



RESEARCH PAPER 06/14  
6 MARCH 2006

# **The Northern Ireland (Miscellaneous Provisions) Bill**

**Bill 131 of 2005-6**

The *Northern Ireland (Miscellaneous Provisions) Bill* is due to receive its second reading on 13 March. It contains a series of provisions affecting Northern Ireland. It abolishes the annual canvass for electoral registration in Northern Ireland and places new duties on the Chief Electoral Officer (CEO) for Northern Ireland to ensure an accurate register. The Bill also changes the term of office of the CEO to a five year term, renewable once. The Bill gives the Secretary of State power to bring forward the date of the next Northern Ireland Assembly elections, due in May 2007, and change the rules governing the disclosure of political donations to parties in Northern Ireland.

Part 5 of the Bill provides for the possible devolution of policing and justice functions to the Assembly and Executive, and creates the possibility of rotating ministers to take responsibility for these functions. There are miscellaneous amendments, including the extension of the last date for the amnesty period for arms decommissioning to February 2010, provisions in relation to a single wholesale electricity market in Northern Ireland and Ireland, and an extension of the investigatory powers in the *Serious Organised Crime and Police Act 2005* to Northern Ireland. Finally, the Bill amends current requirements on filling judicial vacancies.

Oonagh Gay

PARLIAMENT AND CONSTITUTION CENTRE

Pat Strickland and Miriam Peck  
HOME AFFAIRS

Ross Young  
SOCIAL AND GENERAL STATISTICS

HOUSE OF COMMONS LIBRARY

## Recent Library Research Papers include:

06/01	The <i>International Development (Reporting and Transparency) Bill</i> [Bill 19 of 2005-06]	11.01.06
06/02	Social Indicators [includes article: New Year resolutions – how do they figure?]	12.01.06
06/03	Unemployment by Constituency, December 2005	18.01.06
06/04	The <i>Merchant Shipping (Pollution) Bill</i> [Bill 68 of 2005-06]	23.01.06
06/05	Economic Indicators, February 2006 [includes article: The 80% employment aspiration]	01.02.06
06/06	The <i>Legislative and Regulatory Reform Bill</i> [Bill 111 of 2005-06]	06.02.06
06/07	The <i>Children and Adoption Bill</i> [Bill 96 of 2005-06]	07.02.06
06/08	Sudan: The Elusive Quest for Peace	08.02.06
06/09	Inflation: The value of the pound 1750-2005	13.02.06
06/10	Unemployment by Constituency, January 2006	15.02.06
06/11	The <i>Police and Justice Bill</i> [Bill 119 of 2005-06]	27.02.06
06/12	Economic Indicators, March 2006	01.03.06

*Research Papers are available as PDF files:*

- to members of the general public on the Parliamentary web site,  
URL: <http://www.parliament.uk>
- within Parliament to users of the Parliamentary Intranet,  
URL: <http://hcl1.hclibrary.parliament.uk>

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We welcome comments on our papers; these should be sent to the Research Publications Officer, Room 407, 1 Derby Gate, London, SW1A 2DG or e-mailed to [PAPERS@parliament.uk](mailto:PAPERS@parliament.uk)

## Summary of main points

Attempts to restore devolution to Northern Ireland have intensified in recent months, following the announcement by the Provisional Irish Republican Army (PIRA) in July 2005 that it had formally called an end to its armed campaign. The Northern Ireland Secretary, Peter Hain, has indicated the UK Government's desire for early elections to the Northern Ireland Assembly, before the planned date of May 2007. The Bill gives the Secretary of State power to bring the election date forward.

The possibility of devolving police and justice functions to the Northern Ireland Assembly and Executive has also been raised, and the Bill facilitates this by providing for a new Department to be headed either by two Ministers acting jointly, or by a senior and junior Minister respectively, who would rotate at intervals. The Bill does not in itself provide for the devolution of police and justice which would take place under the *Northern Ireland Act 1998*. The detailed arrangements necessary to devolve policing and justice powers to the Northern Ireland Assembly and Executive were the subject of a consultation paper issued by the NIO on 16 February 2006.

The Bill makes a number of changes to Northern Ireland electoral law, which were foreshadowed in the Queen's Speech and in a number of policy announcements in 2004 and 2005. Briefly, these are to abolish the annual canvass for registration and to allow the Chief Electoral Officer access to more extensive data sharing arrangements. The term of office to be served by the next Chief Electoral Officer is set by the Bill at five years, with one re-appointment possible. This replaces the current indefinite term of office subject to good behaviour.

The *Electoral Fraud (Northern Ireland) Act 2002* tightened electoral registration procedures, as a response to concerns about electoral fraud. It introduced a system of individual registration for electors. It also required electors to provide personal identification information before they could be registered, including National Insurance numbers. Following the legislation, the provision to carry over the names of electors from one annual register to another, where electors had not completed the annual canvass form, was abolished in Northern Ireland.

Reports from the Electoral Commission in December 2003 and the Northern Ireland Select Committee in December 2004 found that the level of registration had dropped by around 10 per cent since implementation of the legislation. Evidence from the Chief Electoral Officer indicated that around 10 per cent of the annual register had previously been made up of non-responders who had been carried over. Both the Chief Electoral Officer and the Electoral Commission agreed that the main cause in the decline was the abolition of carry over, but the Electoral Commission was not in favour of its reinstatement, because it believed that the reformed registration procedures were more accurate and robust. The Government introduced the *Electoral Registration (Northern Ireland) Act 2005* to reinstate carry-over as an interim measure for the 2005 elections, but announced that it planned more permanent arrangements to secure an accurate register, fulfilled in this current Bill.

The Bill also contains provisions which are intended to increase the transparency of the donations process by requiring Northern Ireland parties to submit reports to the Electoral Commission from October 2007. At present, an order under the *Political Parties, Elections*

*and Referendums Act 2000* disapplies the legislation from application to Northern Ireland until 2007. For a transitional period until 31 October 2010, the Electoral Commission would not disclose information on donations provided to it by Northern Ireland parties. The Bill will also allow parties in Northern Ireland to receive donations from individuals and bodies entitled to donate to Irish political parties under the law of the Republic of Ireland. However the amounts donated do not have to be made public, due to concerns about possible intimidation.

There is a range of miscellaneous amendments, dealt with in parts 5 and 6 of the Bill. There is provision to entrench enactments by listing them in the *Northern Ireland Act 1998* so that the Assembly would not be able to alter the law in this area of policing and justice. The decommissioning scheme provisions of the *Northern Ireland Arms Decommissioning Act 1997* are extended to a maximum date of 27 February 2010. The Assembly's powers to call for witnesses and papers relating to functions undertaken during direct rule would be limited. Provisions to allow for a single electricity market for both Northern Ireland and the Republic of Ireland are also contained within the Bill, together with provisions to enable financial assistance for specified energy projects, focusing on sustainable energy sources.

The Bill also extends the operation of part 2 of the *Serious Organised Crime and Police Act 2005* to Northern Ireland, which gives investigating authorities extensive new powers to enter and search premises and seize documents. A statutory duty is placed on the Prime Minister to make a recommendation to fill a vacancy for the Lord Chief Justice and also for the Lord Justice of Appeal (unless the Lord Chief Justice agrees that it should remain unfilled).

There have been press reports suggesting that this Bill may undergo further changes during its passage through Parliament, should agreement be reached to modify the arrangements for devolution in the *Northern Ireland Act 1998*. One possibility is a shadow Assembly which would meet until it was possible to end direct rule.

## CONTENTS

I	Current political developments in Northern Ireland	7
	A. Background	7
	B. The Comprehensive Agreement proposals of December 2004	8
II	Electoral registration in Northern Ireland	12
	A. Background	12
	B. Change to individual registration in 2002-03	13
	C. The effects of the <i>Electoral Fraud (Northern Ireland) Act 2002</i>	15
	D. The <i>Electoral Registration (Northern Ireland) Act 2005</i>	16
III	Proposals to abolish the annual canvass	18
	A. Consultation paper	18
	B. The <i>Electoral Administration Bill 2005/6</i>	21
	C. The <i>Northern Ireland (Miscellaneous Provisions) Bill</i>	22
IV	The Chief Electoral Officer	24
	A. The Bill	25
V	Date of next Assembly election	26
	A. Background	26
	B. The Bill	28
VI	Regulation of party funding in Northern Ireland	28
	A. Provisions on party funding	28
	1. Northern Ireland exemption on political donations	29
	2. Consultation on provisions for donations to Northern Ireland parties	31
	3. Regulation of funding of political parties in Irish Republic	35
	4. New reporting arrangements for donations to Northern Ireland parties – the Bill	36
VII	Devolution of police and justice functions	37

<b>A.</b>	<b>Ministerial responsibility under the <i>Northern Ireland Act 1998</i></b>	<b>37</b>
<b>B.</b>	<b>Ministerial models for Policing and Justice</b>	<b>40</b>
<b>C.</b>	<b>Police and justice functions in Northern Ireland</b>	<b>42</b>
	<b>1. The Patten Commission</b>	<b>42</b>
	<b>2. Implementing Patten</b>	<b>42</b>
	<b>3. The Government's proposals for devolving policing and criminal justice</b>	<b>43</b>
	<b>4. Functions related to extradition and related matters</b>	<b>45</b>
<b>VIII</b>	<b>Miscellaneous provisions</b>	<b>47</b>
	<b>A. Entrenching enactments</b>	<b>47</b>
	<b>B. Decommissioning</b>	<b>48</b>
	<b>C. Witnesses</b>	<b>48</b>
	<b>D. Energy provisions</b>	<b>49</b>
	<b>E. SOCAP and Northern Ireland</b>	<b>53</b>
	<b>F. Police liability for health and safety breaches</b>	<b>54</b>
	<b>G. Judicial vacancies</b>	<b>54</b>
<b>IX</b>	<b>Commencement and extent of Bill</b>	<b>54</b>
	<b>Appendix Parliamentary electorates and voting age population 2001-5</b>	<b>56</b>

# I Current political developments in Northern Ireland

## A. Background

On 10 April 1998, the *Belfast Agreement* was finalised. It was endorsed through a referendum held on 22 May 1998 and subsequently given legal force through the *Northern Ireland Act 1998*. The Northern Ireland Assembly was elected on 25 June 1998 under the terms of the *Northern Ireland (Elections) Act 1998*.

The Assembly met for the first time on 1 July 1998 and David Trimble (Ulster Unionist Party) was elected as First Minister with Seamus Mallon (Social Democratic and Labour Party) as the Deputy First Minister. Difficulties in securing agreement on decommissioning delayed devolution. The Assembly met on 29 November 1999 when 10 Ministers were nominated, according to the d'Hondt formula set out in the *Northern Ireland Act 1998*. On 30 November 1999 the Secretary of State made the *Northern Ireland Act 1998 (Commencement Order No 5)* resulting in the devolution of powers to the Northern Ireland Assembly from 2 December 1999.

Continued problems regarding decommissioning led to the re-introduction of direct rule through primary legislation in the form of the *Northern Ireland Act 2000* which allowed for the suspension of the operation of the Assembly and Executive, restoration of devolution by order and for Northern Ireland legislation to be undertaken at Westminster by Orders in Council. Devolution was suspended from 11 February 2000 to 30 May 2000.

Throughout 2002, sectarian violence and allegations that the IRA had broken their ceasefire caused further problems. On 14 October 2002 the then Secretary of State for Northern Ireland, John Reid, announced the return of direct rule, following a police raid on Sinn Fein offices at Stormont and the resignation of two Democratic Unionist Party ministers from the executive. The Northern Ireland Office took on the work of the Executive and Assembly Bills were introduced into Parliament as Orders in Council.

Elections to the Assembly originally due on 1 May 2003 were postponed twice, first to 29 May 2003 and then until the autumn on the grounds that outstanding issues about the position of the IRA could not be resolved during an election campaign. A *Joint Declaration* was published on 1 May 2003 which stressed the necessity in this context of 'acts of completion' in the full implementation of the *Belfast Agreement*. As part of the package of proposals surrounding the Joint Declaration by the British and Irish Governments, 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 (IMC) to monitor the activities of paramilitaries. The *Northern Ireland (Monitoring Commission etc) Act 2003* was passed to implement this proposal, which also contained extra provisions to be used to exclude ministers and parties from the Executive, and for the Secretary of State to vary provisions on pay and allowances for Assembly Members.<sup>1</sup>

---

<sup>1</sup> See Research Paper 03/69 *The Northern Ireland (Monitoring Commission etc) Bill*.

The Assembly elections took place on 26 November 2003. Results of the elections are given in Library Standard Note no 3801 *Northern Ireland Assembly Elections 2003*. The main results were as follows:

- The Democratic Unionist Party won 30 of the 108 seats, 10 more than in 1998. The DUP won the highest share of the first preference votes.
- The Ulster Unionist Party won 27 seats, one fewer than in 1998 despite a higher share of the first preference votes.
- Sinn Fein, who secured more first preference votes than the UUP, won 24 seats.
- The Social Democratic and Labour Party won the fewest seats, and the lowest share of the vote, of the major parties.
- Turnout was 63.1 percent of the electorate, compared to 68.8 percent at the 1998 Assembly elections and 68.0 percent in Northern Ireland at the 2001 General Election.

Due to the continued suspension of devolution this Assembly has not formally sat, although its Members carry out constituency work.

## **B. The Comprehensive Agreement proposals of December 2004**

A review of the Belfast Agreement with all the political parties began in early 2004. However efforts were halted after the Popular Unionist Party (PUP) leader disengaged from the review in March. Short Money type allowances were removed from PUP and Sinn Fein Assembly Members following a report from the IMC's first report in April 2004. After the European elections in June, review talks resumed in Stormont and then at Leeds Castle where a British/Irish communiqué was issued.<sup>2</sup> On 8 December 2004 the DUP leader Ian Paisley confirmed that the negotiations to restore devolution had broken down. There were recriminations between the DUP and Sinn Fein as to the responsibility for the breakdown. That day, Tony Blair and Bertie Ahern held a news conference where the proposals for the agreement were published and made available for public scrutiny.<sup>3</sup> These were entitled the *Proposals by the British and Irish Government for a Comprehensive Agreement*.

These *Proposals* planned for:

1. legislation to introduce a shadow Assembly to allow time for parties to prepare adequately for the re-establishment of political institutions
2. legislation enabling the devolution of policing and justice functions

The *Proposals* set out a timetable for an IRA statement on decommissioning, on creating a shadow assembly, and the nomination of the First and Deputy First Ministers, among other measures. In Annex B there were also proposals by the British Government for changes in the Strand One institutions (the Assembly), such as 'enhancing collectivity

---

<sup>2</sup> <http://www.nio.gov.uk/index/media-centre/media-detail.htm?newsID=10254>

<sup>3</sup> *Progress but no deal says Blair*, BBC News, 8 December 2004 The *Proposals by the British and Irish Government for a Comprehensive Agreement* December 2004 are available at [http://news.bbc.co.uk/nol/shared/bsp/hi/pdfs/08\\_12\\_04\\_british\\_irish\\_proposals.pdf](http://news.bbc.co.uk/nol/shared/bsp/hi/pdfs/08_12_04_british_irish_proposals.pdf)

and accountability' and providing for a statutory Ministerial Code, amendments to the Pledge of Office and amendments to the Assembly procedures for nominating Ministers (discussed below in Part VII of this Paper on devolving policing and judicial functions). Annex C contained proposals from the British and Irish Governments for changes in Strands Two and Three institutions such as the North-South Ministerial Council and the British Irish Council.

There was considerable speculation about the involvement of the IRA in the Northern Bank robbery on 20 December 2004, where £26m was stolen and the International Monitoring Commission (IMC) report of 10 February 2005 concluded that the IRA had been responsible. There was further pressure on Sinn Fein following the murder of Robert McCartney in January 2005. On 10 March 2005 a motion was passed in the name of the Leader of the House, Peter Hain and the Secretary of State for Northern Ireland, to suspend the payment of allowances to Sinn Fein MPs for 12 months. The effect of this motion, and delegated legislation removing the payment of Short Money type allowances to the Sinn Fein party in the Assembly, have since been rescinded by a Commons motion on 9 February 2006 restoring allowances to individual Sinn Fein MPs and creating a new type of allowance for representative duties. Assembly allowances were restored with effect from 1 November 2005. Further information is available in Library Standard Note no 1667 *Sinn Fein and access to Commons facilities*.

The general election took place on 5 May 2005. Turnout in Northern Ireland was 68.6%, the highest of all UK regions. The Democratic Unionists won nine seats, half of the Northern Ireland total. They gained four seats from the Ulster Unionists: East Antrim, Lagan Valley, South Antrim and the seat of the Ulster Unionist's leader David Trimble in Upper Bann. The Ulster Unionist lost five of their six seats and their vote share fell by 9.0% points<sup>4</sup>

Following the loss of his seat in the General Election Mr Trimble resigned as leader of the Ulster Unionists. The DUP received more votes than any other party in Northern Ireland for the first time at a General Election. Their share of the vote increased by 11.2% points to 33.7%. Sinn Fein also increased their share of the vote, and took Newry & Armagh from the SDLP. They came second in Northern Ireland in terms of both seats and votes won, both for the first time at a General Election. The SDLP gained South Belfast from the Ulster Unionists, leaving them unchanged in total seat numbers. Their share of the vote fell and they came fourth in terms of votes received. Full details are given in Library Research Paper 05/03.

