ HC Deb 14 April 2003, c635

³⁶ Ibid, c636

proposals, and they can have no status until the necessary clarity on all sides about acts of completion is in place.³⁷

He emphasised the importance of decommissioning and the relations between the Irish and British Governments, which “have never been better.”³⁸ He looked forward to the return of devolved government in Northern Ireland and believed that the Sinn Fein leadership and many people within Sinn Fein were “committed to the democratic process.”³⁹ However, until there was confidence in the process, built on trust, “we shall get nowhere in the democratic and political process in Northern Ireland.”⁴⁰

Mr Blair requested clarification of the IRA statement in three areas, and he made these public in a press briefing on 23 April 2003. He asked:

When the IRA say that their strategies and disciplines will not be inconsistent with the Good Friday Agreement, does that mean an end to all activities inconsistent with the Good Friday Agreement, including targeting, procurement of weapons, so-called punishment beatings, and so forth?

Secondly, when they say that they are committed to putting arms beyond use through the Decommissioning Commission, does that mean all arms so that the process is complete?

And thirdly, when they say that they support the Good Friday Agreement and want it to work, does that mean that if the two Governments and the other parties fulfil their obligations under the Good Friday Agreement and the Joint Declaration, that that means the complete and final closure of the conflict?⁴¹

The Sinn Fein leader, Gerry Adams, spoke about the Joint Declaration and the IRA’s statement at Stormont on 27 April 2003, and he explained his responses to the three questions. .⁴²

A few days later, in response to the British and Irish Governments’ request for clarification, Mr Adams made a statement on the IRA’s intentions:

The IRA leadership makes it clear in its statement that it is determined that its activities will be consistent with its resolve to see the complete and final closure of the conflict.

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid, cc638-9

⁴⁰ Ibid, c640

⁴¹ *PM: Northern Ireland agreement frustratingly close*, <http://www.pm.gov.uk/output/page3516.asp>

⁴² *Guardian Unlimited*, 29 April 2003, at

http://www.guardian.co.uk/Northern_Ireland/Story/0,2763,945249,00.html The full text is set out in Library Research Paper 03/43 at p17-21

The IRA leadership is determined that there will be no activities which will undermine in any way the peace process and the Good Friday Agreement.

The IRA statement is a statement of completely peaceful intent. Both governments have already acknowledged this.

The Joint Declaration and all other statements should now be published. The commitments contained in all statements should be implemented.⁴³

Mr Trimble was not convinced by Mr Adams's clarification, maintaining that Republicans still had to be "dragged over the finishing line" and forced to wind up their private army.⁴⁴ After the IRA statement had been made public, on 6 May 2003, Mr Trimble said that

[...] we all expected there would be a transition period after the Good Friday Agreement, but five years after the Agreement, is it not reasonable to expect that transition to have been completed and for us now to be living in a society where there are no private armies and there is no paramilitary activity?⁴⁵

For the DUP, Nigel Dodds said that "mere words and statements and stunts from the IRA will not suffice."⁴⁶ The leader of the SDLP, Mark Durkan, reportedly said that the statement was "not as clear and unambiguous as Sinn Fein had claimed." He also said that the impasse

[...] vindicate[d] the SDLP's continued health warning about the dangers of a process being conducted in a way which veers between stand-offery and choreography.⁴⁷

IV The Joint Declaration

A. The Declaration

The Joint Declaration was published on 1 May 2003 and is summarised below.⁴⁸ It stated that the devolved institutions, if restored, could flourish only in a climate of trust, and it stressed the necessity in this context of "acts of completion" in the full implementation of the Belfast, or Good Friday, Agreement. The Declaration included chapters on the political institutions, paramilitarism, normalisation of security arrangements, policing and justice, and rights, equality, identity and community. There were three annexes, on

⁴³ 30 April 2003, at <http://cain.ulst.ac.uk/issues/politics/docs/sf/ga300403.htm>

⁴⁴ *Guardian Unlimited*, 29 April 2003, at http://www.guardian.co.uk/Northern_Ireland/Story/0,2763,945596,00.html

⁴⁵ BBC on-line, 7 May 2003, http://news.bbc.co.uk/1/hi/northern_ireland/3006675.stm

⁴⁶ *Ibid*

⁴⁷ BBC on-line, 7 May 2003, http://news.bbc.co.uk/1/hi/northern_ireland/3006675.stm

⁴⁸ For the full text see <http://www.nio.gov.uk/pdf/joint2003.pdf>

security normalisation, devolution of policing and justice, and rights and equality. The planned outcome in a number of areas was:

- *Normalisation*- the vacation and demolition of security installations, the closure of designated military bases, a substantial decrease in military deployments in support of the police, a phased reduction of troops to peacetime levels, and a substantial decrease in military helicopter activity and usage. Details were set out in Annex 1.
- *Policing and justice*- further devolution of policing and justice, as set out in Annex 2, with a view to introducing legislation at Westminster to achieve this devolution in the lifetime of the next Assembly. Possible models to administer devolved policing and justice structures are outlined in this Annex. At present these matters are reserved to Westminster under Schedule 3 of the *Northern Ireland Act 1998*. Specific commitments included a commitment to appoint an independent Oversight Commissioner to scrutinise the implementation of the Government's decisions on the Criminal Justice Review, a new Criminal Justice Bill to create a Judicial Appointments Commission, and legislation to allow for lateral entry and secondments to the new Police Service of Northern Ireland
- *Rights, Equality, Identity and Community*- further specific measures were outlined in Annex 3. As well as strengthening the position of the Northern Ireland Human Rights Commission, this included further initiatives in relation to victims of violence, improving community relations, and regeneration of areas of greatest disadvantage. The British Government committed itself to considering the need for future legislation in relation to the Parades Commission.

The Joint Agreement noted that the two Governments were committed to a review of the Belfast Agreement which would necessitate the consideration of other issues.

