



RESEARCH PAPER 06/23  
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# **The *Northern Ireland* *Bill***

**Bill 169 of 2005-6**

This Bill is due to have its second reading in the Commons on Wednesday 26 April, followed by remaining stages on 27 April. The Secretary of State for Northern Ireland, Peter Hain, announced on 18 April 2006 that he would bring forward emergency legislation to the Commons. The Bill requires the Northern Ireland Assembly to be recalled on 15 May 2006 with the express purpose of electing an Executive, resulting in the devolution of power through the repeal of the *Northern Ireland Act 2000*. If no agreement is reached by Assembly Members by 25 November 2006, then the Assembly will no longer meet and will be dissolved on or before 3 May 2007. No further elections will be held until the Secretary of State appoints a date by order. If the Assembly is successful in selecting an Executive, then Assembly elections due in May 2007 will be postponed for a further year to allow the bedding in of the new devolved institutions.

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## Summary of main points

The Northern Ireland Assembly met for the first time on 1 July 1998, following a referendum on the *Belfast (Good Friday) Agreement*, and the passage of the *Northern Ireland (Elections) Act 1998*. 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*.

Continued problems regarding decommissioning led to the re-introduction of direct rule 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. An order under the *Northern Ireland Act 2000* restored devolution from June 2000 until 14 October 2002, when there was a further suspension which remains in force. The Assembly cannot therefore exercise legislative functions until this suspension is lifted. Elections were postponed in 2003 until 26 November, and the Assembly has not met since then, although Members continue to carry out constituency work and receive roughly 70 per cent of pay. In December 2004 intensive efforts by the British and Irish Government foundered when the Northern Ireland parties failed to agree. The proposals were published as the Comprehensive Agreement and involved the creation of a shadow Assembly designed to elect an Executive.

In recent months, attempts to restore devolution have intensified, 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 (Miscellaneous Provisions) Bill*, had its second reading in the Commons on 13 March 2006. Clause 10 provided a power for the Secretary of State to bring forward the date of the next elections to the Northern Ireland Assembly. These elections were due in May 2007, as the Assembly was designed to operate on a four year fixed term. However this power to bring forward the election date was removed at Commons committee stage on 19 April 2006, following a statement from the Secretary of State, Peter Hain, on 18 April to the effect that new legislation would require the existing Assembly Members to meet on 15 May 2006 for the purpose of electing a new Northern Ireland Executive.

The *Northern Ireland Bill* was introduced and published on 20 April 2006. It provides for the restoration of devolved government through the selection of Ministers to form the Executive, with detailed arrangements set out in Schedule 2. The Assembly elected in November 2003 would convene for the purpose of determining members of the Executive, but would not exercise legislative powers. Restoration would only occur through the Secretary of State bringing forward an order under the *Northern Ireland Act 2000* once he was satisfied that a First and Deputy First Minister and Executive had been elected. Should it be successful in creating an Executive, then the Bill will extend its term for a further year until May 2008, to avoid fresh elections while the new institutions are bedding down.

Where the Assembly fails to select an Executive by the end date of 25 November 2006 Schedule 3 gives the Secretary of State power to dissolve the Assembly and determine when or if elections are next held. Members would no longer be paid. The Bill comes into force on royal assent.

# CONTENTS

<b>I</b>	<b>Background</b>	<b>7</b>
	<b>A. Creation of the Northern Ireland Assembly</b>	<b>7</b>
	<b>B. Elections in November 2003</b>	<b>7</b>
	<b>C. The Comprehensive Agreement proposals of December 2004</b>	<b>8</b>
	<b>D. IRA announcement July 2005</b>	<b>9</b>
	<b>E. Joint statement on 6 April 2006</b>	<b>12</b>
	<b>F. Mr Hain's statement on 18 April 2006</b>	<b>15</b>
	<b>G. <i>The Northern Ireland (Miscellaneous Provisions) Bill</i></b>	<b>16</b>
<b>II</b>	<b><i>The Northern Ireland Bill</i></b>	<b>18</b>
	<b>A. The framework of the Bill</b>	<b>18</b>
	<b>B. Appointment of the Presiding Officer</b>	<b>18</b>
	<b>C. Standing Orders of the Assembly</b>	<b>19</b>
	<b>D. Devolution and Direct Rule</b>	<b>19</b>
	<b>E. Election of the First and Deputy First Ministers and Executive</b>	<b>22</b>
	<b>F. Pledge of office and procedures for exclusion</b>	<b>23</b>
	<b>G. Elections and dissolution of the Assembly</b>	<b>24</b>
	<b>H. Pay and allowances for Assembly Members</b>	<b>24</b>
	<b>I. Modifying the <i>Belfast Agreement</i></b>	<b>27</b>

# I Background

## A. Creation of the Northern Ireland Assembly

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, using powers in the *Northern Ireland Act 2000*, 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.