The *Northern Ireland Act 2000 (Modification) (No.2) Order 2005* extended the power to legislate on Northern Ireland matters by Order in Council for a further six months until 14 April 2006. This was examined by both Houses in July 2005. This power originally set out in the *Northern Ireland Act 2000* had already been extended five times since the suspension of devolution in October 2002. The motion was agreed to.<sup>5</sup>

---

<sup>4</sup> Research Paper 05/03, *General Election 2005*, p17

<sup>5</sup> HL Deb, 7 July 2005, GC81-88

On 28 July 2005 the IRA formally ordered an end to its armed campaign and said it would pursue exclusively peaceful means.<sup>6</sup> The IRA statement was welcomed by the British and Irish Governments on 28 July. The new Northern Ireland Secretary, Peter Hain, stated in a letter to MPs that the IMC had been asked to prepare an additional report in January 2006 to check on progress with decommissioning.<sup>7</sup> On 1 August Mr Hain issued a written statement in which he set out a 2 year plan for de-militarisation, contingent on the security situation.<sup>8</sup>

On 26 September General John de Chastelain, chairman of the Independent Commission on Decommissioning, established under the *Northern Ireland Arms Decommissioning Act 1997*, announced that the IRA had completed its decommissioning. A report was sent to the British and Irish Governments and was deposited in both Houses.<sup>9</sup> On 19 October 2005 the Independent Monitoring Commission, established under the *Northern Ireland (Monitoring Commission etc) Act 2003*, published its seventh report.<sup>10</sup> It made some encouraging comments in relation to the IRA after the 28 July announcement, but stated:

Clearly we are looking for cumulative indications of changes in behaviour over a more sustained period of time.<sup>11</sup>

The Government asked this Monitoring Commission to produce an extra report in January 2006 to reinforce the verification process, following the IRA statement of 28 July.<sup>12</sup>

The raid by the police of Sinn Fein offices in the Assembly building at Stormont on 4 October 2002 had contributed to the decision to suspend devolution. On 8 December 2005 the Director of Public Prosecutions announced that the prosecution of three people allegedly involved in the Sinn Fein spy ring at Stormont would be dropped, as prosecution was no longer in the public interest. The Northern Ireland Office statement noted that this was solely a matter for the prosecuting authorities, but stated that the police operation did lead to the recovery of sensitive documents removed from government offices.<sup>13</sup> In December, one of the defendants, Denis Donaldson, former head of Sinn Fein administration at Stormont, revealed that he had worked for British intelligence and the RUC/PSNI Special Branch since the mid 1980s. He made a press statement on 18 December 2005.<sup>14</sup>

---

<sup>6</sup> , "IRA statement in full", 28 July 2005 *BBC News*

<sup>7</sup> "Hain responds to IRA statement" *Northern Ireland Office* 28 July 2005

<sup>8</sup> "Northern Ireland Secretary's statement" *BBC News* 1 August 2005

<sup>9</sup> Dep 05/1227 HINF2005/1593 *Report of the Independent Commission on Decommissioning addressed to Peter Hain and Michael McDowell* 26 September 2005

<sup>10</sup> Available at

<http://www.independentmonitoringcommission.org/documents/uploads/7th%20%20IMC%20%20Report.pdf>

<sup>11</sup> *Seventh Report* para 3.18

<sup>12</sup> HC Deb 13 October 2005 c449-452

<sup>13</sup> Quoted in "Stormontgate- securocrats pulled down executive says spy accused" 9 December 2005 *Irish News*

<sup>14</sup> "Donaldson's statement" 18 December 2005 *Belfast Telegraph*

In December 2005 Mr Hain announced in an interview with the *Belfast Telegraph* that he could not conceive of ‘the people in Northern Ireland agreeing in May 2007 to go along with taking part in a pure charade of an election for a second time to a suspended Assembly’.<sup>15</sup>

At the end of January 2006 the Independent International Commission on Decommissioning presented a report to the British and Irish Governments. It concluded that in the absence of evidence to the contrary, its assessment of 26 September regarding IRA arms remained correct.<sup>16</sup>

The Eighth Report from the International Monitoring Commission was published on 1 February 2006. It reviewed paramilitary activity, and concluded as follows in relation to PIRA:

3.25 To sum up, the position is not entirely straightforward. We see a number of definite signs of the organisation moving in the direction indicated in the 28 July statement.

We see other signs which we would describe as neutral and some which are more disturbing. For example, some members continue to be engaged in significant crime and occasional unauthorised assaults. Whereas these assaults are not in our view sanctioned by the leadership, and may be directly against its wishes, the contrary appears to be the case with some other criminal activities such as the exploitation of financial assets PIRA had previously acquired or the illegal gathering of intelligence. The indications that PIRA appears to retain long term intentions to gather intelligence is also in our view a matter for concern. On the other hand, we believe there is a clear strategic intent to turn the organisation on to a political path and there is good evidence that this is happening even given such constraints as there may be on the leadership in this regard.<sup>17</sup>

Mr Hain announced the publication of the report in a Written Ministerial Statement on 1 February, noting that “there was enough evidence of progress to make the process of political talks meaningful”.<sup>18</sup>

All-party talks were planned based on the Comprehensive Agreement proposals published by the British and Irish Governments in December 2004 (see above).<sup>19</sup> There have been a number of press reports that there would be a time-limited initiative to restore the Assembly in shadow form, with a requirement to restore a power-sharing Executive within a certain period, such as a year.<sup>20</sup>

The DUP has issued a policy document which contains proposals for the restoration of the Assembly without the restoration of the Executive.<sup>21</sup> This position is opposed by the

---

<sup>15</sup> “Sinn Fein and Hain” 10 December 2005 *Belfast Telegraph*

<sup>16</sup> available from <http://cain.ulst.ac.uk/events/peace/decommission/iicdreports.htm>

<sup>17</sup> HC 870 2005-6 available at [http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/01\\_02\\_06\\_imc\\_eighth\\_report.pdf](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/01_02_06_imc_eighth_report.pdf)

<sup>18</sup> “Positive IMC report shows IRA moving in the right direction” 1 February 2006 *Northern Ireland Office PN*

<sup>19</sup> “Joint statement by Prime Minister Tony Blair and Taoiseach Bertin Ahern! 26 January 2006 *Northern Ireland Office Press Notice*

<sup>20</sup> “Blair plans restored NI Assembly without Executive” 23 February 2006 *Irish Times*

<sup>21</sup> *Facing Reality: A Truthful Assessment: The Policy Context The Best Way Forward* DUP January 2006

SDLP who have accused SF of accepting the idea of a shadow Assembly in the negotiations preceding the publication of the British-Irish *Proposals* of December 2004 (see above).<sup>22</sup> Both the SDLP and the Ulster Unionist Party have indicated that they would not support a new devolution settlement based on the terms in the December 2004 *Proposals*.<sup>23</sup> For Sinn Fein, Martin McGuinness has stated that the Assembly should be abolished and salaries for its Members withdrawn if there is not progress towards full restoration of devolution in the next few months.<sup>24</sup>

Mr Hain has set a deadline of 8 March for the parties to agree legislative changes to the operation of the Assembly and the Executive. BBC News reported:

Meanwhile, government sources say a bill which will provide for the devolution of policing and justice to Northern Ireland may be widened to make further changes to the rules of the Stormont institutions.

The Northern Ireland Bill, due to be published on 16 February, is understood to cover policing and some other matters, such as electricity deregulation.

The bill could also be amended in April to make other rule changes.<sup>25</sup>

However all-party talks which were due to begin on 20 February did not progress, due to failure to agree on the sequence of talks.<sup>26</sup>

## II Electoral registration in Northern Ireland

### A. Background

Election law and election administration are excepted matters under the *Northern Ireland Act 1998* and therefore legislation must be introduced at Westminster to change the law in Northern Ireland. Separate delegated legislation is necessary to apply the law relating to Westminster Parliament elections to Assembly, local and European Parliamentary elections. There are some important differences in electoral administration in Northern Ireland, the most important being the post of the Chief Electoral Officer (CEO). The Electoral Commission, established under the *Political Parties, Elections and Referendums Act 2000*, has a remit which extends to Northern Ireland but which does not replace the role of the CEO there. An assessment of some difficulties in the relationship between the two electoral bodies was made in a recent report from the Northern Ireland Select Committee.<sup>27</sup>

The system of registration in Northern Ireland still depends on a qualifying period of three months, unlike Great Britain where it is now possible to apply for inclusion on the register as soon as a person has moved house. The three month requirement is longstanding and dates from original UK legislation requiring a qualifying period for registration. This period was repealed in Great Britain in the *Representation of the People Act 1948*. There

---

<sup>22</sup> "SF has accepted Shadow Assembly-Eddie McGrady" 21 February 2006 SDLP Press Release

<sup>23</sup> "New deal is the only way forward" parties warn" 17 February 2006 *Belfast Telegraph*

<sup>24</sup> "Call to bring back Stormont or stop salaries" 20 February 2006 *Belfast Telegraph*

<sup>25</sup> "Devolution "a real possibility" 8 February 2006 BBC News

<sup>26</sup> "Row as NI talks session collapses" *BBC News*; "Sinn Fein 'were not excluded from Assembly talks' says NIO" 21 February 2006 *Belfast Telegraph*

<sup>27</sup> HC 131 Session 2004-5, Summary

have always been concerns in Northern Ireland that the qualifying period was necessary as a deterrent against Irish citizens taking up residence simply in order to vote in key elections there.<sup>28</sup> As in Great Britain, Irish and Commonwealth citizens may vote in Northern Ireland elections provided they fulfill the residency requirements.

In line with the rest of the United Kingdom, it is possible to be registered to vote in more than one area, provided that the appropriate electoral officer considers that the requirements in the *Representation of the People Act 1983* as to residence are satisfied.<sup>29</sup> Many students, for example are registered in two places. The danger is that a second registration may be used by an elector to vote twice, or by another voter personating the absent registered voter. The CEO noted in evidence to the Northern Ireland Affairs Select Committee in 1998 that registration of family members and others who have since moved out of a household was one of the main areas of abuse of the register.<sup>30</sup>

From February 2001 a new system of rolling registration operated in Northern Ireland, in line with the rest of the UK, where a revised register is issued monthly and claims and objections are made on a monthly basis. However, the three month residential qualifying period remains in force and there is still an annual canvass in the autumn with a new register published in December.<sup>31</sup> The decision to hold the Northern Ireland Assembly elections in November 2003 delayed the production of the register in 2003 until February 2004.<sup>32</sup>

## **B. Change to individual registration in 2002-03**

A major change was introduced by the *Electoral Fraud (Northern Ireland) Act 2002* which replaced household registration with a system of individual registration and required electors to provide personal identification information before they could be registered.<sup>33</sup>

The legislation made a number of changes to the registration process:

- Electors are registered as individuals, rather than in household units
- The CEO now requires electors to give their date of birth, National Insurance number and a signature when registering, as well as name and address
- Removal of the elector's name from the register if the personal identifiers are not completed is mandatory
- The register has a life of 12 months only and is renewed each year by the annual canvass and then supplemented by rolling registration

The Act also introduced a voluntary electoral ID card to be produced at polling stations, and required the absent voter's form to have confirmation of date of birth and signature.<sup>34</sup>

---

<sup>28</sup> Oliver Committee Cmd 7004 1946

<sup>29</sup> Northern Ireland was brought into line with Great Britain as a result of Northern Ireland Regulations

<sup>30</sup> HC 316 1997-98 para 15 and CEO Evidence p1 and Q4

<sup>31</sup> *The Representation of the People (Northern Ireland) Regulations 2001* SI no 400, made under the *Representation of the People Act 2000*

<sup>32</sup> *The Representation of the People (Northern Ireland) Regulations 2001* SI no 400, para 47

<sup>33</sup> The background to the legislation is discussed in Library Research Paper 05/15

<sup>34</sup> See the website of the Chief Electoral Officer at <http://www.electoralofficeni.gov.uk/faq/idcards.asp>

The legislation was complemented by the creation of a single electronic database which would facilitate cross checking of multiple registrations and multiple voting. The application of the provisions of the Act to Assembly, local government and European parliamentary elections was made by separate delegated legislation. The use of the 'carry forward' facility was abolished by the *Representation of the People (Northern Ireland) (Amendment) Regulations 2002*.<sup>35</sup> Carry forward is where electors who do not respond to a canvass form are nevertheless added onto the next year's register.

The legislation required people wishing to register to vote to supply a national insurance number or a signed declaration that they had never had a number. This was an amendment inserted in the Lords stages of the Bill.<sup>36</sup> The Bill as presented to the Lords required only the provision of a signature and date of birth.<sup>37</sup> The Government had come under pressure to add this requirement during the Commons stages of the Bill from the Opposition and parties represented in Northern Ireland. Initially, it resisted the pressure, arguing that it is possible to have more than one NI number, and that it would act as a deterrent to registration, given that many people could not recall their number.<sup>38</sup> At Lords amendment stage in the Commons, concerns were expressed that the system would not be workable. The junior minister, Des Browne, said that he was now satisfied that the system could be made to work.<sup>39</sup> Section 6 of the Act inserted amendments to Schedule 2 of the *Representation of the People Act 1983* allowing the Department of Work and Pensions (DWP) to disclose national insurance numbers to the Chief Electoral Officer following a request by him. There is also provision for the DWP to charge a fee. The Government also introduced new offences in section 7 of providing false information to the electoral registration officer.

The annual report for the CEO in 2003-4 noted major difficulties in accessing the NI database due to the introduction of a new computer system, NIRS2.<sup>40</sup> But by the 2004-5 annual report, the CEO could report that cross checking was in operation and that they were achieving a 95 per cent match rate, which was considerably higher than expected.<sup>41</sup> The prescribed form sent out to electors may be found in *Representation of the People (Form of Canvass) (Northern Ireland) Regulations 2003*.<sup>42</sup>

Regulations under the *Representation of the People Act 1983*, introduced in 2001, already give the CEO power to examine the records of certain public bodies, such as the

---

<sup>35</sup> In fact, the carry over facility had not been formalised in legislation until the *Representation of the People (Northern Ireland) Regulations 2001* in Regulation 34. See fn30 in *The Electoral Fraud (Northern Ireland) Act 2002* by the Electoral Commission

<sup>36</sup> HC Deb 4 Feb 2002 c479-482

<sup>37</sup> HL Bill 18 2001-2

<sup>38</sup> See speech by Des Browne, then junior Northern Ireland minister at Commons committee stage 16 October 2001 c34

<sup>39</sup> HC Deb 15 April 2002 c386

<sup>40</sup> *Annual Report of Chief Electoral Office for Northern Ireland 2003-4*, available at <http://www.electoraloificeni.gov.uk/about/documents/AnnualReport2003-04.pdf>

<sup>41</sup> Annual Report of the CEO 2004-5, published October 2005 at <http://www.official-documents.co.uk/document/hc0506/hc04/0482/0482.pdf>

<sup>42</sup> SI no 1942 at <http://www.opsi.gov.uk/si/si2003/20031942.htm>

Housing Executive, district councils, valuation and Lands Agency, Rates Collection Agency and the register of births, deaths and marriages.<sup>43</sup>

### C. The effects of the *Electoral Fraud (Northern Ireland) Act 2002*

Individual registration was introduced in September 2002 and the first new register was published in December 2002. The number of names on the new register fell by about 10.5 per cent compared with the December 2001 register, representing 125,000 potential voters. For details about the effect on individual constituencies see the Appendix to this Paper.

The 2002 legislation has been recognised as successful in reducing fraud, according to the Northern Ireland Select Committee report of December 2004.<sup>44</sup> The register continued to contract, but at a slower rate. The electorate continued to fall: by a further 10,000 or one per cent, between December 2002 and February 2005. The Electoral Commission undertook to conduct research to establish the reasons for the decline. Their conclusions were published in December 2003.<sup>45</sup> The Northern Ireland Select Committee also issued a report on electoral registration in December 2004.<sup>46</sup>

The Electoral Commission report found evidence that the registration rate for the whole of Northern Ireland in August 2002, before individual registration was introduced, was 95.5 per cent. This was likely to have been in excess of the true numbers of people eligible to vote, particularly since in some constituencies there were more people on the electoral register than were accounted for in census figures.<sup>47</sup>

The Commission report found that a significant factor was the mismatch between where people live and where they are registered, citing students, in particular, who tend to be registered at their home address rather than where they live in term time. It found that ward level registration rates varied from 41 per cent to 126 per cent in August 2002.<sup>48</sup> The largest decreases between August 2002 and the new December 2002 register were in the four Belfast constituencies, with Belfast West registering an 18 per cent reduction.