34. The two Governments are committed to a review this autumn of the operation of the Agreement (under paragraph 8 of the Validation, Implementation and Review section). This provides a vehicle for further consideration of a number of other important issues that the parties have brought to the table. These will include the question of designation and voting arrangements in the Northern Ireland Assembly; the effectiveness of the Pledge of Office with regard to the responsibilities of Ministers to participate in the work of the Executive and the other institutions of the Agreement; and the nomination procedures for attendance at meetings of the North/South Ministerial Council and the British- Irish Council. The Governments will, in consultation with the parties, put forward proposals for the agenda and conduct of the review. Different formats may be appropriate for the discussion of different issues.

There has been press speculation about the likely timing of any review.⁴⁹ The Declaration rested on the complete cessation of paramilitary activity. Paragraph 13 stated that:

Paramilitarism and sectarian violence ... must be brought to an end, from whichever part of the community they come. We need to see an immediate, full and permanent cessation of all paramilitary activity, including military attacks, training, targeting, intelligence gathering, acquisition or development of arms or weapons, other preparations for terrorist campaigns, punishment beatings and attacks and involvement in riots. Moreover, the practice of exiling must come to an end and the exiled must feel free to return in safety. Similarly, sectarian attacks and intimidation directed at vulnerable communities must cease.

Paragraph 15 stated that “paramilitary groups need to make it clear that they have made such an historic act of completion, and that it is reflected in reality on the ground.”

B. The Independent Monitoring Commission

As part of the package of proposals surrounding the Joint Declaration, a draft Agreement on Monitoring and Compliance between the British and Irish Governments was published on 1 May 2003. This envisaged the establishment of an Independent Monitoring Commission to monitor the carrying out of various commitments under the Belfast Agreement. These were:

- Monitoring and reporting on continuing activity by paramilitary groups
- Reporting on the progress of implementation of normalisation measures by the British Government, in the context of acts of completion by paramilitaries
- Consideration of allegations from a party represented in the Assembly that another party represented in the Northern Ireland Assembly, or a Minister of the devolved administration was not committed to non-violence, or had breached the terms of the pledge of office. For this aspect of its work, only British members of the Commission would undertake the consideration. Findings and recommendations for remedial action would be reported solely to the British Government. The intention was to allow the UK government to act to exclude parties or Ministers should a motion to that effect fail to be passed in the Assembly.

The draft Agreement recognised that the *Northern Ireland Act 1998* would need amendment to provide the necessary powers for the Northern Ireland Assembly and for the British Government to respond to the Commission’s recommendations. Two members of the Commission would be British, one from Northern Ireland – to be appointed by the British Government, one member would be appointed by the Irish Government and one would be a nominee of the United States Government, and appointed by the British and

⁴⁹ *The Belfast Telegraph* 10 September 2003 ‘Good Friday Agreement: show goes on and on’ at <http://www.belfasttelegraph.co.uk/news/story.jsp?story=442116>

Irish Government. The text of the draft Agreement can be found at Appendix 1 and is also available from the Northern Ireland Office website.⁵⁰

On 4 September Paul Murphy, Secretary of State for Northern Ireland, announced the names of the four Commissioners. These are: John Grieve, formerly a senior officer in the Metropolitan Police, Lord Alderdice, former Presiding Officer of the Northern Ireland Assembly, Joseph Brosnan, a former Secretary General of the Department of Justice in Ireland and Richard Kerr a former Deputy Director of Central Intelligence in the United States. The Northern Ireland Office press notice stated:

3. The Commission will be formally established by an International Agreement between the British and Irish Governments. This will allow it to function in both jurisdictions with the necessary support and assistance from the two Governments. British and Irish domestic legislation will also be necessary in order to place the Commission on an appropriate statutory footing in both jurisdictions. The draft International Agreement published today has been agreed in substance between the two Governments. It will be formally signed and ratified in the Autumn in line with British and Irish procedures.⁵¹

It also stated that where matters referred to the Commission relate to the operation of the institutional arrangements under Strand One of the Belfast Agreement they will be considered only by those members appointed by the British Government.

C. Reactions to the Joint Declaration and draft International Agreement

There have been divisions within the Ulster Unionist Party (UUP) over support for the Joint Declaration and efforts by the party leader, David Trimble, to restart the Good Friday process and help restore devolved government in Northern Ireland. In June 2003 a motion of no confidence in Mr Trimble as MP for Upper Bann was signed by some 30 UUP members. Mr Trimble also faced opposition from Jeffrey Donaldson, who led a group of ‘rebels’ who wanted the UUP to reject the Joint Declaration. They accused Mr Trimble of granting concessions to Sinn Fein and objected to the proposal to appoint an Irish Government representative on the Independent Monitoring Committee (IMC), which would decide whether parties in the Assembly had breached the agreement.

On 23 June 2003 three of the six Westminster UUP MPs, Jeffrey Donaldson, Martin Smyth and David Burnside, resigned the party whip in protest at Mr Trimble’s policies. Roy Beggs and Lady Sylvia Hermon supported Mr Trimble and the party’s executive voted by 54% to 46% to back him. The Democratic Unionist Party (DUP), led by Ian Paisley, has also rejected the Good Friday process. The three MPs were suspended from

⁵⁰ <http://www.nio.gov.uk/pdf/monitori.pdf>

the UUP on 27 June 2003, following a decision of the party disciplinary committee, but they sought a ruling from the High Court in Belfast on the legality of the party officers' action. On 7 July 2003 Mr Justice Paul Girvan said that the suspension was invalid because the disciplinary committee set up by the UUP officers had been "improperly constituted."⁵² The three were reinstated as UUP members, but on 11 July 2003 party officers voted by six votes to three, with several abstentions, to take further action against them. On 8 July 2003, in another vote of confidence in Mr Trimble's constituency, 63% voted to support him.