## B. Elections in November 2003

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>

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.

### **C. 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

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

<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)

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 and accountability’ and providing for a statutory Ministerial Code, amendments to the Pledge of Office and amendments to the Assembly procedures for nominating Ministers. 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.

## **D. IRA announcement July 2005**

On 28 July 2005 the IRA formally ordered an end to its armed campaign and said it would pursue exclusively peaceful means.<sup>5</sup>The IRA statement was welcomed by the British and

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

<sup>5</sup> „IRA statement in full”, 28 July 2005 *BBC News*

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>6</sup> On 1 August Mr Hain issued a written statement in which he set out a two year plan for de-militarisation, contingent on the security situation.<sup>7</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>8</sup> On 19 October 2005 the Independent Monitoring Commission, established under the *Northern Ireland (Monitoring Commission etc) Act 2003*, published its seventh report.<sup>9</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>10</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>11</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>12</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>13</sup> On 4 April 2006 Denis Donaldson was found dead in the Republic. Mr Hain stated that the apparent murder would not derail the efforts of the British and Irish Governments.<sup>14</sup>

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<sup>6</sup> "Hain responds to IRA statement" *Northern Ireland Office* 28 July 2005

<sup>7</sup> "Northern Ireland Secretary's statement" *BBC News* 1 August 2005

<sup>8</sup> Dep 05/1227 HINF2005/1593 *Report of the Independent Commission on Decommissioning addressed to Peter Hain and Michael McDowell* 26 September 2005

<sup>9</sup> Available at

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

<sup>10</sup> *Seventh Report* para 3.18

<sup>11</sup> HC Deb 13 October 2005 c449-452

<sup>12</sup> Quoted in "Stormontgate- securocrats pulled down executive says spy accused" 9 December 2005 *Irish News*

<sup>13</sup> "Donaldson's statement" 18 December 2005 *Belfast Telegraph*

<sup>14</sup> "Agent's death 'won't stall peace'" *BBC News* 5 April 2006



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 were 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 issued a policy document containing proposals for the restoration of the Assembly without the restoration of the Executive.<sup>21</sup> This position was opposed by the

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<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 accused Sinn Fein 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 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 stated that the Assembly should be abolished and salaries for its Members withdrawn if there was not progress towards full restoration of devolution in the next few months.<sup>24</sup>

Mr Hain set a deadline of 8 March for the parties to agree legislative changes to the operation of the Assembly and the Executive. However all-party talks which were due to begin on 20 February did not progress, due to a failure to agree on the sequence of talks.<sup>25</sup>

The *Northern Ireland Act 2000 (Modification) Order 2006* extended the power to legislate on Northern Ireland matters by Order in Council for a further six months until 14 October 2006. This was examined by both Houses in March 2006.<sup>26</sup> This power originally set out in the *Northern Ireland Act 2000* had already been extended six times since the suspension of devolution in October 2002.

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 per annum, including Members' salaries and allowances, party allowances, research and IT, printing and publishing and secretariat salaries.<sup>27</sup>

## **E. Joint statement on 6 April 2006**

On 6 April a Joint Statement was issued by the Prime Minister and the Taoiseach, in an attempt to make progress on restoring devolution. The Joint Statement had four main proposals:

- Recall of the Assembly to initiate the 6 week period within which a First Minister and Deputy First Minister should be elected
- Intensive party talks to ensure an Executive on the d'Hondt model
- Second Assembly session from 1 September to 24 November, should no agreement be reached in June
- Cancellation of Assembly member salaries and allowances on 24 November, should no agreement be reached
- If no agreement, then the British and Irish Governments would develop partnership arrangements to develop the structure and functions of the Belfast Agreement

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

<sup>26</sup> Lords, on 29 March 2006, Commons on 28 March 2006

<sup>27</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

The full text of the Joint Statement by the Prime Minister and the Taoiseach made at Armagh, 6 April 2006 was deposited in the House and is available on the internet.<sup>28</sup> The main points were as follows:

4. The Assembly will therefore be recalled on 15 May. Recognising that it has not sat for nearly four years, it seems sensible to give the Assembly a short period in which to prepare for government as envisaged by paragraph 35 of Strand One of the Good Friday Agreement. The Assembly's primary responsibility would be to elect a First and Deputy First Minister as soon as possible, to allocate Ministerial posts under the d'Hondt formula and to make other preparations for Government within Northern Ireland and in the North/South and East/West fields.