Evidence from the CEO indicated that 10 per cent of names on the register had been carried forward each year until abolition of the facility.<sup>49</sup> The Electoral Commission 2003 report noted that the lower registration rate was largely explained by the fact that the carry forward facility no longer applied.<sup>50</sup>

This conclusion was also supported by the Northern Ireland Select Committee:

---

<sup>43</sup> See speech by Des Browne, then junior Northern Ireland minister, at Commons committee stage 16 October 2001 c28

<sup>44</sup> HC 131 2004-5

<sup>45</sup> *The Electoral Fraud (Northern Ireland) Act 2002: An assessment of its first year in operation*

<sup>46</sup> HC 131 2004-5

See [http://www.electoralcommission.org.uk/files/dms/ElectoralFraudActFinalpdf\\_11266-891\\_E\\_N\\_S\\_W\\_.pdf](http://www.electoralcommission.org.uk/files/dms/ElectoralFraudActFinalpdf_11266-891_E_N_S_W_.pdf). Para 4.3

<sup>48</sup> These were the Botanic ward in Belfast South and the Forkhill ward in Newry and Armagh respectively

<sup>49</sup> Northern Ireland Select Committee report HC 131 2004-5 Minutes of Evidence 2 April 2003 from EONI

<sup>50</sup> *The Electoral Fraud (Northern Ireland) Act 2002* Electoral Commission December 2003, Executive Summary

39. The Electoral Commission has concluded that the removal of the carry-forward mechanism is likely to be the most important factor by far in the decline in the level of voter registration following the introduction of the 2002 Act. According to the Chief Electoral Officer, the response rate in canvasses has not changed with the introduction of the new system. The rate of responses has in the past been approximately 90%, and in the December 2002 canvass, the response rate was also about 90%. The difference is that whereas the non-responding 10% in the past would have been given one year's grace and left on the register, under the new system the 10% are now immediately removed from the register. Both the Electoral Commission and the Chief Electoral Officer indicate that the drop in registrations of about ten percentage points is likely to result primarily from the fact that approximately 10% of names are no longer carried forward from one register to the next.<sup>51</sup>

Both the Select Committee and Commission acknowledged that other factors apply to explain the reduction in registration:

- Reduction in fraud, but there is no quantifiable evidence of the numbers
- Failure to register, due to voter apathy, or concerns about disclosure of personal information
- Young people in particular are disproportionately under-registered since the change to individual registration

Although the major drop in registration took place in 2002, the register continued to contract. The Select Committee assessed the argument that there were structural factors leading to continuous decline in registration -which the number of registered electors declined at each canvass, only to show a slow increase as a consequence of rolling registration.

However the Select Committee found there to be disagreement between the Electoral Commission and the CEO as to the need to reinstate a carry-over facility, with the latter supporting the reintroduction of carry-over. The CEO considered that the effort needed to compile a 12 month register, necessitating the completion of application forms annually, was disproportionate, but the Electoral Commission report of December 2003 argued that the carry forward facility "tended to cloud the electorate's understanding of the link between registering and voting. Our research found that the requirement to register every year was not widely understood by the electorate, with 4 in 10 people aware that they had to do so."<sup>52</sup> It opposed its reintroduction since its removal had led to a more accurate and robust register.

#### ***D. The Electoral Registration (Northern Ireland) Act 2005***

The Government brought forward legislation in the 2004-05 parliamentary session to reinstate carry-over as an interim measure ahead of the scheduled local government elections in 2005. This was the *Electoral Registration (Northern Ireland) Act 2005*. This

---

<sup>51</sup> *ibid*

<sup>52</sup> *The Electoral Fraud (Northern Ireland) Act 2002* Electoral Commission December 2003 Para 6.10

decision was not fully welcomed by the Select Committee which preferred the separate retention of a list of people who fail to respond to the annual canvass and the retention of a register with a lifespan of 12 months.

Section 1 of the Act gave the CEO power to reinstate on the electoral register the names of those removed following the canvass of 15 October 2004, who failed to complete the annual canvass form, or completed it inaccurately. The re-registration took effect on 1 April 2005. However the CEO may not re-register if he has evidence that the registration conditions set out in the *Representation of the People Act 1983* have not been met. At second reading of the Bill in the Lords the Leader of the House, Baroness Amos, said that the CEO had checked all personal identifiers against the central data base held by the Department for Work and Pensions, and individuals whose identifiers did not match would be contacted for clarification. She stressed that the bill was necessary in order to return 83,000 electors to the register in time for 1 April 2005.<sup>53</sup> Statistics from the CEO's office indicate that the percentage of the eligible population who became registered increased from 83 per cent in December 2004 to 90 per cent by April 2005. In effect, 70,000 voters were reinstated.<sup>54</sup> The Act contained powers for the reinstatement exercise to be repeated for the autumn 2005 canvass and these have been used to publish a new register on 1 December 2005.<sup>55</sup> However the Act gave no permanent power to reinstate names.

The latest CEO annual report for 2004-5, published 27 October 2005, gives a breakdown of registration rates for each parliamentary constituency for the register as published on 1 December 2004, compared with the rates on 1 December 2002. It also provides a summary of the advice given to Ministers to abolish the annual canvass and develop automated data transfer arrangements for the use of the CEO to check the accuracy of the register. Registration rates for 1 December 2005 are given in the Appendix to this Paper.

In November 2005 the Electoral Commission published its report *Election 2005 - The combined UK Parliamentary and Local Government Elections*. Chapter 9 dealt with the combined elections in Northern Ireland.<sup>56</sup> According to the Commission report, the number of people eligible to vote at the May 2005 elections increased to an estimated 91 per cent of the voting age population, as a result of the 2005 Act. Published turnout at the UK parliamentary election in Northern Ireland was 63.5 per cent, but when turnout was measured against voting age population it fell to 57.4 per cent. The Commission made a series of recommendations in the area of electoral administration, but these did not cover registration issues.

---

<sup>53</sup> HL Deb 21 February 2005 c992

<sup>54</sup> Chief Electoral Officer Annual Report 2004-5 at <http://www.official-documents.co.uk/document/hc0506/hc04/0482/0482.pdf>

<sup>55</sup> See "Publication of the new electoral register" 1 December 2005 *Electoral Office for Northern Ireland* <http://www.electoralofficeni.gov.uk/press/documents/PressRelease011205.pdf>  
[http://www.electoralcommission.org.uk/files/dms/NIcombinedelectionsFINALPDF\\_19163-14140\\_ENSW.pdf](http://www.electoralcommission.org.uk/files/dms/NIcombinedelectionsFINALPDF_19163-14140_ENSW.pdf)

### III Proposals to abolish the annual canvass

#### A. Consultation paper

In the Queen's Speech for 2005-6, the Government announced plans to bring forward further legislation to create a permanent system of electoral registration, still based on individual registration. The Bill would amend the current electoral registration system by abolishing the annual canvass in Northern Ireland. It would also give the CEO increased powers to access data held by other public sector organisations.

The Northern Ireland Office published a consultation paper on 5 August 2005, which asked for responses by 30 September 2005. Its main proposals on registration were as follows:

3. The Government will retain both individual registration and the requirement that all individuals registering for the first time or seeking to effect a change to their details on the register should provide their three individual personal identifiers (signature, date of birth and National Insurance number) and other prescribed information. These are key planks of the 2002 reforms to registration, and have been central to enhancing the accuracy of and confidence in, the electoral register in Northern Ireland.
4. However, having substantially enhanced the accuracy and integrity of the register, the Government sees the next step as increasing its comprehensiveness. So to facilitate this, the legal requirement to have an annual canvass will be repealed. This will remove the need for individuals to provide information afresh each year. In addition, the Chief Electoral Officer will be given additional access to appropriate data to enable him to ensure that individuals' records are kept up to date, and to take proactive steps to target those not on the register for registration. In addition, the deadline for registration before an election will be shortened to 11 days before polling day, subject to certain conditions to guard against fraud.
5. In order to provide a safeguard and underpin confidence in the register, the Chief Electoral Officer will be given the power, with the approval of the Secretary of State, to conduct a canvass if he thinks it necessary to refresh the electoral roll.

The consultation paper gave further details on the proposed data-sharing powers:

**Enhanced data sharing arrangements between the Chief Electoral Officer and other Government departments and public sector bodies.**

The CEO already has powers of inspection as set out in section 35 of *The Representation of the People (Northern Ireland) Regulations 2001*. These powers allow him to inspect and copy for the purpose of his registration duties records held by a number of named organisations. However, the Government does not believe that these current powers are sufficient or specific enough for the CEO to ensure that the register is both comprehensive and accurate. This new measure would enable the CEO both to ensure that individuals' residency details continued to be accurate through cross-checking; and to identify those individuals not registered more effectively in order that resources could be directed at actively encouraging them to register. The main categories of information it is envisaged he will require comprise:

- Data on all domestic premises in Northern Ireland and the people resident in them;

- The names of young people becoming eligible for registration;
- Individuals changing addresses, including persons moving to and out of Northern Ireland; and
- Individuals changing their names.

The consultation paper proposed a change to the deadline for registration to 11 days before polling day. This would bring Northern Ireland into line with the planned UK position under the *Electoral Administration Bill 2005-6*:

**Extending the deadline for registration to 11 days before polling day.** At present voters may only vote if they appear on the last published register before an election. The relevant register is that published at the beginning of the month when nominations are due for the said election, effectively meaning that registration forms may have to be submitted as much as seven weeks or so before polling day. This measure has been included in the Electoral Administration Bill but does not extend to Northern Ireland. The Government supports in principle extending the provision to Northern Ireland, on the basis that at any future UK-wide election Northern Ireland electors should where possible enjoy similar rights to those existing for electors in Great Britain.

However, the Government has to balance this with the risk highlighted by the Chief Electoral Officer that large numbers of individuals registering close to this new deadline would mean that the CEO would not have the time available before polling day to check identity through verifying personal identifiers – principally the national insurance number. This issue does not arise under current registration arrangements in Great Britain. So to take account of this, the Government proposes to extend the provision to Northern Ireland with the addition of two measures designed to preserve accuracy in the register:

- Individuals registering between the closing date for the register used for nominations (usually seven weeks before polling day) and the new 11 day deadline (the “late registration window”) would have to provide supplementary evidence acceptable to the Chief Electoral Officer confirming the person’s name and address and period of residence in Northern Ireland; and
- Individuals registering in this “window” would be barred from applying for an absent (postal or proxy) vote for the election. (Under existing arrangements those registered before this period can apply for an absent vote up to 14 days before the election.)

The Government is putting forward these two safeguards following advice from the Chief Electoral Officer who is concerned that there might be a particular risk of fraud in the absent vote process. The Government accepts this advice and is determined to protect the integrity of the electoral register whilst doing as much as possible to allow individuals to register much nearer to the date of an election.

The *Electoral Administration Bill 2005-6* also makes provision for anonymous registration in Great Britain. The consultation paper invited responses on the desirability of such a scheme in Northern Ireland. At present there are no provisions to allow individuals to register anonymously. Although it is possible to ask to be excluded from the edited version which is available for sale, the full register must carry details of all those registered to vote and be made available for inspection by members of the public. The full register may not be copied and access to it is allowed only under supervision. Despite these provisions the Electoral Commission acknowledged in its report *The electoral registration process* that some voters are deterred from registering to vote because they fear they may be traced by those who pose a threat to their personal

safety.<sup>57</sup> The Commission recommended that anonymous registration be introduced for those electors able to demonstrate a genuine threat to their safety.

The *Electoral Administration Bill 2005-06*, currently awaiting its Committee stage in the House of Lords, makes provision in Clause 10 for the anonymous registration of electors who fear that their personal safety would be at risk if their name and address could be identified from the register. Electors will have to make a specific application to the Electoral Registration Officer and provide evidence in support of their request. It will not be possible to apply for anonymous registration on the annual canvass form. If anonymous registration is granted the only details to appear on the register for that elector will be their electoral number and the letters prescribed in the regulations which indicate the elections in which the elector is eligible to vote. The clause was amended at Commons Report stage to extend the possibility of anonymous registration being given to people living with a person who was anonymously registered.

On 24 January 2006 David Hanson, junior Northern Ireland Office minister, published the results of Government consultations on changing the law on an annual electors' register and donations to political parties. The proposal to abolish the annual canvass had been widely publicised and was broadly welcomed by the political parties and the Electoral Commission in their response to the consultation. Further details on the proposals on donations to political parties are discussed in part VI of this paper. The summary of the responses to consultation may be found on the Northern Ireland Office website.<sup>58</sup>

The proposals allowing for registration 11 days before polling and for anonymous registration did not receive unanimous support, but there was not widespread opposition. The Government announced in its summary of responses that:

- The legal requirement to hold an annual canvass would be removed and the last annual canvass would take place in 2006
- There would be no carry forward to the 2006 register
- There would be a power for the Secretary of State to authorise a full canvass if there is evidence that the register's accuracy is diminishing, with a canvass planned for 2010
- New powers would be introduced for enhanced data sharing arrangements for the CEO, focusing on names of attainers, those changing addresses, changes of name, data on domestic premises and notification of death
- A new duty on the CEO to ensure that the register is both accurate and comprehensive would be introduced
- A new deadline for registration up to 11 days before polling would be set, with additional proof of residency and no access to an absent vote
- A power to introduce anonymous registration at a later date would be included.

The paper noted that, at present, the Government did not consider that an Equality Impact Assessment was necessary.

---

<sup>57</sup> *The electoral registration process: report and recommendations*, Electoral Commission, May 2003

<sup>58</sup> at [http://www.nio.gov.uk/electoral\\_registration\\_in\\_northern\\_ireland\\_-\\_consultation\\_paper.pdf](http://www.nio.gov.uk/electoral_registration_in_northern_ireland_-_consultation_paper.pdf)

## B. The *Electoral Administration Bill 2005/6*

The *Electoral Administration Bill* is designed to bring into force a series of changes to registration for Great Britain. Further details are contained in *Library Research Paper 05/65* and in *Standard Note No 3877 The Electoral Administration Bill- a note on the Bill's progress*. There are several differences from the provisions to the position in Northern Ireland. Most importantly, Northern Ireland now has a system of individual registration whereas Great Britain will retain household registration, although the EAB contains provisions allowing piloting of individual registration. Data-sharing provisions are also different. The current Bill will give the Northern Ireland CEO more broad ranging powers than those available to Electoral Registration Officers in Great Britain.

During the Committee stage of the EAB, there were a number of probing amendments on data sharing arrangements in Great Britain. The Minister, Harriet Harman, agreed that data sharing was important but commented that operational practice amongst registration officers varied because of different interpretation of the rules. Ms Harman said that the Government would consider extending access to records:

Electoral registration officers use the information that is already available to them for cross-referencing. They can already examine council tax records, housing benefit registers, council rent records and the records of the planning, education and social services departments. No primary or secondary legislation is needed for that. They can also examine Royal Mail records, because they are allowed to do that by custom and practice. We will consider the records that existing powers do not cover but which could be covered by secondary legislation, and whether such legislation is a good idea. That is, therefore, already on our agenda. Such information includes records held by other authorities, the Driver and Vehicle Licensing Agency, TV licensing, the Inland Revenue, the Department for Work and Pensions and the Land Registry.<sup>59</sup>

There was also some discussion in Committee about the possibility of vote rigging, given that the registration date would move forward to 11 days before polling. There is a five day period for public objections to new entries on the register that has to be taken into account before registration takes effect so the Bill will allow a person to vote in an election if their registration has taken effect by the fifth day before polling day.<sup>60</sup> Amendments to introduce NI numbers as personal identifiers for the electoral registration process in Great Britain were not accepted.

The Minister, David Cairns, said that the infrastructure was not in place for the same use of national insurance numbers as personal identifiers in Great Britain as in Northern Ireland. There was a centrally held register of electors in Northern Ireland and 1.1 million electors compared to more than 400 locally held registers in Great Britain and around 43 million electors.<sup>61</sup>

---

<sup>59</sup> *ibid*, c209

<sup>60</sup> *ibid*, c219

<sup>61</sup> *ibid*, c245

The *Electoral Registration Bill* empowers EROs to encourage the participation of electors in the electoral process. Expenditure incurred will be reimbursed by the Secretary of State subject to a maximum limit. It also sets out a list of minimum steps to be taken by EROs to identify persons eligible for registration and provides for the Electoral Commission to set performance standards for electoral administrators. However, there is no direct equivalent to the proposed duty on the CEO in Northern Ireland to ensure an accurate register.

### **C. The Northern Ireland (Miscellaneous Provisions) Bill**

Clause 1 contains provisions for the creation of a scheme of anonymous registration. An elector, whose safety would be at risk if he or she were identifiable from the electoral registers, may apply to be registered anonymously. As noted above, the *Electoral Administration Bill* is applying this power in Great Britain, but Clause 1 of this Bill will amend Section 84(1) of the *Northern Ireland Act 1998* to enable anonymous registration to be introduced into Northern Ireland in respect of district, Assembly, European and Parliamentary elections by Order. The clause states that the anonymous registration provisions must correspond or be similar to provisions in the *Electoral Administration Bill*. There is also a power to amend primary and secondary legislation to give effect to anonymous registration, in order to take account of the different registration and anti-fraud measures in Northern Ireland legislation. The *Explanatory Notes* state that the relevant Order in Council will be subject to the affirmative resolution and that it will have the status of primary legislation for human rights purposes. The *Notes* also state that the Order will define the criteria to be applied for eligibility, so that only genuinely vulnerable people will be eligible and this is not expected to be a large number. It appears under the *Electoral Administration Bill* such electors will be identified only by a number, rather than an address.

Clause 2 abolishes the annual canvass, by amending section 10 of the *Representation of the People Act* in respect of Northern Ireland. Clause 3 makes new provisions for a canvass to be held in 2010 and every tenth year following. The *Explanatory Notes* state:

32. This clause inserts new section 10ZA into the 1983 Act. The new section provides for a canvass to take place in 2010 and every tenth year following 2010. However, the Secretary of State may make an order cancelling the 2010 canvass if the following conditions are met: first, the CEO has made a recommendation by 15th April 2010 against a canvass being conducted in that year; and second, the Secretary of State is satisfied that the public interest does not require a canvass. Both the CEO and the Secretary of State, in making their decisions, must have reference to the registration objectives set out in new provisions inserted by clause 4. An order cancelling the 2010 canvass may only be made if it is laid in draft before, and approved by, both Houses of Parliament.

33. The clause provides that if no canvass is held in under the new provisions before 2015, a canvass must be held in 2016.