On 22 July 2003 UUP party officers met to select a disciplinary committee, but a formal submission to the committee was deferred to allow for a consultative period of up to three weeks in which efforts would be made to resolve the internal divisions. On 6 September the Ulster Unionist Council voted in favour of a motion from David Trimble calling for the three UUP MPs to retake the party whip by 443 to 359 votes. The three MPs had called the meeting to try to stop disciplinary moves against them, but voting was not reached on their motion. The vote was interpreted as a victory for Mr Trimble. The BBC quoted Jeffrey Donaldson as commenting: 'We will not be retaking the whip at Westminster - we are going to oppose the legislation linked to the joint declaration.'⁵³ Disciplinary action has been deferred against the so-called 'rebel' MPs Jeffrey Donaldson, Martin Smyth and David Burnside. The issue has been left until the next UUP officers' meeting, due on October 3.⁵⁴

Sinn Fein called on the British Government to set a date for elections to the Northern Ireland Assembly, in spite of the UUP's internal problems. There has been speculation that the party is considering a legal challenge to force a date for the elections.⁵⁵ Gerry Adams was reported to have said that the peace process has to be seen to be bigger than the future of any one party.⁵⁶ He was also opposed to the Independent Monitoring Body since he considered that Sinn Fein would be the sole target for sanctions.⁵⁷ The DUP also supported the case for elections as soon as possible.

At Northern Ireland questions on 10 September, the Secretary of State, Paul Murphy commented on the need to hold elections for the Assembly as soon as possible.

Mr. David Trimble (Upper Bann): Can the Secretary of State confirm that it is still the Government's policy that there must be effective and substantial acts of completion—which is a euphemism for complete decommissioning and effective disbandment—before there can be a resumption of the Northern Ireland Assembly? Can he give his assessment of whether we will see early movement on effective acts of completion?

⁵¹ *Northern Ireland Office* 4 September 2003 'Major Progress on Independent Monitoring Commission'

⁵² BBC News, 7 July 2003 at http://news.bbc.co.uk/1/hi/northern_ireland/3049762.stm

⁵³ BBC News 6 September 2003 at http://news.bbc.co.uk/1/hi/northern_ireland/3085558.stm

⁵⁴ *Belfast Telegraph* 13 September 'Unionist motion may end divisions'

⁵⁵ BBC News 10 September 2003 at http://news.bbc.co.uk/1/hi/northern_ireland/3096618.stm

⁵⁶ *Press Association*, 23 July 2003

⁵⁷ *Ibid*

Mr. Murphy: I sincerely hope that there will be early movement on such acts. The right hon. Gentleman will be aware that in March and April we made considerable progress over a number of weeks—although not enough, of course, to be able to do what we wanted in setting up the institutions. I believe that by working on what occurred in March and April, and because all parties in Northern Ireland want to make progress, we can be hopeful that there will be progress on acts of completion in order to ensure that we can get the institutions up and running again.

The right hon. Gentleman is aware—more than anybody, I suppose—that we want to get not only the Assembly but the Executive up and running in Northern Ireland. The establishment of that Executive must be based on mutual trust, understanding and confidence among the parties that make it up.

Mr. Seamus Mallon (Newry and Armagh): When the Secretary of State presents the Northern Ireland (Monitoring Commission etc.) Bill next week, will he ensure that the measure requires parties in the Executive to attend Executive meetings and north-south ministerial meetings as part of their duties and to ensure that they assume collective responsibility along with their ministerial colleagues? Will he ensure that the Bill deals with such breaches of rules or will they be put on the long finger again?

Mr. Murphy: My hon. Friend is right that the independent monitoring commission will deal, among other matters, with political breaches of the Good Friday agreement. He also knows that the commission will report to the implementation group in the Northern Ireland Assembly. There will be an opportunity next week to debate that in detail. It is therefore up to the Northern Ireland Assembly to consider the best way to deal with such a report. I repeat that we shall debate those matters in greater detail next week.

Mr. Alistair Carmichael (Orkney and Shetland): Does the Secretary of State accept that the implementation of the Belfast agreement is going nowhere unless and until the Northern Ireland Assembly is allowed to renew its democratic mandate? Will he therefore take the opportunity to confirm that elections will be held in the autumn and that there will be no further postponement, which would constitute cancellation?⁵⁸

Mr. Murphy: No one wants postponement or cancellation of elections. Earlier, I said that we all want the elections to take place before the year is out. I repeat the point that I made to the right hon. Member for Upper Bann (Mr. Trimble) that we want the other institutions as well as the Assembly to work again. Of course, we want the Northern Ireland Assembly to be up and running, but we also want the Government of Northern Ireland to do those things that my fellow Ministers and I currently have to undertake on behalf of the people of Northern Ireland.

The BBC reported on 10 September that there had been a private meeting between Tony Blair and the Sinn Fein leadership the previous weekend.⁵⁹ The BBC reported statements from Martin McGuinness on the need to set a date for the election of the Assembly.

⁵⁸ HC Deb 10 September 2003 c316-317

⁵⁹ http://news.bbc.co.uk/1/hi/northern_ireland/3096618.stm

The *Sunday Times* suggested that negotiations had reached an intense stage, including a meeting between Tony Blair and Bertie Ahern on 13 September:

This suggestion of movement from the IRA will be the subject of intense political negotiations over the next fortnight, as the British and Irish governments attempt to pin down the details of a settlement before committing themselves to assembly elections. The taoiseach and prime minister met yesterday at Chequers to discuss how to restart Northern Ireland's political process.

Last April the IRA offered to put up to 70% of its weapons "beyond use" and to issue a statement pledging totally peaceful intent, but the offer was judged too vague by London and Dublin. The governments sought specific undertakings on a range of issues including IRA intelligence gathering and punishment beatings.

The governments and unionists are still seeking firm commitments from republicans before announcing an election for November. The IRA's previous offer provides the effective starting point for negotiations.