34. In intervening years (which are all years other than: 2010; every tenth year after 2010; and, if no canvass is held before the end of 2015, 2016) a canvass may be held provided the following conditions are satisfied. The first condition is that the CEO makes a recommendation to the Secretary of State, by 15th April of that year, in favour of a canvass being conducted for the purpose of meeting the registration objectives. The second condition is that the Secretary of State is satisfied that the public interest requires a canvass.

Clause 4 inserts a new section 10ZA. The Chief Electoral Officer is given a duty to meet certain registration objectives in maintaining the electoral register, so far as reasonably practical. The *Explanatory Notes* set out the objectives as follows:

everyone who is entitled to be registered is on the register;  
 no-one who is not entitled to be registered is on the register; and  
 all the required information in relation to individuals contained on the register is correct.

36. The "required information" is an individual's: name; qualifying address; date of birth; national insurance number (or a statement that they do not have one); and signature. However, the section allows for the requirement for a person's signature to be dispensed with in the event that a CORE (co-ordinated on-line record of electors) scheme, allowing for electronic registration of electors across the United Kingdom, is implemented. CORE schemes are provided for by the EAB.

Clause 5 retains the default requirement that a revised and updated register must be published before 1 December in a year when a canvass has been held. But for non-canvass years there is a default requirement to publish a revised register on 1 December. This is accomplished by inserting a new section 13BA after section 13 of the *Representation of the People Act 1983*

Clause 6 allows a person to register closer to the date of the poll, and according to the *Explanatory Notes* the measure is broadly similar to that in the *Electoral Administration Bill* and will allow allow electors not on the register to apply to meet a new 'late registration' deadline, to be set in regulations under the clause. The *Explanatory Notes* state that it is expected that this will be set at 11 days before the poll. Those who apply under this provision will have to supply additional supporting material and will not be allowed to have an absent vote, whether postal or proxy. The usual claims and objections procedures following application to appear on the register are not dispensed with.

The CEO will publish alterations to the register on the fifth or sixth day before the poll, as set out in the *Explanatory Notes*:

42. The CEO must publish a notice specifying any consequent late alterations to the register on the "appropriate publication date", which is defined in section 13B (5) of the 1983 Act (attracted by subsection (13) of the new section 13BA inserted by the clause) as "the sixth or fifth day before the date of the poll, as the registration officer may determine". This notice is used by polling officers to verify those entitled to vote and can also be used by political parties for canvassing.

43. The clause also provides for alterations to the register as a result of a court decision, or a clerical error following a representation to the CEO, to be made up to a prescribed time on the day of poll (whereas currently the deadline is the fifth day before the poll). The CEO must publish a notice forthwith if any such alterations are made. The deadline for any alterations to correct clerical errors that do *not* follow a representation made to the CEO remains the fifth day before the poll, and notice of these alterations must be issued on the appropriate publication date.

Schedule 4 makes minor amendments to electoral law in Northern Ireland in respect of electoral registration, including registration-related appeals. In particular, paragraph 5

inserts a new section 58 into the *Representation of the People Act 1983*, (dealing with registration appeals) to apply specifically to Northern Ireland.

Clause 7 enables regulations to be made to give the CEO power to obtain information from public authorities to help him to meet the relevant registration objectives. The clause does not specify the types of information to be sought, but the *Explanatory Notes* refer to information to help the CEO check names and addresses and to identify people who ought to appear on the register. The regulations will permit the data to be passed to a third party only for the purpose of the registration objectives or criminal or civil proceedings, according to the new paragraph 13(1)(6) inserted by the clause into Schedule 2 of the *Representation of the People Act 1983*. The *Explanatory Notes* consider the ECHR implications and consider that if Article 8 (right to private and family life) is engaged with, it is nevertheless a justifiable interference.<sup>62</sup>

## IV The Chief Electoral Officer

Currently, the CEO is appointed under section 14(2) of the *Electoral Law Act (Northern Ireland) 1962* as amended, to 'hold office during good behaviour'.<sup>63</sup> There is no parliamentary or Assembly involvement in any dismissal. There is no reference to a retirement date.

The Comptroller and Auditor General (C & AG) of the UK also holds office under good behaviour, with no retirement date, but may only be dismissed following resolutions of both Houses. There is no retirement date for this office.<sup>64</sup> Further detail on the terms of office of a number of constitutional officers may be found in Library Research Paper 03/77 *Officers of Parliament- A Comparative Perspective*. Individual Electoral Commissioners may only be removed by the Crown upon the resolutions of both Houses.<sup>65</sup> The salary of the CEO is met from consolidated fund standing services, in the same way as the C & AG and Electoral Commissioners, as an indication of the independence of the office. However, the Electoral Office of Northern Ireland is funded by the NIO and the costs of running elections by HM Treasury.

The current CEO, Denis Stanley, was appointed Chief Electoral Officer on 1 August 2000 and took up his post at the beginning of September 2000. He took over from Pat Bradley who had served as Chief Electoral Officer for 20 years. Announcing Mr Stanley's appointment the then Secretary of State, Peter Mandelson, said 'I am glad that we have found someone with Denis Stanley's proven track record to take over from Pat Bradley. The fair and effective conduct of elections is a task which calls for the highest standards of personal integrity and effectiveness, particularly in the intensely competitive political atmosphere in Northern Ireland.'<sup>66</sup> Denis Stanley had been chief executive of

---

<sup>62</sup> *Explanatory Notes* para 116-118

<sup>63</sup> The 1962 Act has been amended by Article 6 of the *Electoral Law (NI) Order 1972* and the *Northern Ireland (Modification of Enactments No 1) Order 1973*

<sup>64</sup> See *Exchequer and Audits Department Act 1866*

<sup>65</sup> PPERA 2000

<sup>66</sup> Stanley takes over the chief electoral role, *Belfast News Letter*, 2 August 2000

the Compensation Agency in Northern Ireland prior to his appointment as Chief Electoral Officer and a civil servant for 25 years.

In 2002 Mr Stanley faced criticism about the numbers of electors whose names did not appear on the register following the new arrangements put in place by the *Electoral Fraud (Northern Ireland) Act 2002*. The *Irish News* reported on 7 December 2002 that:

...a Sinn Fein delegation met chief electoral officer Denis Stanley to discuss concerns about the large numbers of people whose names did not appear on the latest electoral register. Mid-Ulster assembly member Francie Molloy said he feared the legislation had been politically motivated and ill timed. He said their concerns had been borne out with some 130,000 potential voters not returning registration forms to the electoral office.

Mr Stanley was also the subject of criticism in Sinn Fein's evidence to the Select Committee on Northern Ireland Affairs in March 2003<sup>67</sup> During the 2005 election; there were protests about Mr Stanley's decision to stop using Holy Child Primary School in Creggan as a polling station.<sup>68</sup> A recruitment competition is currently underway to appoint a new CEO, conducted by the Northern Ireland Office, since Mr Stanley is due to retire. The recruitment pack noted that legislation was forthcoming to change the term of office.

## A. The Bill

Clause 8 changes the terms of appointment of the CEO to a term of five years, renewable once only. For an incumbent, the five and ten year periods run from the date of the commencement of the clause, rather than the date of appointment. The clause will come into force when the Secretary of State lays an order. The *Explanatory Notes* state the CEO's statutory terms and conditions were being brought into line 'with terms that are now standard'. However, five years is not necessarily a standard term. The Police Ombudsman for Northern Ireland for example is appointed by royal warrant for a fixed term of up to seven years, with no provision for re-appointment.<sup>69</sup>

The Public Administration Select Committee is currently undertaking an enquiry into ethical regulators which is expected to consider issues about the appointment of independent watchdogs.<sup>70</sup> One issue which does generate some debate is the question of criteria for re-appointment, and the body which oversees whether the criteria are met.<sup>71</sup> No information is currently available about the process of re-appointment planned, although the recruitment pack noted that it would not be appropriate for the CEO to be appraised by officials for pay purposes.

---

<sup>67</sup> HC 619-i *Electoral Registration in Northern Ireland* Appendix 2 Memorandum submitted by Sinn Fein 2002-3

<sup>68</sup> Review of polling station closure, *Irish News*, 18 March 2005

<sup>69</sup> *Police (Northern Ireland) Act 1998*, Schedule 3, para 1

<sup>70</sup> See PASC Issues and Questions Paper *Ethics and Standards* December 2005 at <http://www.parliament.uk/documents/upload/Ethical%20Regulators%20Issues%20and%20Questions%20Paperver3a.doc>

<sup>71</sup> For example, see the current Scottish Parliament Finance Committee enquiry on its Parliament's Commissioners, explained in its press release of 1 March 2006 at <http://www.scottish.parliament.uk/business/committees/finance/inquiries/actgov/fc-actgov-call.htm>

The clause also sets out statutory reasons for dismissal, such as bankruptcy, unfitness etc. Dismissal is at the initiative of the Secretary of State. The *Explanatory Notes* reviews the implications of the clause for Article 1, Protocol 1 of the *European Convention of Human Rights* (peaceful enjoyment of possessions). They state:

124. Even were the post of CEO a possession, the change of terms and conditions would not amount to an interference with a possession. Case law states that a claim for a breach of Article 1, Protocol 1 will fail if there was not legitimate expectation that the licence or claim would last. A new CEO is in the process of being appointed, and all candidates for the post have been informed of the change to the terms and conditions provided for in the Bill. Hence they can have no legitimate expectation that the current terms are to continue. We have therefore concluded that this article is not engaged.

The CEO is also given specific registration objectives, explained above under clause 4.

## **V Date of next Assembly election**

### **A. Background**

Under section 31 of the *Northern Ireland Act 1998* the Assembly was designed to operate as a fixed term legislature on a four year cycle, apart from the initial election after devolution which was due to take place on 1 May 2003. As first introduced into the Commons the Bill gave the Secretary of State power to dissolve the Assembly and enable an early general election to be held under certain circumstances. However, the Government signalled that it intended to bring the legislature more into line with the proposals for the Scottish Parliament during the passage of the Bill. New Clause 90 was introduced by the Government in the Lords stages and it provided that early elections would take place only where two thirds of all Assembly Members voted in favour, or where the Assembly failed within six weeks to elect a First Minister and Deputy First Minister.<sup>72</sup> This became section 32 of the *Northern Ireland Act 1998*. Another original provision in clause 43, to allow the Queen in Council to prorogue the Assembly was deleted in the Lords.<sup>73</sup>

The *Northern Ireland Act 2000* provided for the suspension of the Assembly, on a date to be appointed by the Secretary of State. This allowed Peter Mandelson, the Northern Ireland Secretary to suspend the Assembly in February 2000. Section 2 also provided for devolution to be restored by order, subject to the affirmative resolution. The section allows for former office holders to be restored to their original posts but also provides for vacancies to be filled according to the d'Hondt procedures in the *Northern Ireland Act 1998*. Devolution was restored on 30 May 2000. The Act allowed for further suspensions by order in section 4 and two more twenty four hour suspensions took place on 11 August 2001 and 21 September 2001. The Assembly was suspended by the then

---

<sup>72</sup> HL Deb 19 October 1998 c1293

<sup>73</sup> HL Deb 21 October 1998 c1442

Northern Ireland Secretary, John Reid at midnight on 14 October 2002, using his powers under the 2000 legislation.<sup>74</sup> It remains suspended.

On 5 March 2003 the Prime Minister, Tony Blair, announced that the Assembly elections, due on 1 May 2003, would be postponed to 29 May 2003.<sup>75</sup> Legislation was necessary to revoke the *Northern Ireland (Date of Next Assembly Poll) Order 2001* as this order had specified that the elections would take place on the date specified in section 31(3) of the 1998 Act, namely 1 May 2003. The suspended Assembly was dissolved on 28 April 2003 in accordance with the *Northern Ireland Assembly Elections Act 2003* and elections were expected on 29 May 2003.<sup>76</sup>

However, on 1 May 2003 the British Government announced that elections would be suspended until the autumn, as outstanding issues over IRA decommissioning had not been satisfactorily resolved.<sup>77</sup> The *Northern Ireland Assembly (Elections and Periods of Suspension) Act 2003* 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. The Act also shortened the electoral timetable to 20 days for that election and gave the Secretary of State power to determine the amounts of salaries and allowances payable to MLAs during dissolution.<sup>78</sup>

On 21 October 2003 negotiations between the Ulster Unionists and Sinn Fein resulted in a new date being announced for elections to the Northern Ireland Assembly. The likelihood of devolution being restored immediately after the elections was subsequently cast into doubt when David Trimble announced his dissatisfaction with the level of information disclosed in the latest round of decommissioning. Despite this, elections went ahead as planned on 26 November 2003.

The Assembly remains suspended and the next election is due on the first Thursday in May 2007 unless section 31 of the 1998 Act is modified. The continuing cost of the Assembly has been the subject of political debate. The proposed budget allocation for the Assembly for 2006-7 and 2007-8 is £50m, including Members' salaries and allowances, party allowances, research and IT, printing and publishing and secretariat salaries.<sup>79</sup>

There are other occasions when election dates have been altered, most often in relation to the reorganisation of local government. More recently, the *Elections Act 2001* postponed the date of the 2001 local elections in England and Wales from the first Thursday in May to the first Thursday in June, as a result of disruption caused by the foot and mouth outbreak. The date coincided with a general election.<sup>80</sup> The *Local*

<sup>74</sup> *Northern Ireland Act 2000 (Suspension of Devolved Government) Order 2002 SI no 2574*

<sup>75</sup> Downing Street Press Release *PM NI talks have been 'genuinely constructive'* 5 March 2003

<sup>76</sup> For further information on this Act, see Library Research Paper 03/21 *the Northern Ireland Assembly Elections Bill*

<sup>77</sup> Statement by Paul Murphy, Secretary of State for Northern Ireland HC Deb 1 May 2003 c459

<sup>78</sup> For further information see Library Research Paper 03/43 *the Northern Ireland Assembly (Elections and Periods of Suspension) Bill*

<sup>79</sup> Northern Ireland Office Priorities and Budget 2006-8 14 December 2005 which was debated in draft in Northern Ireland Grand Committee on 15 November 2005

<sup>80</sup> See Library Research Paper 01/44 *The Elections Bill*

*Government Act 2003* contained provisions to give the Secretary of State power to postpone the 2004 local elections in England, due on 6 May, to 10 June 2004, so that they coincided with the elections to the Greater London Authority and the European Parliament elections. These powers were subsequently used.<sup>81</sup>

## **B. The Bill**

Clause 10 enables the Secretary of State to bring forward the date of the Northern Ireland Assembly election without restriction by amending section 31. The power relates only to the election planned for May 2007, and would come into effect on royal assent. The order is subject to the affirmative resolution procedure, but there is also provision to use the urgency procedure.<sup>82</sup> Under this procedure, the Secretary of State makes the order, which is subsequently laid before Parliament for approval.

Clause 11 provides that the period during which campaign expenditure limits apply will be the period between the date the order is made and the date of the poll.<sup>83</sup> The campaign limits are set by the *Political Parties, Elections and Referendums Act 2000*. The *Explanatory Notes* state: "the clause is intended to provide clarity for the Northern Ireland parties on the level of permitted campaign expenditure should the election date be brought forward." The normal applicable period under PPERA would be four months. The maximum campaign expenditure for a party contesting all the Assembly seats is £306,000. The campaign period was similarly shortened in the *Northern Ireland Assembly (Elections and Periods of Suspension) Act 2003* to commence with the date of the order giving the date of the poll.

Clause 12 gives the Secretary of State power to make supplementary provisions to amend primary or secondary legislation in connection with altering the election date. The *Explanatory Notes* indicate the power is designed to be used to overcome any practical difficulties caused by the new election clashing with other statutory requirements, such as the election canvass. The wording of the clause is similar to that used in section 6 of the *Northern Ireland Assembly (Elections and Periods of Suspension) Act 2003*.

## **VI Regulation of party funding in Northern Ireland<sup>84</sup>**

### **A. Provisions on party funding**

The *Political Parties, Elections and Referendums Act 2000* introduced wide ranging controls on national expenditure by political parties and required donations to parties over £1,000 to be made public, amongst other provisions. It also banned donations from abroad. Full details are available from the Electoral Commission website, which regulates the Act.<sup>85</sup>

---

<sup>81</sup> HC Deb 6 May 2003 29-30WS gives the text of the written statement in which the intention to use the power was announced

<sup>82</sup> The urgency procedure is used under Section 85(8) of the *Northern Ireland Act 1998*, allowing orders to be made and then approved by both Houses within 40 days

<sup>83</sup> This is achieved by amending Schedules 9 and 10 to PPERA.

<sup>84</sup> Provided by Richard Kelly, Parliament and Constitution Centre

<sup>85</sup> <http://www.electoralcommission.org.uk/regulatory-issues/>

## 1. Northern Ireland exemption on political donations

In October 1998, the Committee on Standards in Public Life published a report into *The Funding of Political Parties in the United Kingdom*.<sup>86</sup> It made a variety of recommendations on the transparency and reporting of donations received by political parties; it recommended that “Political parties should in principle be banned from receiving foreign donations”.<sup>87</sup> However, it accepted that a different situation applied in Northern Ireland, including the rights of citizens of the Republic of Ireland not to be considered aliens, the Belfast Agreement provisions for joint North/South institutions and the structure of some political parties which operated across both jurisdictions. It then recommended:

In relation to donations to political parties in Northern Ireland, the definition of a ‘permissible source’ should also include a citizen of the Republic of Ireland resident in the Republic subject to compliance with the Republic’s Electoral Act 1997.<sup>88</sup>

The Government agreed with the Committee’s general thrust on the transparency and reporting of donations; and welcomed the Committee’s endorsement of its plan for a ban on foreign donations but accepted its proposals for a different approach in Northern Ireland:

The Neill Committee concluded that section 2(1) of the Ireland Act 1949 and the terms of the Good Friday Agreement argued for an exception to be made to the definition of a permissible source in order to allow a citizen of the Republic of Ireland to make a donation to a Northern Ireland political party provided that the donor complied with the provisions of the Republic of Ireland’s Electoral Act 1997 (R29). The Government accepts the case for making such an exception and proposes to give effect to the Committee’s recommendation by means of an exemption order (clause 63). Such an order will initially be made for five years when it will be subject to review and, if necessary, renewed.<sup>89</sup>

Alongside its response to the Committee on Standards in Public Life, the Government published the draft *Political Parties, Elections and Referendums Bill*.

Section 70 of the *Political Parties, Elections and Referendums Act 2000* allows the Secretary of State for Northern Ireland, among other things, to alter the categories of permissible donors, detailed in section 54 of the Act, for Northern Ireland. Through the *Political Parties, Elections and Referendums Act 2000 (Disapplication of Part IV for*

---

<sup>86</sup> Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, October 1998, Cm 4057, <http://www.archive.official-documents.co.uk/document/cm40/4057/volume-1/volume-1.pdf>

<sup>87</sup> Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, October 1998, Cm 4057, recommendation 24, p71

<sup>88</sup> Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, October 1998, Cm 4057, recommendation 29, p77

<sup>89</sup> Home Office, *The Funding of Political Parties in the United Kingdom – The Government’s proposals for legislation in response to the Fifth Report of the Committee on Standards in Public Life*, July 1999, Cm 4413, para 4.16, <http://www.archive.official-documents.co.uk/document/cm44/4413/4413-00.htm>

*Northern Ireland Parties, etc) Order 2001*,<sup>90</sup> the Secretary of State disapplied the rules on donations received by parties in Northern Ireland for four years.

In a Written Ministerial Statement on 6 May 2004, John Spellar, the Minister of State in the Northern Ireland Office announced that the Government was “minded to let the current Order expire in February 2005”.<sup>91</sup>

However, on 18 November 2004, he announced that the Government intended to disapply the rules for a further two years. During that time period legislation would be brought forward to reflect the different position of Northern Ireland but align it more closely to the arrangements in the rest of the United Kingdom would be brought forward<sup>92</sup>

The draft *Political Parties, Elections and Referendums Act 2000 (Disapplication of Part IV for Northern Ireland Parties, etc) Order 2005*, was laid on 20 December 2004 and approved in the House of Lords on 31 January 2005 and in the House of Commons on 7 February 2005.<sup>93</sup> The Order disapplied Part IV of PPERA to political parties in Northern Ireland for a further two years until end of February 2007.<sup>94</sup>

In the debate on the Order in the House of Lords, Baroness Amos, Leader of the Lords, said:

While we are committed to greater transparency for political donations, it has not been possible, within the current timeframe, to move toward these more transparent arrangements for the following reasons. First, there is still concern across the community in Northern Ireland about an ongoing threat to donors by way of intimidation.

Secondly, sectarianism is unfortunately still prevalent in Northern Ireland society. If the names of donors were published, there is a danger that business donors could see their businesses being boycotted by customers from the other side of sectarian divide.

Thirdly, parties need some time to adjust to new arrangements that take account of what we still hope will be the ending of paramilitary activity. Finally, there is a need to find a suitable solution to the question of Irish donations that can meet the Irish Government's concerns and be made compatible with our system.

We will be undertaking detailed discussions with the political parties, the Irish Government and the Electoral Commission over the coming months to try to reach agreement on putting in place such new arrangements. My right honourable friend John Spellar has written to all the main political parties asking for their proposals in writing by early March on how a new system might work.<sup>95</sup>

---

<sup>90</sup> The *Political Parties, Elections and Referendums Act 2000 (Disapplication of Part IV for Northern Ireland Parties, etc) Order 2001*, SI 2001/446

<sup>91</sup> HC Deb 6 May 2004 c84WS

<sup>92</sup> HC Deb 18 November 2004 c104WS

<sup>93</sup> HL Deb 31 January 2005 cc56-63; HC Deb 7 February 2005 c1318

<sup>94</sup> SI 2005/299

<sup>95</sup> HL Deb 31 January 2005 cc56-63

During the debate Lord Smith of Clifton suggested that Northern Ireland parties should be required to detail the number of donations they received annually, in bands of £1,000. He also sought new proposals to improve the way the House transacted Northern Ireland business.<sup>96</sup> In response, Baroness Amos acknowledged the need for proposals to deal with Northern Ireland business whilst devolution was suspended and said that:

... the parties let the Electoral Commission have the figures for the total amount received through donations for the financial year. I recognise that that does not meet the proposals made by the noble Lord, but we feel that introducing our current arrangements for Great Britain would hurt those parties in Northern Ireland which believe in the rule of law.<sup>97</sup>

## 2. Consultation on provisions for donations to Northern Ireland parties

In August 2005, the Northern Ireland Office published a consultation paper on *Political Donations in Northern Ireland*.<sup>98</sup> The Northern Ireland Office outlined the background to the disapplication of Part IV of PPERA in Northern Ireland but confirmed that once the Order had expired, the Government “was inclined ... to introduce a scheme which brought the rules applying in Northern Ireland closer to the framework applied by the Political Parties, Elections and Referendums Act in Great Britain”.<sup>99</sup>

The Government sought views, by the end of September, on its proposals:

13. The Government has been seeking to develop a more transparent set of arrangements which also take account of the need to allow Irish citizens to donate to Northern Ireland parties. Against this background, it is the Government’s strong view that, ultimately, political parties in Northern Ireland should be subject to the same levels of transparency in respect of donations as parties in the rest of the United Kingdom. However, the Government is also aware that moving to full transparency immediately would not deal with the issue of potential intimidation of donors.

14. In the light of these considerations, and discussions with the Irish Government, the Government has identified two broad options for the system which might operate in Northern Ireland once the existing exemptions from the UK transparency arrangements and restrictions on donations from abroad expire in February 2007. These are:

**i) Full application of the PPERA scheme in relation to transparency from February 2007, with a derogation to permit donations from Irish citizens as well as corporate donations from Irish companies based in Ireland.**

**ii) Implementation of the PPERA scheme, but with the information provided by parties held by the Commission on a confidential basis. As under PPERA, the Commission would check the legality of UK donations; but the**

---

<sup>96</sup> HL Deb 31 January 2005 cc58-59

<sup>97</sup> HL Deb 31 January 2005 c62

<sup>98</sup> Northern Ireland Office, *Political Donations in Northern Ireland*, August 2005, [http://www.nio.gov.uk/political\\_donations\\_in\\_northern\\_ireland\\_-\\_consultation\\_paper.pdf](http://www.nio.gov.uk/political_donations_in_northern_ireland_-_consultation_paper.pdf)

<sup>99</sup> Northern Ireland Office, *Political Donations in Northern Ireland*, August 2005, para 12

**returns would not be published. All other aspects of the declaration regime would operate as under PPERA. As with option (i), the Government would legislate to permit donations from Irish citizens as well as corporate donations from Irish companies based in Ireland. The Government believes that, if adopted, this should be a transitional system with Northern Ireland moving to the full PPERA system at a future date specified in the legislation.**

15. The Government is in discussions with the Irish Government about the degree to which residency in Ireland or other qualifications (such as appearing on the electoral register) should be required of Irish citizens wishing to donate; and about enforcement.

16. The Government would welcome views on:

- any aspect of the two proposed approaches at paragraph 14 above;
- the question of how donations from Ireland can be effectively facilitated; and
- any other issues related to the system for regulating political donations.<sup>100</sup>

On 24 January 2006 David Hanson, junior Northern Ireland Office minister, published the results of Government consultations on changing the law on donations to political parties. He was quoted as saying:

The Government is clear that there needs to be more effective regulation of donations to political parties operating in Northern Ireland to bring arrangements into line with the rest of the UK.

It also recognises the need to take account of the legitimate concerns that have been expressed about the potential risk of intimidation of donors, and to ensure that the special place of Ireland in the political life of Northern Ireland is respected.

We are therefore planning for legislation that will require political parties to notify the Electoral Commission of donations over £5,000 but provide for donor details to be kept confidential. UK nationals on the electoral register and Irish citizens will be entitled to donate. This would take effect in October 2007. The legislation would also provide for an opportunity to move to full transparency in October 2010 if the circumstances allow.<sup>101</sup>

This position broadly reflected the second option put to consultees in the original consultation paper in August 2005. Donations from the Republic of Ireland would be permitted. In a transitional phase Northern Ireland parties would have to report donations to the Electoral Commission but not have to disclose the donations publicly. At the end of the transition period, donations would have to be disclosed.

The NIO's report on the responses to the consultation summarised the comments of eight respondents and indicated how it proposed to move forward on the issue. The

---

<sup>100</sup> Northern Ireland Office, *Political Donations in Northern Ireland*, August 2005, paras 13-16

<sup>101</sup> "Hanson publishes response to consultations on electoral registration and donations to political parties" 24 January 2005 *NIO Press Notice*

NIO noted each respondent's preference for either option (i) or option (ii) and any other comments made. Table 1 summarises these preferences and other comments are briefly reviewed below.

**Table 1**

<b>Respondent</b>	<b>Option (i)</b>	<b>Option (ii)</b>	<b>Status quo</b>
Alliance Party	Preference	Prepared to accept*	
Democratic Unionist Party		Would support	
Sinn Fein		Preference**	
Social Democratic & Labour Party			Preference
UK Unionist Party	Favoured		
Ulster Unionist Party	Supported		
Electoral Commission	Preference	Could emerge as a way forward	
New Politics Network	Preferred		

\* with the proviso that all donations over £5,000 should be declared

\*\* full transparency for all donations over £50

In its response, the Electoral Commission argued that its role should be “clearly set out in the legislation and that it should not be given wide discretion as to its checking of compliance issues”.

The political parties made a number of comments on the context of the consultation. The Alliance Party suggested that “the point regarding intimidation of donors had been exaggerated”, whilst the SDLP considered that “the threat of intimidation to donors was still strong”.

There were a number of comments relating to restrictions on donations. Both the DUP and the UKUP were opposed to a system that permitted donations from Irish citizens: the DUP argued that it would disproportionately favour nationalist and republican parties; and the UKUP argued that the regulatory systems in the two countries were not compatible. However, the SDLP argued that “there should be no restrictions on donations from Irish citizens and companies and non-Irish citizens who reside in Ireland”. Sinn Fein wanted to ban all corporate donations and to limit the amount an individual donor could donate. The SDLP argued that the Electoral Commission “could do more to ensure transparency and openness of accounts”.

The New Politics Network suggested a third option in which parties would have the option of either putting donations into the public domain or requiring donors to donate via the Electoral Commission. The Commission would ensure that all donations were

permissible, pass the donation to the party, publish the amount of the donation and the recipient but withhold details of the donor.<sup>102</sup>

The Government responded as follows:

The Government believes that it would be extremely difficult to justify continuing with the current arrangements, which do not provide for any degree of transparency in the regulation of donations to political parties in Northern Ireland. The Government is also conscious, however, that the particular circumstances of Northern Ireland, and the risk of donor intimidation, make it difficult to move to full transparency straight away. The government therefore intends to legislate for a new system in Northern Ireland ... broadly reflecting option (ii) in the consultation document.

It then detailed its plans for the legislation. It intended that the core provisions of PPERA would be extended to Northern Ireland but information provided by parties to the Electoral Commission would be held on a confidential basis, although the Commission would be empowered to verify that donations were permissible. If a party refused to return an impermissible donation both the party and the donor would be named. These varied provisions would operate for three years, but in order to allow the Electoral Commission time to prepare for the changes the existing disapplication of Part 4 of PPERA would be extended for eight months to the end of October 2007.

It is anticipated that from October 2010, the PPERA provisions would apply in Northern Ireland. However, the legislation would allow this date to be delayed for periods of up to two years.

Donations would continue to be permitted from Irish citizens and companies but only to parties registered in Northern Ireland, although the Secretary of State would be given the power to adjust the list of permissible donors.<sup>103</sup>

The Government concluded:

The Government is clear that there needs to be more effective regulation of donations to political parties operating in Northern Ireland to begin bringing arrangements in Northern Ireland into line with those operating elsewhere in the United Kingdom. At the same time, the Government recognises the need to take account of the legitimate concerns that have been expressed about the continuing risk of intimidation of donors, and to ensure that the special place of Ireland in the political life of Northern Ireland is respected. The Government believes that the approach set out above represents an effective balance between these concerns, and will ensure that the mechanisms are in place for a transition to a fully transparent system when circumstances allow.<sup>104</sup>

---

<sup>102</sup> Northern Ireland Office, *Electoral Registration in Northern Ireland and Donations to Political Parties in Northern Ireland – Consultation Response*, 23 January 2006, DEP 06/270, paras 30-37

<sup>103</sup> Northern Ireland Office, *Electoral Registration in Northern Ireland and Donations to Political Parties in Northern Ireland – Consultation Response*, 23 January 2006, DEP 06/270, para 38

<sup>104</sup> Northern Ireland Office, *Electoral Registration in Northern Ireland and Donations to Political Parties in Northern Ireland – Consultation Response*, 23 January 2006, DEP 06/270, para 39

The funding of Sinn Fein was discussed during the Commons debate on a motion restoring allowances for parties which do not take the parliamentary oath on 8 February 2006.<sup>105</sup> For further details of this new form of funding see Standard Note no 1667 *Sinn Fein, allowances and access to Commons facilities*.

### 3. Regulation of funding of political parties in Irish Republic

The Irish Republic's rules on the funding of political parties are contained in the *Electoral Act 1997* as amended. Qualified parties – registered in accordance with the provisions of the *Electoral Act 1992* and in receipt of at least two per cent of first preference votes at the preceding general election<sup>106</sup> – are required to provide to the Standards in Public Office Commission details of the amounts of both state funding and public donations they receive. In addition Members of either House of the Oireachtas and the European Parliament have to provide a report of donations they receive.

Under Part III of the *Electoral Act 1997*, Irish political parties were initially entitled to receive in aggregate no more than Ir£1 million. The Act specified the purposes for which these funds could be used:

(1) ( a ) A qualified party which receives payments under this Part shall, subject to guidelines issued by the Public Offices Commission pursuant to section 4, apply such payments to any or all of the following purposes, namely

- (i) the general administration of the party,
- (ii) research, education and training,
- (iii) policy formulation, and
- (iv) the co-ordination of the activities of the branches and members of the party.

(b) Payments made to a qualified party under this Part shall be deemed to include provision in respect of expenditure by the party in relation to the promotion of participation by women and young persons in political activity.<sup>107</sup>

Section 20 specifies the reporting requirements for the parties in receipt of these state funds:

#### **Party to furnish statement regarding payments.**

20.—(1) As soon as may be after the end of a year in which payments are made to a qualified party under this Part, the appropriate officer of the party shall furnish to the Public Offices Commission a statement in writing, in the form directed by the Commission, signed by the officer, stating that the payments were applied to some or all of the purposes referred to in section 18 (1) and indicating the matters to which the payments were applied, including the amounts applied to the promotion of participation, respectively, by women and young persons in political activity.<sup>108</sup>

---

<sup>105</sup> HC Deb 8 February 2006 c855-895

<sup>106</sup> *Electoral Act 1997*, section 16 (Irish Statute Book Database, <http://www.irishstatutebook.ie/ZZA25Y1997.html>)

<sup>107</sup> *Electoral Act 1997*, section 18 (1)

<sup>108</sup> *Electoral Act 1997*, section 20 (1)

Political parties that receive single donations exceeding £4,000 (in the original Act, which was made before Ireland adopted the euro) and individual who receive donations exceeding £500 are required to make a report to the Public Offices Commission. The report should detail:

- (i) the value of the donation, and
- (ii) the name, description and postal address of the person by or on whose behalf the donation was made.<sup>109</sup>

Members of either House of the Oireachtas and the European Parliament have to make their reports (donation statements) by the end of January each year, and political parties' reports should be submitted by the end of March. Separate provisions are made in the same Act for the receipt of election expenses.

The Act puts the onus for reporting on those required to do so:

It shall be the duty of every person who is required by this section to furnish a donation statement and make a declaration to make such enquiries and maintain such records as are necessary for the purpose of furnishing the said statement and making the declaration.<sup>110</sup>

The Standards in Public Office Commission has to lay all payment statements and donation reports before both Houses of the Oireachtas. In addition the Minister of Finance is provided with copies of the payment statements and a report from the Public Offices Commission stating which qualified parties have submitted donation reports.<sup>111</sup>

Further information is available from the Standards in Public Office Commission website.<sup>112</sup>

#### **4. New reporting arrangements for donations to Northern Ireland parties – the Bill**

The Government is using Part 4 of the *Northern Ireland (Miscellaneous Provisions) Bill* to give effect to the changes it outlined in its report on the responses to the consultation on donations to political parties in Northern Ireland. The Bill would amend PPERA and the RPA 1983.

Clause 14 would also replace the *Political Parties, Elections and Referendums Act 2000 (Disapplication of Part IV for Northern Ireland Parties, etc) Order 2005*, which extended the disapplication period to the end of February 2007, and extend the disapplication period to 31 October 2007.