Sinn Fein is eager for an election because it expects to emerge as the largest nationalist party in Northern Ireland, eclipsing the SDLP. Under the assembly's power sharing rules this would mean that McGuinness would become the North's deputy first minister.⁶⁰

But the DUP's stance remains against the formation of a power-sharing executive. Gregory Campbell was quoted as stating:

"If we can command enough support to block the election of a First and Deputy First Minister then we will prevent the formation of an administration," he said. "That is the time for negotiations for a new agreement by those who have a mandate from the electorate and who can deliver a new agreement. "

With sufficient support in the election the DUP would have it within its power "to make sure that the Belfast Agreement never again gets off the ground," he said.⁶¹

V *The Northern Ireland (Monitoring Commission etc) Bill* **[HL]**

The Bill was introduced into the House of Lords on 8 September 2003 as HL Bill 102. The *Explanatory Notes* explain that the Bill generally reflects the draft Agreement on Monitoring and Compliance between the British and Irish Governments published on 1 May.

⁶⁰ *Sunday Times* 14 September 2003 'Sinn Fein hints at arms deal

⁶¹ *Belfast Telegraph* 13 September 2003 'Campbell in warning on vote pledge'

A. The Independent Monitoring Commission

The Commission will be established by international treaty, with its functions set out in Articles 4 to 7 of that treaty. **Clause 1** sets these out as follows:

1 The Monitoring Commission

(1) In this Act, “the Monitoring Commission” means an independent organisation established, by an agreement made in connection with the affairs of Northern Ireland between Her Majesty’s Government in the United Kingdom and the Government of Ireland, to carry out functions which include—

- (a) monitoring activity by paramilitary groups,
- (b) monitoring security normalisation, and
- (c) reporting on claims relating to commitment to the observing of terms of the pledge of office set out in Schedule 4 to the Northern Ireland Act 1998 (c. 47).

In the Lords second reading Baroness Park of Monmouth and others argued that action on normalisation should be dependent on action on the result of monitoring paramilitary activity.⁶²

Clause 1 enables the Secretary of State to confer on it the legal capacities of a body corporate, and to confer immunities and privileges on the Commission, its members, staff and other persons working for it, and their families. The Secretary of State is enabled to do this by Order under the negative resolution procedure. This follows similar orders for the Independent International Commission on Decommissioning⁶³ and the Independent Commission for the Location of Victims’ Remains.⁶⁴ Details are given in the *Explanatory Notes*.

Clause 2 gives the Commission a duty to avoid prejudicial effects as follows:

(1) The Monitoring Commission shall not do anything in carrying out its functions which might—

- (a) prejudice the national security interests of the United Kingdom or Ireland,
- (b) put at risk the safety or life of any person, or
- (c) have a prejudicial effect on any present or future legal proceedings.

(2) The duty under subsection (1) is owed to Her Majesty’s Government in the United Kingdom.

⁶² HL Deb 11 September 2003 c585

⁶³ This body was established under the *Northern Ireland Decommissioning Act 1997*

⁶⁴ This body was established under the *Northern Ireland (Location of Victims’ Remains) Act 1999*

Clause 3 provides for reports of the Commission to be laid before Parliament by the Secretary of State. The administrative costs of the new Commission were estimated at £2m in the first year, to be jointly borne by the UK and Irish Governments.⁶⁵

In the second reading debate Lord Williams of Mostyn, for the Government, said that he expected the Commission to meet in September to plan its work.⁶⁶ Lord Williams also said that the Commission would have access to a number of intelligence sources:

Lord Williams of Mostyn: My Lords, I am obliged for that correction, if it was my misunderstanding. But I repeat that this IMC will have access to the Chief Constable; it will have access to the GOC; it will have access— specifically now in answer to the questions asked by the noble Lord, Lord Glentoran, and others— to other agencies with law enforcement and security roles in Northern Ireland. It will be able to receive information—the particular point raised by the noble Lord, Lord Glentoran—from all relevant sources in the Republic of Ireland. It will receive material drawn from intelligence. I think that those are all the specific questions about the flow of information to the IMC. Of course, when the IMC publishes its reports, it will be obliged to bear in mind that the duties in Clause 2 are not breached. Self-evidently, that is simply a prudent requirement for obvious reasons.⁶⁷

He also said that the Commissioners would be bound by official secrets legislation, and would have to comply with the Clause 2 requirements on prejudicial effects in their reports.⁶⁸ Lord Williams also made clear that the normalisation timetable ending in April 2005, set out in the Joint Declaration, was intended to be illustrative, rather than mandatory. He said that Article 15 of the agreement made plain that the programme of security normalisation would be determined only when the UK Government was satisfied that appropriate commitments had been given to an end to paramilitary activity.⁶⁹

B. Exclusion from ministerial office

The *Explanatory Notes* give background to changes to section 30 of the *Northern Ireland Act 1998* as follows:

8. Article 6 of the draft Treaty provides that the Commission will have the capacity to investigate complaints by Assembly parties that:
 - a Minister or junior Minister in the Northern Ireland administration, or another party in the Assembly, is not committed to non-violence and exclusively peaceful and democratic means; or

⁶⁵ *Explanatory Notes* para 57

⁶⁶ HL Deb 12 September 2003 c602

⁶⁷ HL Deb 12 September 2003 c600

⁶⁸ HL Deb 12 September 2003 c602

⁶⁹ HL Deb 12 September 2003 c600

- a Minister or junior Minister has failed to observe any other terms of the pledge of office; or
 - a party represented in the Assembly is not committed to such of its members as are or might become Ministers observing the other terms of the pledge of office.
9. When reporting in relation to its duties under Article 4 and 6 of the Treaty, the Commission will be able recommend what remedial action might be taken in response to its findings; and what measures it considers the Assembly might consider taking against the relevant Assembly party or Minister (Article 7).