---

<sup>109</sup> *Electoral Act 1997*, section 24 (1)

<sup>110</sup> *Electoral Act 1997*, section 24 (6)

<sup>111</sup> *Electoral Act 1997*, section 20 (3) and section 24 (7)

<sup>112</sup> Guidance on the acceptance of donations by TDs, Senators and MEPs is at <http://www.sipo.gov.ie/en/Guidelines/Donations/TDsSenatorsandMEPs/>

Clause 15 inserts a new chapter in PPERA, which makes special provisions for “Northern Ireland recipients” of donations, that is parties, regulated donees (MPs, MEPs, MLAs and councillors) ordinarily resident in Northern Ireland and “members’ associations wholly or mainly consisting of members of a Northern Ireland party”. Northern Ireland recipients will continue to be able to receive donations from an Irish citizen or bodies of a prescribed description who meet conditions prescribed. Both the descriptions of bodies and the conditions would be prescribed, by order, by the Secretary of State in consultation with the Electoral Commission. Clause 18 sets out how such an order is to be made and that it would be subject to the affirmative resolution procedure. Northern Ireland recipients would not be able to make donations to political parties registered in Great Britain.

The provisions inserted by Clause 15 would be inserted into Part 4 of PPERA, and therefore would not apply until 31 October 2007. They would have lasting effect.

After 31 October 2007 the reporting requirements in Part 4 of PPERA would then apply to Northern Ireland recipients. For a transitional period, referred to in the Government’s response to the consultation, the Electoral Commission would be prevented from disclosing information on donations provided to it by Northern Ireland recipients. Schedule 1 of the Bill, as well as preventing the Electoral Commission from disclosing information, requires it to verify the information provided to it by Northern Ireland recipients. The transitional period is scheduled to run from 1 November 2007 to 31 October 2010, although the Secretary of State could extend the period, for not more than two years at a time, by an order subject to the affirmative resolution procedure (Clause 17). When the transitional period ends the reports submitted by Northern Ireland recipients will be fully disclosable.

## **VII Devolution of police and justice functions**

### **A. Ministerial responsibility under the *Northern Ireland Act 1998***

The Assembly exercises full legislative authority for those areas within the responsibility of the Northern Ireland Government Departments. These subject areas broadly correspond with the areas devolved to Scotland and Wales, but are less extensive than those devolved to Stormont under the *Government of Ireland Act 1920*. The *Belfast Agreement* stated that the British Government was ready in principle to devolve responsibility for policing and justice issues in the context of the full implementation of the *Agreement* (p 23). This was repeated in the *Joint Declaration of the British and Irish Governments* in December 2003 (see above) and the *Proposals* of December 2004.

As with the *Northern Ireland Constitution Act 1973* there are three categories of legislative powers; reserved, excepted and transferred. Excepted matters are subjects reserved to Westminster which will not be transferred. Schedule 2 specifies excepted matters and includes some matters as elections, international relations and judicial appointments. Schedule 3 set out reserved matters; these are subjects which could be transferred to the Assembly at a later date. Matters transferred to the Assembly are matters which are not excepted or reserved. There is potential for rolling devolution since reserved powers can be transferred to the Assembly in future, but such transfers are

dependent on cross community support and the necessary Westminster approval. It is also possible to transfer subjects back. Section 4(2) of the 1998 Act enables the Secretary of State to lay orders making a reserved matter a transferred matter and vice versa, provided that there is cross-community Assembly assent.

The civil service in Northern Ireland is a separately constituted body, distinct from the Home Civil Service in Great Britain. In contrast, civil servants in Scotland and Wales remain part of the British civil service.

The *Northern Ireland Act 1998* provided for a new Northern Ireland power-sharing Executive, with a maximum of ten ministers (excluding the First and Deputy First Ministers) (s17 (4)).

Agreement on the number of ministries to be established was reached on 18 December 1998 along with negotiations on the North South implementation bodies.<sup>113</sup> As a result-ten ministries were set up under the terms of the *Departments (Northern Ireland) Order 1999*.<sup>114</sup>: Department of Agriculture and Rural Development, Department of Culture, Arts and Leisure, Department of Education, Department of Enterprise, Trade and Investment, Department of the Environment, Department of Finance and Personnel, Department of Health, Social Services and Public Safety, Department of Higher and Further Education, Training and Employment, Department for Regional Development, Department for Social Development. These are in addition to the Office of the First Minister and Deputy First Minister established under s21 (3) of the *Northern Ireland Act 1998*. There has been some pressure to reduce the number of ministries and speculation that Culture and Leisure, Environment, and Employment and Learning might be the subject of merger, especially if a Department of Justice is created.<sup>115</sup>

Part III of the 1998 Act allows pre-existing statutory and prerogative functions of ministers and departments to continue in existence. The First Minister and Deputy First Minister have power to determine any number of junior ministers and the functions of those appointed. Further detail is provided in the *Northern Ireland Act 1998: A Summary Guide*<sup>116</sup>

61. Section 22 makes clear that functions may be conferred by Act of the Assembly on a Minister (but not a junior minister) or on a Northern Ireland department by name. Existing functions of departments continue, subject to such modification.

There is no transfer en bloc of statutory functions in the transferred field to the devolved authorities, as there is in Scotland, because the Northern Ireland statute book already generally confers functions in the transferred field on devolved institutions set up by earlier constitutional legislation. These functions pass to the new institutions by virtue of the 'translations' set out in schedule 12.

---

<sup>113</sup> The First and Deputy First ministers issued a statement on 18 December which formed a basis for their interim report to the Northern Ireland Assembly which was discussed and agreed on 18 January 1999. This was followed by a final report which was agreed by the Assembly on 15 February 1999

<sup>114</sup> SI 1999 no 283 (N.I.1)

<sup>115</sup> "All change please" February March 2006 *Public Service Magazine*, produced by the civil service union FDA

<sup>116</sup> *Northern Ireland Office* July 1999

It has been the general practice in Northern Ireland to confer statutory functions on departments, in contrast with the Whitehall practice of conferring functions on ministers, and more recently the 'Secretary of State' (not a particular Secretary of State). This is of little importance in terms of ministerial responsibility: the new Departments Order, reflecting existing Northern Ireland legislation, makes clear that departments are subject to the direction and control of ministers and that ministers may themselves exercise the functions of departments.

Under the terms of section 16 of the *Northern Ireland Act 1998*, the First Minister and the Deputy First Minister are appointed jointly and resign jointly. A majority of the designated Unionists and the majority of the designated Nationalists are required in the vote for the appointments to take effect. The First Minister and the Deputy First Minister jointly have power to determine the number of ministerial offices and functions to be undertaken, under section 17, but their decision requires the approval of the resolution of the Assembly, voting on a cross-community basis. Section 19 allows the First Minister and Deputy First Minister to appoint junior ministers, as approved by Assembly resolution. Section 18 requires ministries to be allocated according to the proportion of seats held by each party in the Assembly, by using the d'Hondt procedure.

As a condition of appointment under the 1998 Act, ministers must affirm the terms of a Pledge of Office and can be removed from office following a decision of the Assembly taken on a cross community basis if the responsibilities of the Pledge are not met. The Pledge was set out in the *Belfast Agreement* and was incorporated unamended into the Act. Provisions for exclusion from office are contained in S30 of the *Northern Ireland Act* as amended by the *Northern Ireland (Monitoring Commission etc) Act 2003*. There is 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.<sup>117</sup> The minimum period for the latter would be 6 months. The *Explanatory Notes* to the 2003 Act set out the procedural safeguards for exclusion:

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.<sup>118</sup>

---

<sup>117</sup> Ministers are defined as First Minister, Deputy First Minister or Northern Ireland Minister under section 7(3) of the 1998 Act

<sup>118</sup> Available at <http://www.opsi.gov.uk/acts/en2003/2003en25.htm>

Under the Standing Orders of the Assembly members may designate their political identity<sup>119</sup>

## **B. Ministerial models for Policing and Justice**

As part of the talks designed to restore devolution to Northern Ireland the possibility of devolving responsibility for policing and justice matters has been under discussion.

The NIO issued a consultation paper on 16 February 2006 *Devolving Policing and Justice in Northern Ireland: A Discussion Paper* outlining what was intended to be devolved and areas where further thought was necessary in order to achieve the devolution of these functions.<sup>120</sup>

The consultation paper notes that before devolution of justice and policing the Assembly would need to consider how the devolved administration would re-organise itself. The paper sets out appropriate options:

4.2 Consistent with the Agreement, whatever new model is agreed should contain adequate safeguards to protect the rights and interests of all sides of the community while ensuring that there is effective decision-taking capability.

4.3 Without prejudice to the views of the parties it is possible to identify a number of models:

4.3.1 A single Justice Department, headed by one Minister (perhaps supported by a Junior Minister from the other tradition). This was broadly the approach favoured by the Criminal Justice Review. A single Department has the advantage of facilitating a joined-up approach to the criminal justice system. A variant would be to agree a rotation arrangement so that the Department changed hands between parties after a fixed interval.

4.3.2 A single Justice Department headed by two Ministers, with decisions requiring the agreement of both, similar to the arrangement provided for in the Northern Ireland Act where the First Minister and deputy First Minister act jointly in carrying out their statutory functions. (As a variation on this, the First Minister and deputy First Minister could themselves take on the roles of the two ministerial heads of a new Department.) Any double-headed arrangements of this sort would strengthen cross-community accountability but could weaken decision taking capability. It would therefore be particularly important to consider whether this model would be likely to prove robust and workable.

4.3.3 Responsibilities for justice to be added to those of the First Minister and deputy First Minister, perhaps supported by additional Junior Ministers. Two key issues here are whether it would be workable for the First Minister and deputy First Minister to provide ministerial oversight in these key areas in addition to all their other responsibilities; and whether such an arrangement would fundamentally change the nature of the Office of the First Minister and deputy First Minister, and the relationship between that Office and the Northern Ireland Departments.

---

<sup>119</sup> As provided for in s4 (5) of the *Northern Ireland Act 1998*. See SO 3(8) as printed on 9 March 1999

<sup>120</sup> [http://www.nio.gov.uk/devolving\\_police\\_and\\_justice\\_in\\_northern\\_ireland\\_a\\_discussion\\_paper.pdf](http://www.nio.gov.uk/devolving_police_and_justice_in_northern_ireland_a_discussion_paper.pdf)

4.3.4 Two Departments (say Policing and Justice), with the two Ministers each coming from a different tradition. Splitting the portfolios could reduce risks of deadlock but weaken efforts to integrate the system more effectively.

4.4 In settling this issue, account will need to be taken of both political balance and effective governance.

Clause 19 inserts a new section 21A into the *Northern Ireland Act 1998*. to allow a variety of models for a new Department for policing and justice. The 1998 Act would already allow for a new department for policing and criminal justice to be established under the control of a single Minister. The *Explanatory Notes* state:

78. This clause inserts a new section 21A into the 1998 Act along with an accompanying new Schedule 4A (which is set out in Schedule 2 to the Bill). It applies where an Act of the Assembly establishes a new Department responsible for devolved policing and justice functions. (Subsections (6) and (7) define these functions). Where such a Department is established, an Act of the Assembly may provide for the Department to be headed by two Northern Ireland Ministers acting jointly. Alternatively, the Act may provide for the Department to be headed by one Minister supported by a junior Minister, and for those persons to rotate at intervals.

Schedule 4 to the Bill sets out relevant procedures as explained in the *Notes*:

81. This new Schedule to the 1998 Act sets out the procedures that will apply where one of the departmental structures provided for by new section 21A is adopted. Part 1 of the Schedule provides for the case in which two Ministers in charge act jointly; Part 2 for the alternative rotational model. The Schedule requires, in both cases, that the First Minister and Deputy First Minister nominate two members of the Assembly to head up the department. The nomination must be approved by a resolution of the Assembly passed with cross-community support, in accordance with paragraph 4(4) or 8(4) of the Schedule. It is possible in either case for the First Minister or Deputy First Minister to be nominated.

82. Both Parts 1 and 2 of the Schedule make provision for what happens if one of the Ministers ceases to hold office, requiring the nomination process to begin again. They also deal with how the nomination and appointment of Ministers under either scheme will affect the nomination and appointment of Ministers to other Northern Ireland Departments under section 18 of the 1998 Act.

83. Part 3 of new Schedule 4A enables further modifications to be made by Order in Council, under the affirmative resolution procedure, in consequence of one of the new departmental structures being adopted. For example, in the event of one of the structures being adopted, it would be necessary to make modifications to Schedule 12A to the 1998 Act.

The rotational ministerial model in this Bill is very unusual in terms of British constitutional practice, and would appear to raise issues of ministerial accountability.<sup>121</sup> However, the power-sharing nature of the Northern Ireland Executive means that the traditional Westminster notions of ministerial accountability are already subject to considerable modification.

---

<sup>121</sup> For a discussion of this issue see Library Research Paper 04/31 *Individual Ministerial Responsibility: Issues and Examples*

In the South Tyrol region of Italy a form of power-sharing among different linguistic groups was established by the 1972 Autonomy Statute. This provides in Article 49 for the compulsory rotation of offices in the presidency of the elected provincial parliament.<sup>122</sup> The presidency is composed of the president, a vice-president and three deputies. In the first half of every five-year legislative period an elected representative of the German-speaking group must be elected as president and an Italian as vice-president. In the second half of the term their roles are reversed. Further details are available from the website.<sup>123</sup>

## **C. Police and justice functions in Northern Ireland**

### **1. The Patten Commission**

A central concern of the *Belfast Agreement* was to bring about a police service capable of attracting and sustaining support from across Northern Ireland as a whole. To facilitate this, the Agreement proposed the establishment of an Independent Commission on Policing for Northern Ireland. Chris Patten was appointed to chair this Commission and it published its plans in September 1999.<sup>124</sup> There were 175 recommendations, including:

- Renaming the Royal Ulster Constabulary
- The creation of a new Policing Board, to replace the Police Authority, with a majority of Board members being members of the Northern Ireland Assembly
- The establishment of a District Policing Partnership Board as a committee of each District Council, with a majority elected membership
- Contracted out recruitment of police officers and staff, with community representatives on recruitment panels
- All candidates for the police service who achieve a specified standard of merit in a selection procedure being entered into a pool from which an equal number of Catholics and non-Catholics should then be drawn as recruits
- Appointment of an eminent person, from a country other than the UK or Ireland to act as an Oversight Commissioner to supervise implementation of the Commission's recommendations.

### **2. Implementing Patten**

An Oversight Commissioner, Tom Constantine a former Director of the US Drugs Enforcement Agency was appointed in June 2000. He has since been replaced by his Chief of Staff, Al Hutchinson, who became Commissioner in January 2004.

Under the provisions of the *Police Northern Ireland Act 2000*, the RUC has been renamed the Police Service of Northern Ireland (PSNI). 1,781 recruits have already

---

<sup>122</sup> [http://www.provinz.bz.it/lpa/autonomy/autonomy\\_statute\\_eng.pdf](http://www.provinz.bz.it/lpa/autonomy/autonomy_statute_eng.pdf)

<sup>123</sup> [http://www.provincia.bz.it/english/overview/region\\_trent\\_tyrol.htm](http://www.provincia.bz.it/english/overview/region_trent_tyrol.htm)

<sup>124</sup> *A New Beginning: Policing in Northern Ireland: The Report of the Independent Commission on Policing in Northern Ireland*, September 1999, <http://www.belfast.org.uk/report.htm>. Further background is in Library Research Paper 00/58.

been appointed to the PSNI on a 50:50 basis since April 2002. The overall proportion of Catholics has risen from just over 8% to over 17% - the target is to increase it to 30% by 2010/11.<sup>125</sup>

26 District Policing Partnerships have been set up, corresponding to the police District Command Units. Their role is to voice the views of the community, contribute to policing plans and monitor police performance at the district level.

The Northern Ireland Policing Board (NIPB) was established November 2001, also under the 2000 Act. Its role is to secure the maintenance, efficiency and effectiveness of the PSNI and hold the Chief Constable to account. When the Assembly is in operation, the Board is made up of 10 MLAs appointed in proportion to the parties' strength, according to the d'Hondt formula, and nine independent members appointed by the Secretary of State. It currently has 11 independent members and eight MLAs,<sup>126</sup> as Sinn Fein have not taken up seats. The Board is due to be reconstituted in April 2006.<sup>127</sup> There has been some press speculation about whether or not Sinn Fein may be moving nearer to taking up seats.<sup>128</sup>

Detailed information on progress on implementing Patten is available in the reports of the Oversight Commissioner.<sup>129</sup>

In addition to the Patten Commission, a Review of Criminal Justice was set up in 1998 under the Belfast Agreement and reported in March 2000. This made 294 recommendations including a new Public Prosecution Service for Northern Ireland, which was established in June 2005.<sup>130</sup> Further details are given in Library Research Papers 00/07 and 04/22.

### 3. The Government's proposals for devolving policing and criminal justice

As was set out in Part I of this Research Paper, the Joint Declaration of the British and Irish Governments reiterated the *Belfast Agreement* statement that the British Government accepted the desirability of devolving police and justice, on "a basis that is robust and workable and broadly supported by the parties."<sup>131</sup> It went on to express the British Government's desire to introduce the necessary legislation "at the earliest opportunity".

---

<sup>125</sup> Northern Ireland Office <http://www.nio.gov.uk/index/faq/niofaq-policing.htm#top>. Figures relate to Regulars, not Reserves.