Clause 4 amends section 30 of the *Northern Ireland Act 1998* to create a minimum duration for exclusion of three months, distinguishing in this respect between the exclusion of individual Ministers and exclusion of all members of a party.⁷⁰ The minimum period for the latter would be 6 months. However, the procedural safeguards in section 30 will continue to apply, as summarised in the *Explanatory Notes*:

a motion for an exclusion resolution cannot (section 30(5)) be moved unless:

- it is supported by at least 30 members of the Assembly;
- it is moved by the First Minister and the deputy First Minister acting jointly; or
- it is moved by the Presiding Officer in pursuance of a notice served by the Secretary of State; and
- an exclusion resolution will require cross-community support in the Assembly (section 30(8)). *Cross-community support*, as defined in section 4(5) of the 1998 Act, can take two forms:
 1. Parallel consent : a majority of the members voting, including a majority of designated nationalists voting and a majority of designated unionists voting; or
 2. Weighted majority: the support of 60% of the members voting, including 40% of the designated Nationalists voting and 40% of the designated unionists voting.

In order to exclude an individual Minister or junior Minister from holding office, the Assembly has to resolve under s30(1) that the individual has lost the confidence of the Assembly

- (a) because he is not committed to non-violence and exclusively peaceful and democratic means; or
- (b) because of any failure of his to observe any other terms of the pledge of office,

To exclude political parties, the provisions are as follows:

⁷⁰ Ministers are defined as First Minister, Deputy First Minister or Northern Ireland Minister under section 7(3) of the 1998 Act

- (a) because it is not committed to non-violence and exclusively peaceful and democratic means; or
- (b) because it is not committed to such of its members as are or might become Ministers or junior Ministers observing the other terms of the pledge of office,

The Bill does not change this provision, but Clause 4(2) amends s30(2) to provide that exclusion of an individual Minister will be for a minimum of three months. The power to exclude for a maximum of 12 months remains, as well as the power to renew this at 12 month intervals. Renewals would however be for a minimum of three months.

Clause 4(2) also amends s30(2) to provide that exclusions of all members of a party from ministerial office will be for a minimum of 6 months. The maximum period remains 12 months, but the Bill will create a new minimum of 6 months for any extensions of this period.

Finally, Clause 4 adds another condition to the factors to be taken into account by the Secretary of State when deciding whether to require the Presiding Officer to move an exclusion motion. Section 30(6) and (7) would read as follows, if amended, with the new condition in bold:

- “(6) If the Secretary of State is of the opinion that the Assembly ought to consider a resolution under this section, he shall serve a notice on the Presiding Officer requiring him to move a motion for such a resolution.
- (7) In forming an opinion under subsection (6), the Secretary of State shall in particular take into account—
 - (a) whether the person or party concerned is committed to the use now and in the future of only democratic and peaceful means to achieve his or its objectives;
 - (b) whether he or it has ceased to be involved in any acts of violence or of preparation for violence;
 - (c) whether he or it is directing or promoting acts of violence by other persons;
 - (d) whether he or it is co-operating fully with any Commission of the kind referred to in section 7 of the Northern Ireland Arms Decommissioning Act 1997 (c. 7) in implementing the Decommissioning section of the Belfast Agreement; and
 - (e) any recommendation about steps the Assembly might consider taking which is contained in a report—
 - (i) made by the Commission mentioned in section 1 of the Northern Ireland (Monitoring Commission) Act 2003, or**
 - (ii) made under the agreement establishing that Commission by members of that Commission.”****

Clause 5 adds a new Section 30A to the 1998 Act. This will confer on the Secretary of State new powers to exclude Ministers, junior Ministers and all members of a political party from holding ministerial office. The *Explanatory Notes* state:

23. New section 30A(1) provides that the Secretary of State may only exercise his power to exclude if :

The Commission makes a report under the terms of the Treaty which contains a recommendation about the steps that the Assembly might consider taking; and

The taking of those steps requires the Assembly to pass a resolution under section 30(1), (1A),(2) or (3); and

The first motion for a resolution to take those recommended steps does not attract cross-community support.

Exclusion of individual Ministers

24. The Secretary of State is given power to exclude a Minister or junior Minister from holding ministerial office for a period of between three and twelve months (new section 30A(2)). The power is exercisable by direction. The parliamentary procedure which must be followed is set out in clause 9 (see below). He is also given power to extend a period of exclusion for a further period of between three and twelve months (new section 30A(3)). The same test as is applied by the Assembly (see paragraph 16 above) applies to the exercise of these powers by the Secretary of State (new section 30A(4)).

Exclusion of parties

25. The Secretary of State is given power by direction to exclude members of a political party from holding ministerial office for a period of between six and twelve months (new section 30A(5)). Again, he may extend a period of exclusion of members of a party (for a further period of between six and twelve months (new section 30A(6)). In order to impose or to extend a period of exclusion the Secretary of State must be satisfied that either of the conditions for exclusion set out at paragraph 19 above is met (new section 30A(7)).

Clause 9 inserts a new section 95A into the 1998 Act to provide for the parliamentary procedures to be followed when the Secretary of State exercises his powers of direction under new section 30 A (and also 47B (reduction of remuneration) or 51B (reduction of financial assistance)). In general the directions cannot be made without the use of the affirmative procedure at Westminster, but there are provisions to allow the Secretary of State to dispense with these requirements where he considers it expedient (the urgency procedure). In these cases, the direction is laid before Parliament and ceases to have effect if not approved by each House within 40 days.⁷¹

Clause 9 also inserts new Schedule 12A to the 1998 Act. This provides for cases where a direction made by the Secretary of State fails to gain parliamentary approval. The *Explanatory Notes* make clear that the effect is, so far as possible to reconstitute the Executive in the form it was prior to the direction taking effect.

⁷¹ In calculating the 40 days, time in which Parliament is prorogued, dissolved, or adjourned for more than 40 days is not to be taken into account. See Lords Select Committee on Delegated Powers and Regulated Reform HL 163 Session 2002-3

Clause 5 amends section 18 of the *Northern Ireland Act 1998* to provide for the application of the d'Hondt mechanism to fill Ministerial offices, following the use of the Secretary of State's new powers. This mechanism allocates ministerial positions to party according to the proportion of seats held in the Assembly. The clause ensures in particular that the d'Hondt procedure is only triggered when a period of exclusion, however extended, finally runs out.

New section 30A therefore allows the Secretary of State to exclude Ministers where a motion before the Assembly does not attract sufficient cross-community support. But he may only take action after a recommendation from the Commission, and a motion has been unsuccessful in the Assembly. This provision attracted some criticism during the Lords stages of the Bill, as unduly restricting the powers of the Secretary of State.⁷²

In respect of allegations concerning paramilitary activity or breaches of the pledge of office, the Commission will have the power to make recommendations about what measures Assembly parties might consider taking against individual Ministers or parties if they consider such action justified.

In summary, the Secretary of State may only exercise his powers to exclude if:

- The Commission makes a report under the terms of the Treaty which contains a recommendation about the steps that the Assembly might consider taking; and
- The taking of those steps requires the Assembly to pass a resolution under section 47A(1),(2),(3) or (4); and
- The first motion for a resolution to take those recommended steps does not attract cross-community support.

But the Secretary of State is not constrained to act, should these pre-conditions be met. On second reading in the Lords, Lord Williams of Mostyn, for the Government, said that the Irish Government would be consulted, should the Secretary of State consider using this discretionary power.⁷³

At Committee stage in the Lords a Liberal Democrat sponsored amendment inserted a new clause which gave the Secretary of State new powers to exclude for a two week period before a report or the consideration of a resolution from the Assembly:

SECRETARY OF STATE'S POWERS IN EXCEPTIONAL CIRCUMSTANCES
"After section 30A of the Northern Ireland Act 1998 (c. 47) there is inserted—
"30B SECRETARY OF STATE'S POWERS IN EXCEPTIONAL
CIRCUMSTANCES

⁷² See for example Lord Kilclooney in the second reading debate at HL Deb 12 September 2003 c593

⁷³ HL Deb 12 September 2003 c584

(1) Notwithstanding the provisions of section 30A, under exceptional circumstances the Secretary of State may by direction temporarily exclude a Minister or junior Minister.

(2) An exclusion under subsection (1) shall only remain in effect until either—

(a) a report from the Commission has been made; or (b) the Assembly has considered a resolution under 30(1) or (2); or (c) a period of two weeks has elapsed.

(3) In subsection (1) "exceptional circumstances" include where— (a) there is insufficient time for the Commission to make a report; and

(b) there is insufficient time for the Assembly to consider a resolution under section 30(1) or (2).

(4) A direction made under this section shall be in writing and shall be laid before Parliament after the direction is given."

C. Pay and allowances for Ministers and financial assistance to parties in the Northern Ireland Assembly

Clause 6 of the Bill inserts new sections into the 1998 Act authorising the Assembly, or the Secretary of State, to provide for the withholding of the whole or a specified part of the salaries payable to a Minister or Junior Minister, or to all members of a particular party where that individual or party is excluded. If the Assembly (by means of resolution) or the Secretary of State is satisfied that either of the parts of the test set out in clause 4 apply, the reduction in salary can apply for no longer than 12 months, although this can be extended for a further period of 12 months by the Assembly or Secretary of State. The Assembly can make such a provision by resolution. There are the same procedural safeguards as for an exclusion resolution under clause 4 – see above.

Clause 7 inserts new clauses into the 1998 Act providing for the reduction in whole or part of the financial assistance payable to Assembly parties under the *Financial Assistance for Political Parties Act (Northern Ireland) 2000*⁷⁴ where Ministers or parties are excluded. If the Assembly resolves that for a specified period the whole or a specified part of any financial assistance payable under the 2000 Act to a particular political party shall not be payable, because either of the conditions set out at clause 4 is met, then the allowance shall be reduced accordingly. The period specified by the Assembly may not exceed 12 months, although the Assembly may resolve to extend a period of reduced financial assistance which it has imposed or which the Secretary of State has imposed. The amount by which a period is extended on any occasion may not exceed 12 months. The Secretary of State may only exercise his powers in accordance with the rules in clause 6.

The same procedural safeguards apply as for an exclusion resolution – see clause 4 above. Similar provisions exist for determining the reduction in allowance as are in clause 6, which relates to the salaries of individual ministers and Assembly members.

⁷⁴ N.I. c1

Allowances are paid to parties under the terms of a scheme made by the Assembly Commission under section 2 of the 2000 Act, for the purpose of assisting members of the Assembly who are connected with such parties to perform their Assembly duties. The current scheme was made by the Secretary of State on 4 April 2000, as the Assembly was in suspension at the time. It was revised in June 2002⁷⁵ and provided for a payment of up to £24,000 for each party with one Member, £48,000 for each party with two or more Members and £3,000 for each Member connected with a political party who is under the direction of the party Whip and who does not hold a ministerial or junior ministerial post. The scheme is not intended to be a direct mirror of Westminster's Short Money scheme.⁷⁶

D. Commencement, extent and duty to report to Parliament

Clause 10 has provisions to allow for the Secretary of State to bring different sections of the Bill into force at different times. This will allow the provisions to come into force to coincide with the Treaty coming into force, and the commencement of parallel provisions relating to the Commission in Irish legislation. Clauses 1 to 3 will cease to have effect when the Secretary of State makes an appropriate order. This wording is modelled on provisions in Section 7(6) of the *Northern Ireland Arms Decommissioning Act 1997* and section 2(6) of the *Northern Ireland (Location of Victims' Remains) Act 1999*. The Bill extends to the UK, but in practice affects the operation of devolution in Northern Ireland.

At Committee stage in the Lords, Lord Williams, for the Government tabled amendments which were passed to insert a requirement for the Secretary of State to report on the working of the Commission and associated matters:

Secretary of State's duty to prepare reports

- (1) The Secretary of State shall report on the operation of—
 - (a) the agreement mentioned in section 1(1), and
 - (b) so much of this Act as amends the Northern Ireland Act 1998 (c. 47).
- (2) The first report under this section shall be in respect of the period of twelve months beginning with the passing of this Act.
- (3) Subsequent reports under this section shall be in respect of the period of twelve months beginning with the end of the previous reporting period.
- (4) Each report under this section shall be prepared as soon as practicable after the end of the period to which it relates.
- (5) A report under this section shall include any additional information which the Secretary of State thinks it appropriate for the report to include.
- (6) The Secretary of State shall—

⁷⁵ Financial assistance for political parties revised scheme 2002: revised scheme laid before the Northern Ireland Assembly under section 2 (3) of the *Financial Assistance for Political Parties Act (Northern Ireland) 2000*

⁷⁶ see Library Standard note SN/PC/1663

- (a) lay a copy of each report under this section before each House of Parliament, and
- (b) publish each such report in such manner as he thinks fit."