<sup>126</sup> [http://www.nipolicingboard.org.uk/our%20people/our\\_people.htm](http://www.nipolicingboard.org.uk/our%20people/our_people.htm)

<sup>127</sup> [http://www.nipolicingboard.org.uk/minutes\\_agendas/](http://www.nipolicingboard.org.uk/minutes_agendas/)

<sup>128</sup> See for example, "Sinn Fein moves to bury past: Leadership wins crucial vote on policing board", *Guardian*, 20 February 2006, "We will not be backing police board yet, says Adams", *Observer* 19 February 2006 "Sinn Fein won't make the same mistake twice", *Irish News*, 22 February 2006

<sup>129</sup> <http://www.oversightcommissioner.org/reports/default.asp?page=reports>

<sup>130</sup> Criminal Justice Review Group, *Review of the Criminal Justice System in Northern Ireland*, March 2000, [http://www.nio.gov.uk/review\\_of\\_the\\_criminal\\_justice\\_system\\_in\\_northern\\_ireland.pdf](http://www.nio.gov.uk/review_of_the_criminal_justice_system_in_northern_ireland.pdf)

<sup>131</sup> Para. 20, [http://www.nio.gov.uk/joint\\_declaration\\_between\\_the\\_british\\_and\\_irish\\_governments.pdf](http://www.nio.gov.uk/joint_declaration_between_the_british_and_irish_governments.pdf)

The Discussion Paper published with the Bill sets out the areas of policing and justice which the Government intends to devolve, and also the areas where that is less straightforward.<sup>132</sup>

Devolved responsibility for **policing** might include the appointment of the NIPB's independent members, and responsibility for the Board's statutory framework. On the devolution of ministerial functions concerning the Police Service of Northern Ireland, such as a duty to promote its efficiency and effectiveness, the document states:<sup>133</sup>

There is no reason, in principle, why this legislation should not be devolved, but care would need to be taken to ensure that it was in the best interests of security the confidence and trust of all sections of the community.

**The criminal law and the creation of offences and penalties** might be devolved which would cover bail, proceeds of crime, hate crime, mental health review, road traffic offences and sexual crime. It might also encompass sentencing and restorative justice and services for victims. It would not include the criminal law in relation to national security, treason and counter-terrorism, which are excepted matters. Consideration would have to be given to cross jurisdictional services such as the Criminal Cases Review Commission, and advising the Crown on the exercise of the Royal Prerogative of Mercy.

**The prevention and detection of crime** might be devolved, including police powers and criminal records checks, and various services such as forensic science and the State Pathologist's department. The "Key Persons Protection Scheme" whereby individuals under substantial terrorist threat receive protection would also be devolved, although thought would be needed on how those responsible would have access to appropriate information given that some of it "might originate from sources within the excepted field".

**Prosecutions** might be devolved, as might **prisons, probation, youth justice** and those functions to do with mentally disordered offenders which are still reserved. Similarly the functions and oversight of the Life Sentence Review Commissioners and the Sentence Review Commissioners, who consider the release of prisoners, might be devolved, as might ministerial responsibilities for the Chief Inspector of Criminal Justice.

The functions of the **Compensation Agency**, which pays statutory compensation to crime victims, might be devolved, except for responsibility for the Terrorism Act Scheme.

Ministerial responsibility for **Community Safety Partnerships** might be devolved. These are partnerships of local agencies at district level who work together to tackle crime and anti-social behaviour. At present they are voluntary, but the Secretary of State does have power to put them on a statutory basis.

---

<sup>132</sup> Northern Ireland Office, *Devolving Policing and Justice in Northern Ireland: A Discussion Paper*, February 2006, [http://www.nio.gov.uk/devolving\\_police\\_and\\_justice\\_in\\_northern\\_ireland\\_a\\_discussion\\_paper.pdf](http://www.nio.gov.uk/devolving_police_and_justice_in_northern_ireland_a_discussion_paper.pdf)

<sup>133</sup> p24

The document recognises that the devolution of **public order**, and in particular responsibility for **parades**, is a controversial issue, although its preference is for devolving this. The document suggests the options could be considered by the Assembly.

Responsibility for **firearms** might be split as it is in Scotland, with the routine regulation of firearms being devolved, whilst the regulation of prohibited weapons would remain reserved. Responsibility for explosives would be devolved. Most UK ministerial responsibilities for the **courts** might be devolved to the Northern Ireland Minister for Justice, although there are exceptions.

The document also confirmed that national security intelligence work – which is an excepted matter - should transfer from the Police Service to the Security Service.<sup>134</sup> This had been announced in a Written Ministerial Statement in February 2005.<sup>135</sup> It has caused controversy amongst republicans.<sup>136</sup>

#### 4. Functions related to extradition and related matters

Clause 21 adds a new section 86A into the *Northern Ireland Act 1998*. The new section is intended to enable functions under the *Crime (International Co-operation) Act 2003* and the *Extradition Act 2003* in relation to Northern Ireland which are currently carried out by Ministers of the Crown to be carried out by Northern Ireland departments or Ministers following the devolution to Northern Ireland of policing and justice functions relating to Northern Ireland.

The *Crime (International Co-operation) Act 2003* is concerned with various issues relating to mutual assistance in criminal proceedings, including:

- Service of process
- Imposition of freezing orders to protect evidence
- Enforcement of overseas freezing orders
- Hearing witnesses abroad or in the UK through television and telephone links
- Requests for information about banking transactions
- Transfers of UK prisoners to assist investigations abroad
- Foreign surveillance operations
- Freezing of terrorist property

The *Extradition Act 2003* completely reformed the law on extradition. The scheme of the 2003 Act is outlined in the Act's *Explanatory Notes* as follows:

The Act makes provision for new extradition procedures, the main features of which are:

---

<sup>134</sup> p43

<sup>135</sup> HC Deb 24 February 2005 cc63-4WS

<sup>136</sup> See for example, "MI5's expanded role in Ulster unacceptable", says Sinn Fein, *Belfast Telegraph*, 15 February 2006, and "SDLP slams Ulster spy role for MI5", *Belfast Telegraph*, 13 February 2006

- a system where each of the United Kingdom's extradition partners is in one of two categories. Each country is designated by order of the Secretary of State for a particular category. It will therefore be possible for a country to move from one category to the other when appropriate, depending on the extradition procedures that the United Kingdom negotiates with each extradition partner;
- the adoption of the Framework Decision on the European Arrest Warrant creating a fast-track extradition arrangement with Member States of the European Union and Gibraltar;
- retention of the current arrangements for extradition with non-European Union countries with important modifications to reduce duplication and complexity;
- a simplification of the rules governing the authentication of foreign documents;
- the abolition of the requirement to provide prima facie evidence in certain cases;
- a simplified single avenue of appeal for all cases.

As this extract from the Explanatory Notes mentions, under the new system introduced by the 2003 Act each of the countries with which the UK has extradition arrangements is now in one of two categories – Category 1 or Category 2 – designated by order of the Secretary of State. Different extradition procedures then apply, depending on whether the country requesting extradition is a Category 1 (or “Part 1”) territory or a Category 2 (or “Part 2”) territory.

The countries which have so far been designated as being in Category 1 are all European countries which have implemented the European arrest warrant scheme, although there is nothing in the 2003 Act which restricts designation as a Category 1 territory to those countries which operate the scheme.<sup>137</sup>

An outline of the extradition procedures under the 2003 Act is available on the Crown Prosecution Service website.<sup>138</sup>

Under the previous *Extradition Acts* of 1870–1989 Government ministers (generally the Home Secretary) were involved in the extradition process at a number of different points. By contrast, extradition under the 2003 Act is an almost entirely judicial process. Government ministers are no longer involved to the same extent in making political decisions about the extradition of individuals from the UK.

---

<sup>137</sup> see Jones and Doobay on *Extradition and Mutual Assistance* (Third Edition 2005) paras. 5-007-5-010

<sup>138</sup> <http://www.cps.gov.uk/publications/communications/fs-extraditionindex.html> See also “Surrender made easy? Parts 1 & 2” *New Law Journal* 26 November 2004 & 3 December 2004 at [http://www.2gardenct.law.co.uk/index.php/2gt/latest\\_news/step\\_by\\_step\\_guides\\_to\\_the\\_extradition\\_act\\_2003](http://www.2gardenct.law.co.uk/index.php/2gt/latest_news/step_by_step_guides_to_the_extradition_act_2003)

Where extradition to Part 1 territories is concerned it is the judge dealing with extradition hearing who must decide whether or not to order a person's extradition to the territory which has requested it. The person whose extradition has been ordered may appeal to the High Court and from there to the House of Lords against the order.

Where extradition to Part II territories is concerned, the judge conducting the extradition hearing may, once proceedings have been concluded, discharge the person whose extradition has been requested or send the person's case to the Secretary of State for his decision on whether or not the person is to be extradited. The Secretary of State's functions in such cases are set out in sections 93-102 of the 2003 Act. They require the Secretary of State to consider whether he is prohibited from ordering the person's extradition on a limited number of grounds set out in section 93 of the 2003 Act. If he is not prohibited in this way the Secretary of State must order the person to be extradited to the requesting territory unless the request is withdrawn, the proceedings are deferred because of competing extradition claims and the person is subsequently discharged under section 180 of the 203 Act, or the person is discharged on various national security grounds set out in section 208 of the 2003 Act. Appeals against the Secretary of State's decision may be made to the High Court and from there to the House of Lords.

## VIII Miscellaneous provisions

Part 6 of the Bill contains a series of miscellaneous amendments, most of which are described in more detail below. Clause 24 simply adjusts the *Northern Ireland (Loans) Act 1975* to increase the limit on loans specified in that Act to £3000million and gives the Secretary of State power to increase the limit by order, with the consent of the Treasury. Clause 28

### A. Entrenching enactments

Section 7 of the *Northern Ireland Act 1998* contained provisions to entrench certain legislation so that it could not be subsequently modified. The principal statutes already entrenched under section 7 are the *European Communities Act 1972* and the *Human Rights Act 1998* and certain sections of the *Northern Ireland Act 1998*. "Entrenched" means that the legislation may not be modified either by the Assembly, or by a Northern Ireland minister under subordinate legislation. Section 86 of the 1998 Act already enables Orders in Council to be made to give effect to the legislative competence of the Assembly, but was confined to changes under sections 4 and 6.

Clause 22 inserts a new section 86A to provide for Orders in Council to amend section 7 of *Northern Ireland Act 1998*, so to entrench additional enactments or provide that entrenchments should cease to have effect. The Order would be subject to the affirmative procedure. The *Explanatory Notes* state that an enactment entrenched under the power could be a transferred matter, but nevertheless could not be amended by the Assembly. The *Notes* state:

88. During suspension, the power could be used to entrench amendments made to enactments relating to matters which are already transferred. For example, it could be used to entrench an amendment to create a policing precept

to give the Assembly the power to provide an enhanced level of expenditure on policing by raising money for policing from the Northern Ireland regional rate.

This appears to offer more opportunities to readjust the boundaries between transferred and reserved or excepted matters by Order in Council.

## **B. Decommissioning**

The *Northern Ireland Arms Decommissioning Act 1997*<sup>139</sup> set out the framework for a decommissioning scheme, following recommendations from an international body chaired by US Senator George Mitchell to provide an 'independent assessment' of the decommissioning issue. It passed through Parliament before the election of the Labour Government in May 1997. Similar legislation was passed in the Republic of Ireland.<sup>140</sup> 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. During this decommissioning period there is immunity from prosecution on a variety of firearms offences, set out in the Schedule, to enable weapons to be handed in. This period was extended in the *Northern Ireland Decommissioning (Amendment) Act 2002* to a maximum period of 27 February 2007, with provision by order for annual renewals until that date. Further details are contained in Library Research Paper 01/114 *The Northern Ireland Decommissioning (Amendment) Bill 2001-2*.

The latest order, the *Northern Ireland Arms (Decommissioning) Act 1997 (Amnesty Period) Order 2006* was approved in the Commons on 9 February 2006<sup>141</sup> and in the Lords after a debate on 10 February 2006.<sup>142</sup> The Order extends the decommissioning scheme until 23 February 2007.

Clause 23 amends the 1997 Act to the effect that the latest permitted end date of an amnesty period is extended from 27 February 2007 to 27 February 2010. There is provision for orders to renew the scheme annually until that date.

## **C. Witnesses**

Clause 20 amends section 44 of the Northern Ireland Act 1998 to prevent the Assembly from calling current or former Ministers of the Crown or civil servants to produce papers or give evidence in relation to devolved functions which were discharged in a period of direct rule, or transferred functions exercised in a period before devolution of the function. Further detail is available in the *Explanatory Notes*. This change allows the general principle of accountability to be maintained - a devolved legislature would not

---

<sup>139</sup> 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 overridden by an independent commission

<sup>140</sup> *Decommissioning Act 1997*

<sup>141</sup> HC Deb 9 February 2006 c1107

<sup>142</sup> HL Deb 10 February 2006 c898-901

normally have the right to question Ministers or civil servants about functions exercised when devolution was not in operation. The *Explanatory Notes* state that the change is designed 'to be consistent with the existing principle that the Assembly should have competence only in relation to transferred matters'.

## **D. Energy provisions**

A consultation paper issued by the Office for Energy Regulation for Northern Ireland summarised the background to the Northern Ireland Electricity system:

When the Electricity Supply industry in Northern Ireland was privatised in 1992 all the electricity generating capacity was contracted to NIE's Power Procurement Business (PPB). PPB had a monopoly right to buy all the electricity produced by the four conventional power stations existing at the time of privatisation, and a monopolist's exclusive right to sell that electricity to suppliers, including NIE's supply business. PPB's right to buy this electricity was set out in power purchase agreements (the PPAs) with each power station operator. The price paid by PPB to the power station operators under the PPAs directly influenced the price that customers paid to their electricity suppliers. The PPAs provided for availability payments to be made by PPB to each of the power station operators in respect of all of the earnings streams that might have been available to the power stations in a competitive market. The PPAs did not, therefore, provide for additional payments for system support services, (i.e. spinning reserve, reactive power, outage coordination and black start capability) or capacity. The payments for these services were included in the PPAs and recovered in the electricity charges paid by all customers. There was little transparency in the payments made to the power station operators and consequently in the make up of customers' charges.

Even without liberalisation this system has been (and would be further) eroded by the passing of time through the retirement of old power stations, the introduction of new uncontracted capacity (including renewable generation) and increased interconnection with Great Britain and the Irish Republic. The liberalisation of the electricity market, as a result of the EU Electricity Directives, has put the process of evolution of the PPAs into a time frame.

Liberalisation and the introduction of external and non-contracted generation have led to a gradual unbundling of the payments made under the PPAs. The unbundling was necessary for two reasons. First because independent power plants within Northern Ireland are also entitled to receive payments for the capacity and system support services etc. they provide. Secondly because all Northern Ireland customers benefit from the services provided by the capacity currently contracted to PPB and therefore should make a fair contribution to those costs. Consequently the system operator acquires such services from all thermal capacity in Northern Ireland and recovers the revenue from all Northern Ireland customers. In addition all customers contribute to the legacy costs of privatisation. The EU Directives also created the circumstances in which energy companies in Northern Ireland and the Irish Republic rapidly turned the island of Ireland into a single business area, thereby providing the context in which the two Governments and the Northern Ireland Authority for Energy Regulation (the

Authority) and the Commission for Energy Regulation (CER) are seeking to establish the Single Electricity Market (the SEM) in 2007.<sup>143</sup>

There are many indications that the electricity industry in Northern Ireland faces problems. A press release from the regulator in December 2005 referred to "the original botched privatisation".<sup>144</sup> In reply to a PQ Angela Smith accepted:

that the excess generation costs inherited from privatisation are the main reason for the higher electricity prices paid by consumers in Northern Ireland compared to their counterparts in the remainder of the United Kingdom.<sup>145</sup>

Another PQ showed how security of supply already requires electricity trading:

In order to meet Northern Ireland's electricity demand during the current unavailability of Coolkeeragh power station, Northern Ireland's available generating capacity is being augmented by imports from Great Britain via the Moyle Interconnect or and by energy trades with the Republic of Ireland via the North-South interconnector...<sup>146</sup>

In June 2005, Angela Smith made a commitment to work towards a Single Energy Market in Ireland:

The all-island energy market, based on a cross-border partnership, can deliver mutual long-term economic benefits, north and south. That was the message from Northern Ireland, Energy Minister, Angela Smith, at the Energy Ireland conference on the future of the Irish energy market. An all-island energy market is one of the key policy initiatives that will support Northern Ireland's Economic Vision, published in February, 2005.

Affirming her commitment to the all-island energy agenda in Dublin this morning, Angela Smith said: "A modern energy infrastructure that is able to deliver reliable and sustainable electricity and gas at an economic price will form one of the cornerstones on which Northern Ireland's economic performance can grow.

"We also need to consider how we can best deliver sustainability in energy supplies, not just by exploiting the opportunities for locally based research and innovation in alternative energy sources, but also by exploiting the opportunities at an all-island level."

The Minister went on to say: "I welcome the significant progress which the two Regulatory Authorities, Northern Ireland Authority for Energy Regulations (NIAER) and Commission for Energy Regulation (CER), have made in bringing forward their high-level design paper for a single electricity market. The Memorandum of Understanding signed by the respective transmission system operators is further evidence of the tangible outworking of the agenda set out in the All-island Energy Market Development Framework."

---

<sup>143</sup> Northern Ireland Authority for Energy Regulation, *Northern Ireland's Generators – managing security of supply in an era of transition*, 19 May 2005

<sup>144</sup> NIAER, NIAER Regrets Government Consent to Kilroot Power Station, 23 December 2005

<sup>145</sup> HC Deb 10 October 2005 c256W

<sup>146</sup> HC Deb 16 January 2006 c987W

Angela Smith concluded: "Work on this agenda has begun in earnest, through a productive partnership between the two Governments, Regulatory Authorities and industry stakeholders. However, we have only just started and a single all-island market must deliver mutual benefits, north and south and I believe it will.