E. European Convention on Human Rights

The *Explanatory Notes* contains the following statement in respect of the ECHR:

EUROPEAN CONVENTION ON HUMAN RIGHTS

59. The holding of ministerial office, and the rights to ministerial and members' salaries and to political allowances are in the Government's view political rights, not civil rights for the purpose of Article 6 of the ECHR. Article 6 is therefore not engaged by either the Assembly's or the Secretary of State's determination of these matters. Neither does the Government consider that the right to future salary comes within Article 1 of the First Protocol to the ECHR.

60. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement, before second reading, about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Lord Williams of Mostyn has made the following statement:

"In my view the provisions of the Northern Ireland (Monitoring Commission etc.) Bill [HL] are compatible with the Convention rights."

F. The Lords stages of the Bill

The Select Committee on Delegated Powers and Procedures issued a report noting that they did not wish to draw any specific delegated power to the attention of the House.⁷⁷ The Bill received its second reading in the Lords on Friday 14 September without a division, but a number of amendments were tabled by Opposition parties for the remaining stages on Monday 15 September. At second reading, Lord Glentoran, for the Conservatives, said that his party did not oppose the creation of an advisory commission, but considered that the Bill did not offer a full solution:

Given that background, the Opposition should be welcoming the Bill, as it provides the Secretary of State with the power for which we have called. Yet, as drafted, the Bill is seriously defective. Under the Bill, the Secretary of State will be able to exercise the power only if that has been specifically recommended by the independent commission, certainly not on his own initiative. That is unacceptable. It compromises the freedom of action of the Secretary of State and, effectively, hands the trigger mechanism to exclude an individual or party from a devolved legislature in the United Kingdom to two members of the commission, neither of whom is accountable to the Assembly or to Parliament. Noble Lords will be aware that the international agreement states that only the two members

⁷⁷ HL 163 Session 2002-3

appointed by the British Government can take any part in recommendations affecting strand one.

The Secretary of State should have freedom of action. He should, of course, take into account the reports of the commission but, ultimately, it should be for him to decide whether the recommendations of the commission are, in certain cases, too weak or, in other cases, too strong. The Secretary of State, who is accountable to this Parliament, should take those decisions. That is why we have tabled amendments to that affect for the Committee and Report stages. The noble Lord, Lord Smith of Clifton, referred to those amendments, and noble Lords will understand that we have also discussed them outside the House, as we have done with the noble and learned Lord the Lord President of the Council.⁷⁸

He tabled amendments giving the Secretary of State power to exclude, 'having regard to any report of the Monitoring Commission'. At Committee stage Lord Maginnis argued for amendments to strengthen the possibility of exclusion:

If I read this Bill correctly, the Secretary of State does not have the power to make a decision at variance with that of the monitoring commission. None the less, page 4, line 17 of the Bill states that, if the commission finds that action should be taken, there is no obligation on the Secretary of State to accept that advice. It states that,

"the Secretary of State may by direction",
not "shall". However, if I remember correctly, the whole debate in Hillsborough leading up to the joint declaration was delayed considerably on that issue; that is, whether the Secretary of State would act on any positive direction coming from the monitoring commission in respect of ministers or junior ministers—or parties—who were,

"not committed to non-violence and exclusively peaceful and democratic means; or . . . [have] failed to observe any other terms of the pledge of office".

I believe that, when the joint declaration was made, there was an obligation once again on the Secretary of State to act according to any positive direction given by the monitoring commission. However, in the Bill brought before this House there is only an option.

Can it be that, on one hand, there is no freedom for the Secretary of State to work positively ahead of the commission if he feels that some elements within the Assembly are not committed to non-violence and so forth, and, on the other, that there is no obligation if the commission feels—and finds and rules—that that is the situation? I hope that I have put that clearly and that the noble and learned Lord the Lord President of the Council follows my argument. I hope that he will specifically address how we can have an option at each end of the question that militates against ordinary law-abiding people.⁷⁹

⁷⁸ HL Deb 12 September 2003 c598

⁷⁹ HL Deb 15 September 2003 c670

Lord Williams argued against the amendments:

Where there has been a report of the IMC with recommendations for action, and other avenues have led to no resolution of the issue, it would be our intention that this power would be exercised in a manner consistent with the IMC recommendations. We would seek to give effect to that faithfully, with the approval of this House and another place. But I repeat: we are constraining no existing power. We are providing for a means where there is an independent body of very high quality, repute and expertise, to give conclusions which it offers to the Assembly. If the Assembly fails, the Secretary of State has that reserve power.⁸⁰

He noted:

If an unconstrained power of exclusion was given to the Secretary of State, that would be a substantial departure from the 1998 agreement in one of its most sensitive areas. I am not using this in a pejorative sense, but I sympathise with the compromise sought by the noble Lord, Lord Smith of Clifton, who spoke of constraints of time. I find it difficult to imagine circumstances in which it would be possible for the Secretary of State to find himself in a position to conclude that that was a correct way forward.⁸¹

But amendments sponsored by the Liberal Democrat spokesman Lord Smith of Clifton were passed by 129 votes to 117. He explained the reasoning behind the amendment at Second Reading:

However, we recognise that there is something of a gap in the Bill as it stands that needs to be plugged in order fully to ensure confidence in the proposals. We can envisage that in exceptional circumstances speedy action will be required. Accordingly, I have tabled an amendment that would authorise the Secretary of State temporarily to suspend a Minister or junior Minister for up to two weeks. In that period, it is to be assumed, either the commission or the Assembly, or both, would have sufficient time to consider the matter.

If such a decision to suspend a Minister or junior Minister is made by the Secretary of State, it will be immediately laid before Parliament for consideration by both Houses. In the unlikely event that the commission was unable to report because of internal disagreement or some other reason, and that the Assembly was unable to attract sufficient cross-community support to pass a resolution, the issue would revert to the Secretary of State, as provided for under the Bill as drafted. We believe that that amendment should satisfy any remaining doubts about effectively and speedily dealing with a serious breach of a ministerial pledge to forsake all violent activity and to be committed to peaceful and democratic means for resolving disputes.⁸²

⁸⁰ HL Deb 15 September 2003 c675

⁸¹ *ibid* c676

⁸² HL Deb 12 September 2003 c595

A new Clause was therefore inserted after Clause 5 to give the Secretary of State powers to exclude Ministers or junior Ministers for two week periods before the Commission had time to report or the Assembly to agree a motion..⁸³ The new clause is set out above.

Lord Williams then moved a new clause inserting a duty for the Secretary of State to prepare reports on the operation of the agreement, to lay before Parliament.⁸⁴ The Bill then received a third reading.

⁸³ *ibid* c682

⁸⁴ *ibid* c684

Appendix: Draft Agreement between the British and Irish Governments

MONITORING AND COMPLIANCE

1. On account of the divisive legacies of the past and the deficit of mutual confidence between both communities, we now judge it necessary to build various safeguards and assurance mechanisms into the proposals set out in the Joint Declaration. These do not reflect a lack of confidence by the two Governments in the willingness of the various parties to meet their commitments. However, it is our judgement that, without such mechanisms, it will be impossible to generate the confidence which is required all round if we are to achieve the necessary outcomes. We accept that some parties will not be able to endorse these proposals, but the two Governments believe that they are essential to secure the future of the Agreement.
2. A new independent body will therefore be created that will monitor and report on the carrying out of the commitments relating to the ending of paramilitary activity and the programme of security normalisation, as set out in paragraphs 12-19 and Annex 1 of the Joint Declaration. It will also have a more general responsibility to consider claims by any party in the Assembly that another party is fundamentally in breach of requirements in the Declaration of Support or elsewhere in the Agreement. The body will have four members, two appointed by the British Government (including one from Northern Ireland) and one each by the Irish and US Governments. It will carry out its activities with a view to promoting public confidence and ensuring that any serious non-compliance with these acts of completion is identified and reported. The terms of reference of this independent body are outlined in the attached annex.
3. The following procedures will apply. Any incidents of non-compliance by any party will, in the normal course of events, be subject to either political exposure or, where appropriate, the process of law. However, with a view to further enhancing public confidence, the Governments recognise that it will also be important to consider other appropriate responses to non-compliance in the light of any reports on breaches by the Independent Monitoring Body. In this connection, the Governments propose that if the Independent Monitoring Body concluded, following its own inquiries, that there were good reasons to believe that a party or individual member of the Assembly was in breach, it would report its findings to the two Governments, making clear what action needed to be taken to remedy the breach and what measures, if any, it would be appropriate to apply. The Governments would initiate discussions in the Implementation Group to consider the action to be taken in response to the report. If the Implementation Group recommended that a motion be put before the Assembly, the Secretary of State would give notice requiring the motion to be moved. Any motion put before the Assembly following the tabling of a report would be subject to decision on a cross-community basis. Where such a motion failed to attract cross-community support, or where the Implementation

Group had failed to agree a course of action, it would be a matter for the British Government, in consultation with the Irish Government and the parties, to resolve the matter in a manner consistent with the report of the Independent Monitoring Body. The British Government would envisage amending the Northern Ireland Act 1998 to enable a variety of responses appropriate to the gravity of the breach in question, including motions of censure, the withholding of allowances, temporary suspension from participation in the Agreement's institutions or, in the most serious cases, exclusion for varying periods, to be made.

3

ANNEX

TERMS OF REFERENCE OF THE INDEPENDENT MONITORING BODY

1. In relation to the remaining threat from paramilitary groups the Independent Monitoring Body would publish its findings on:
 - any continuing paramilitary involvement in attacks on the security forces, murders, sectarian attacks, involvement in riots, and other criminal offences;
 - any continuing involvement of paramilitary groups in training, targeting, intelligence gathering, acquisition or development of arms or weapons and other preparations for terrorist campaigns;
 - the extent to which any paramilitary groups still appear to be engaged in punishment beatings/attacks and exiling;
 - their assessment of whether the leaderships of such organisations are directing such incidents or seeking to prevent them; and
 - trends in security incidents.
2. In relation to the British Government's commitments to a package of security normalisation measures, the Independent Monitoring Body would publish reports as to whether those measures were being fully implemented within the agreed timescales, in the light of its assessment of the paramilitary threat and the British Government's obligation to ensure the safety and security of the community as a whole, including:
 - demolition of towers and observation posts;
 - withdrawal of troops from police stations;
 - closure and dismantling of military bases and installations;
 - troop deployments and withdrawals from Northern Ireland and levels of British Army helicopter use;
 - the repeal of counter-terrorist legislation particular to Northern Ireland.
3. At the request of the Governments, the Independent Monitoring Body may be asked to consider claims by any party in the Assembly that another party is in breach of requirements in the Declaration of Support or elsewhere in the Agreement.
4. The Independent Monitoring Body would report to the two Governments, making recommendations as to appropriate remedies for particular breaches and what measures, if any, it would be appropriate to apply.
5. The Independent Monitoring Body would have access to all the information necessary to carry out its functions, subject to appropriate conditions to ensure confidentiality.
6. The Independent Monitoring Body would be expected to publish reports as and when required and, in any event, at least every six months.
7. The Independent Monitoring Body would consult as required with the Policing Board, the Oversight Commissioner and the Independent International Commission on Decommissioning.