"I am committed to the ambitious programme of work, which has started and will be working closely with the Minister for the Department of Communications, Marine & Natural Resources, Noel Dempsey, and TD, to make it a reality."<sup>147</sup>

Clause 25 of the Bill would make provision for a Single Electricity Market throughout Ireland. The Regulatory Impact Assessment states the following objectives:

Objective: The establishment of a Single Wholesale Electricity Market for Northern Ireland and Ireland (commonly known as the Single Electricity Market or SEM) aims to: enhance Northern Ireland's security and diversity of supply; provide greater competition and investment opportunities from a stable market with transparent and equitable trading arrangements; and encourage market efficiencies and economies of scale.<sup>148</sup>

It considered the options of doing nothing, of revising current arrangements and of integrating the Irish network into that for Great Britain, but noted that the Northern Ireland Authority for Energy Regulation (NIAER) had rejected them. Integration with Great Britain was rejected for the moment so as to avoid further disruption following recent extensive changes within the British system. The option of a single all-island market was favoured.

The NIAER, for Northern Ireland, and the Commission for Energy Regulation, for the Republic, have been working together towards a unified market for several years.

Clause 26 would enable financial assistance for specified energy projects to be provided. Angela Smith explained why the Northern Ireland Office put forward the proposals:

New legislation being introduced to Parliament today will make a significant contribution to the development of Northern Ireland's renewable energy capacity and will facilitate the development of a single electricity market on the island of Ireland.

Outlining the energy clauses in the Northern Ireland (Miscellaneous Provisions) Bill, Enterprise Minister, Angela Smith said: "This Bill will facilitate the establishment of a single wholesale electricity market for the island of Ireland, which will be subject to regulation by the respective Regulatory Authorities. The Bill will also widen the range of energy-related projects for which my Department may offer financial support.

---

<sup>147</sup> Department of Enterprise Trade and Investment, Northern Ireland Press Release, *Ministers commit to development of all-Ireland market*, 13 June 2005

<sup>148</sup> Department of Enterprise Trade and Investment, Northern Ireland, *Single Wholesale Electricity Market: Final Regulatory Impact Assessment, Northern Ireland (Miscellaneous Provisions) Bill*, February 2006  
[http://www.nio.gov.uk/final\\_regulatory\\_impact\\_assessment\\_single\\_wholesale\\_electricity\\_market.pdf](http://www.nio.gov.uk/final_regulatory_impact_assessment_single_wholesale_electricity_market.pdf)

"The new provisions are designed to complement and facilitate the Secretary of State's £59 million Environment and Renewable Energy Fund. They will focus on sustainable energy sources such as renewable heat, combined heat and power and cleaner transport fuels. They will also enable funding to be provided through loans and investment, as well as grants, and will extend the scope of persons who are eligible for such support.

"The wholesale electricity market is set in the context of the drive to develop an EU-wide internal market for electricity. It aims to enhance Northern Ireland's security and diversity of supply, provide competition and investment opportunities from a larger market and to encourage market efficiencies and economies of scale. The energy industry both north and south has given its broad support to this work."

The Minister concluded: "This legislation is a vital element in the strengthening of Northern Ireland's electricity market and in the development and deployment of renewable energy technologies which will help Northern Ireland harness its natural resources to provide heat and power, reducing our reliance on fossil fuels, providing more stable energy prices and securing a cleaner environment for future generations."<sup>149</sup>

The following PQ in November 2005 explained the position on renewable energy in Northern Ireland:

**Mr. Peter Robinson:** To ask the Secretary of State for Northern Ireland what progress is being made with the provision of support for the development of renewable technologies in Northern Ireland.

**Angela E. Smith:** The Northern Ireland Renewables Obligation, which was introduced on 1 April 2005, is the main support mechanism for stimulating the supply of electricity from renewable sources and is available across all renewable technologies.

In addition, the draft Budget proposal, announced on 25 October 2005 by my hon. Friend the Secretary of State for Northern Ireland, created a new Environment and Energy Fund to accelerate the development of renewable technologies.

The Fund will complement and significantly enhance existing support initiatives by allocating £10 million in 2006–07 and £25 million in 2007–08 for capital investment in renewable energy with a further £5 million and £10 million in the respective years being earmarked for encouraging research and development of renewable forms of energy. This will help secure energy from biomass, waste, geothermal, solar and tidal stream power sources and will also encourage scope for the use of bio-fuels. Furthermore, it will, in turn, raise innovation and skills levels and also offer significant opportunities for the creation of new rural businesses involved in renewable energy supply. Additionally, householders will be assisted to incorporate renewable energy within their homes thereby reducing both their dependence on fossil fuels and also overall energy costs.<sup>150</sup>

---

<sup>149</sup> Department of Enterprise Trade and Investment, Northern Ireland, *Smith: Northern Ireland Bill will enhance Ireland's energy Infrastructure*, 16 February 2006 <http://www.nics.gov.uk/press/eti/060216f-eti.htm>

<sup>150</sup> HC Deb 1 November 2005 c1027W

## E. SOCAP and Northern Ireland

Clause 27 and Schedule 3 extend the operation of Chapter 1 of Part 2 of the *Serious Organised Crime and Police Act 2005* to Northern Ireland. These are the provisions which gave English and Scottish investigating authorities extensive new powers when they are investigating particular crimes. The powers are closely similar to those already conferred on the Serious Fraud Office by the *Criminal Justice Act 1987* and on the Assets Recovery Agency by the *Proceeds of Crime Act 2002*. The 2005 Act conferred on SOCA staff,<sup>151</sup> police constables and officers of Revenue and Customs, acting under the supervision of the Director of Public Prosecutions (or the new Director of Revenue and Customs Prosecutions), powers to compel people to co-operate with an investigation by producing documents and answering questions. This is done by giving a “disclosure notice” to a person who has information relating to a matter relevant to the investigation of the offence, requiring him to answer questions, to provide information and/or to produce documents. There are powers to enforce, by entering and searching premises and seizing documents pursuant to a warrant, and the Act created new offences of failing to comply with a disclosure notice, of obstructing a person in the exercise of a warrant and of making a false or misleading statement. There are some safeguards against self-incrimination and legal privilege is protected.

Before the parliamentary passage of the *Serious Organised Crime and Police Act* some concerns about the proposed extension of these powers had been expressed, in particular that the element of compulsion might have an adverse effect on people’s willingness to cooperate, and on the quality of the evidence given. It was also suggested that the range of offences for which the powers were to be available was too wide, and the adequacy of the safeguards was questioned.<sup>152</sup> To address concerns that the compulsory and investigatory powers should be used only for the most serious offences the Government amended the Bill to set a de minimis threshold of £5,000 for particular offences under the *Theft Act 1968* and tax fraud offences which would not necessarily be regarded as serious offences.<sup>153</sup>

Clause 27 extends the new provisions to Northern Ireland, and Schedule 3 makes the requisite amendments to the 2005 Act, principally by including the Director of Public Prosecutions for Northern Ireland as one of the investigating authorities which may exercise the powers, and adding to the list of offences to which the powers apply so that the corresponding offences in Northern Ireland are included. Other amendments also reflect differences in the legislation and procedure applying in Northern Ireland. SOCA’s remit extends throughout the United Kingdom, with special arrangements in place in recognition of the devolution settlement in Scotland and the particular circumstances of Northern Ireland. While designated members of the SOCA’s staff may qualify as an “appropriate person” authorised to give a disclosure notice or search premises, they are specifically excluded when the Act is applied in Northern Ireland.

---

<sup>151</sup> The Serious Organised Crime Agency

<sup>152</sup> For more detailed background to these provisions see Library Research Paper 04/88 The Serious Organised Crime and Police Bill - the New Agency; and new powers in criminal proceedings at <http://hcl1.hclibrary.parliament.uk/rp2004/rp04-088.pdf>

<sup>153</sup> HL Deb 6 April 2005 c754

The Scottish Executive has indicated that it will not propose a Legislative Consent Motion (or Sewel Motion) in respect of clause 27.<sup>154</sup>

## **F. Police liability for health and safety breaches**

In 2003 the Commissioner of the Metropolitan Police, Sir John Stevens and his predecessor, Sir Paul Condon, had to appear in court in person for five weeks for failing to ensure the safety of their officers following a prosecution by the Health and Safety Executive. One officer had been killed and another was seriously injured when a roof collapsed during a chase. The jury cleared them of some charges and were unable to agree on others, and the judge criticised the HSE for bringing the prosecution. There was no retrial.<sup>155</sup>

Section 158 of the *Serious Organised Crime and Police Act 1995* amended the *Health and Safety at Work etc. Act 1984* so that any prosecution of a chief officer of police would be ordinarily brought against the office of the chief constable rather than against the individual incumbent. There are exceptions to cover situations where the Chief Constable bore some personal responsibility.

Clause 28 makes equivalent changes to the *Health and Safety at Work Northern Ireland Order 1978*.<sup>156</sup>

## **G. Judicial vacancies**

The two subsections in clause 29 make amendments to s12 of the *Judicature (Northern Ireland) Act 1978*, which makes provision for appointments of the senior judiciary. Subsection (1) amends s12 in its current form and subsection (2) amends s12 as it will appear when the amendments made by the *Justice (Northern Ireland) Act 2002* are brought into force. The effect of the present Bill's amendments is to impose on the Prime Minister a statutory duty to make a recommendation to fill any vacancy in the office of Lord Chief Justice and also (unless the Lord Chief Justice agrees that a vacancy may remain unfilled) to fill any vacancy in the office of Lord Justice of Appeal. The duty is in line with the duties which ss68 and 77 of the *Constitutional Reform Act 2005* imposed on the Lord Chancellor, to fill any vacancies in the offices of Lord Chief Justice, the Heads of Division and Lords Justices of Appeal in England and Wales.

## **IX Commencement and extent of Bill**

As noted above, in Part I, there have been press reports that the Northern Ireland Secretary is planning major amendments to this Bill, should the parties reach agreement on changes during the current series of talks. The long title of the Bill (which summarises the main purposes and content of the Bill) is as follows:

---

<sup>154</sup> Legislative Consent Memo Northern Ireland (Miscellaneous Provisions) Bill 3 March 2006 at <http://www.scottish.parliament.uk/business/legConMem/pdf/j1-LCM.pdf>

<sup>155</sup> See for example "Safety case against Met police chiefs a 'waste' of public's £3m", *Telegraph*, 28 June 2003

<sup>156</sup> SI 1978/1039

To make provision about registration of electors and the Chief Electoral Officer for Northern Ireland; to amend the Northern Ireland Act 1998; to make provision about donations for political purposes; to extend the amnesty period for arms decommissioning in Northern Ireland; and to make miscellaneous amendments in the law relating to Northern Ireland.

Amendments and new clauses would be expected to fall within the long title to be considered within the scope of the Bill.<sup>157</sup>

Clauses which make provision for anonymous registration and for altering the date of elections come into force on royal assent, as do provisions on arms decommissioning, loans to Northern Ireland, energy, health and safety of police and judicial vacancies. The provisions on donations for political purposes will generally come into force on 1 November 2007. Much of the Bill extends to the whole of the UK because many of the enactments on which the Bill operates are UK-wide.

---

<sup>157</sup> For further details see *Erskine May* (23<sup>rd</sup> ed) 2004 p547ff

## Appendix Parliamentary electorates and voting age population 2001-5

### Parliamentary electorates and voting-age population, 2001-05

*Northern Ireland*

Constituency (B - Borough C - County)	2001			2004	2005	Electorate change 2001-05
	electorate <sup>1</sup>	18 and over <sup>2</sup>	difference	electorate <sup>3</sup>	electorate <sup>4</sup>	
<b>Northern Ireland</b>	1,205,097	1,233,754	-28,657	1,045,537	1,153,409	-51,688
Belfast East	B 59,044	61,438	-2,394	48,408	52,923	-6,121
Belfast North	B 61,646	63,254	-1,608	45,950	52,621	-9,025
Belfast South	B 59,937	76,381	-16,444	46,491	52,126	-7,811
Belfast West	B 60,377	59,259	1,118	46,021	54,205	-6,172
East Antrim	C 61,597	63,031	-1,434	53,212	58,794	-2,803
East Londonderry	C 60,968	65,199	-4,231	54,662	59,109	-1,859
Fermanagh and South Tyrone	C 67,561	65,679	1,882	61,546	67,411	-150
Foyle	C 71,835	72,880	-1,045	61,322	68,848	-2,987
Lagan Valley	C 73,494	75,814	-2,320	65,712	71,952	-1,542
Mid Ulster	C 62,165	60,548	1,617	58,232	63,015	850
Newry and Armagh	C 73,369	71,440	1,929	66,459	72,876	-493
North Antrim	C 75,384	75,240	144	69,998	75,332	-52
North Down	C 63,944	66,505	-2,561	54,618	60,108	-3,836
South Antrim	C 71,316	73,951	-2,635	60,240	67,534	-3,782
South Down	C 74,555	74,280	275	67,937	74,230	-325
Strangford	C 72,948	73,775	-827	63,792	69,575	-3,373
Upper Bann	C 73,471	74,367	-896	66,746	72,564	-907
West Tyrone	C 61,486	60,713	773	54,191	60,186	-1,300

<sup>1</sup> 16 February 2001

<sup>2</sup> 29 April 2001 (Census Day)

<sup>3</sup> 1 December 2004

<sup>4</sup> 1 December 2005

Sources: Office for National Statistics, Northern Ireland Statistics and Research Agency, House of Commons Library electronic holdings

The parliamentary electorate of Northern Ireland fell by 51,688 (4%) between 2001 and 2005.

Not everyone resident in a parliamentary constituency is entitled to vote in parliamentary elections. Non-UK, Republic of Ireland or Commonwealth citizens, prisoners, and members of the House of Lords are among those excluded from parliamentary electoral rolls. However, in six of the 18 parliamentary constituencies in Northern Ireland there were *more* electors on the February 2001 electoral register than there were persons aged 18 and over on Census Day two months later (29 April 2001).

There may be a number of explanations for differences between the 2001 Census count of the voting-age population in a given parliamentary constituency on 29 April 2001 and the count of the parliamentary electorate in February 2001.

Factors that might inflate the count of parliamentary electors relative to the Census count of the voting-age population include:

1. Students and persons with second homes who are entitled to be included on the electoral register in multiple locations;

2. Persons not entitled to vote but nevertheless included on an electoral register;
3. Electoral registers that include, for example, persons who died or moved home prior to the reference date for the new electoral register (10 October 2000) but whose names were not removed from the new register effective 16 February 2001;
4. Persons who died or moved home between the reference date for the new electoral register (10 October 2000) and Census Day (29 April 2001); and,
5. Problems of under-enumeration in the 2001 Census, particularly in 'hard-to-reach' districts, for example inner-city areas. Further information relating to under-enumeration in the 2001 Census is available from the Office for National Statistics<sup>158</sup> and the Statistics Commission.<sup>159</sup>

Factors that might *deflate* the count of parliamentary electors relative to the Census count of the voting-age population include:

1. Inadequate coverage of the electoral register, for example where persons reaching voting-age or otherwise become eligible to vote in parliamentary elections are excluded from the register;
2. Persons who are ordinarily resident in the United Kingdom and counted on Census Day but ineligible to vote in parliamentary elections. For example, non-UK nationals settled in the United Kingdom, Members of the House of Lords, convicted prisoners in communal establishments such as prisons, the Royal Family and other persons detained under the provisions of the *Mental Health Act 1983*.
3. Serving members of the UK armed forces, who were included on the electoral register in the constituency of last residence but, for the purposes of the Census, were counted elsewhere (e.g. army barracks).

Demographic factors, such as inward/outward intra- and inter-national migration, might also be factors in both inflating and deflating the parliamentary electorate relative to the Census count of the voting-age population.

In all but one constituency in Northern Ireland (Mid Ulster) the electorate was lower in 2005 compared with 2001. In Mid Ulster, the increase was 850 electors (+1.3%). The largest falls in parliamentary electors between 2001 and 2005 were in the four Belfast constituencies. In Belfast North, the number of electors in December 2005 was 9,000 fewer than in 2001.

Nine out of the ten UK parliamentary constituencies with the largest reductions in parliamentary electorates between 2004 and 2005 are in Northern Ireland. 2005 UK electorate statistics are provided in a Library Standard Note available online.<sup>160</sup> Similar

---

<sup>158</sup> [http://www.statistics.gov.uk/downloads/theme\\_population/2001CENSUSM&WMATCHINGSUMMARY.pdf](http://www.statistics.gov.uk/downloads/theme_population/2001CENSUSM&WMATCHINGSUMMARY.pdf)

<sup>159</sup> [http://www.statscom.org.uk/media\\_pdfs/reports/Census%20Report%20Final%202022.pdf](http://www.statscom.org.uk/media_pdfs/reports/Census%20Report%20Final%202022.pdf)  
[http://www.statscom.org.uk/media\\_pdfs/reports/Census%202001.pdf](http://www.statscom.org.uk/media_pdfs/reports/Census%202001.pdf)

<sup>160</sup> <http://www.parliament.uk/commons/lib/research/notes/SNSG-03931.pdf>

statistics covering the period between 2001 and 2004 are provided in Library Research Paper 05/85 *The Electoral Administration Bill*, also available online.<sup>161</sup>

---

<sup>161</sup> <http://www.parliament.uk/commons/lib/research/rp2005/rp05-065.pdf>