5. As soon as the Assembly elects a First and Deputy First Minister on a cross-community basis and forms an Executive, power will automatically be devolved to the Assembly, as happened in December 1999, and all its functions will be resumed. At that point the British Government's power to suspend the Assembly will lapse for good.

6. If, despite best efforts, the Assembly is not able to elect a First and Deputy First Minister on a cross-community basis within the normal six week period, we would be prepared to allow a further period of 12 weeks after the summer recess in which to form an Executive and we would expect it to do so at the earliest opportunity within this timeframe.

7. We are also conscious that all parties have made proposals for the better functioning of the institutions and that discussion on these issues has not yet concluded. It would be open to the parties to continue these discussions with each other and with the Governments, as appropriate, so that consideration could be given to proposals for the implementation of the Agreement, including changes to Strands 1 to 3 in the context of a commitment by all involved to participate in a power-sharing Executive.

8. It would of course also be open to the Assembly to prepare for Government by considering issues which the Executive will have to deal with, such as future economic strategy, water rates, public administration and education. Ministers would naturally take account of views which command cross-community support within the Assembly.

9. While it is reasonable to give the Assembly a little more time, there must be a clear limit. We said in January that a power-sharing Executive must be formed this year. If by 24 November the Assembly has failed to achieve this, we do not believe that any purpose would be served by a further election at that point or a few months later in May 2007. We do not think that the people of Northern Ireland should be asked to participate in elections to a deadlocked Assembly. There would be no choice but to cancel salaries and allowances for MLAs and to defer restoration of the Assembly and Executive until there is a clear political willingness to exercise devolved power. The Governments would, of course, stand ready to facilitate full restoration when all parties indicate such willingness.

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<sup>28</sup> at <http://www.nio.gov.uk/media-detail.htm?newsID=12944> MGP 06/994 The text of the speeches made by the Prime Minister and the Taoiseach was set out in a Written Ministerial Statement. HC Deb 19 April 2006 c20-22WS

10.If restoration of the Assembly and Executive has to be deferred, the Governments agree that this will have immediate implications for their joint stewardship of the process. We are beginning detailed work on British-Irish partnership arrangements that will be necessary in these circumstances to ensure that the Good Friday Agreement, which is the indispensable framework for relations on and between these islands, is actively developed across its structures and functions. This work will be shaped by the commitment of both Governments to a step-change in advancing North-South co-operation and action for the benefit of all.

11.The British Government will introduce emergency legislation to facilitate this way forward. It will set out clearly the limited timescale available to the Assembly to reach agreement. In parallel with the recalling of the Assembly, we will engage intensively with the parties to establish the trust necessary to allow the institutions not only to function but to flourish. There is a great deal of work to be done. The Governments will do all in their power to restore the institutions and return devolved Government to those elected by the people of Northern Ireland. But the final decisions are for the parties. We hope they will seize the opportunity to move forward.

In responses to press questions after the Statement the Prime Minister and the Taoiseach denied suggestions that a shadow Assembly was being created. The Taoiseach was quoted as saying: "the Assembly is being recalled on 15 May for a finite period with the responsibility of electing a First and Deputy First Minister and forming an Executive that has all the powers for the purpose, so it's not a shadow Assembly."<sup>29</sup>The reactions of the Northern Ireland parties to the Joint Statement may be found on the BBC website.<sup>30</sup> Mr Paisley stated:

The DUP will not be forced, rushed or bullied into accepting any level of IRA criminality. Currently there is no evidence that Sinn Fein/IRA will be any further advanced in giving up criminality in November.  
Given the reality that there will be no executive formed for the foreseeable future the best way forward is to get working in the assembly.

Mark Durkan, the SDLP leader responded:

In particular, we are concerned that the secretary of state will still seek in that legislation a power to change the Good Friday Agreement at will. People should be clear about where all these difficulties about a shadow assembly have come from.  
A shadow assembly was agreed between the DUP and Sinn Fein in 2004 in the so called comprehensive agreement. We are still living with the damage caused by that bad deal."

Gerry Adams saw the Statement as a positive outcome, while Reg Empey, for the UUP, welcomed the recall of the Assembly.

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<sup>29</sup> "PM's statement on Irish power-sharing" No 10 website PM speeches 2006 at <http://www.number10.gov.uk/output/Page9290.asp>

<sup>30</sup> "Reaction to Northern Ireland devolution plan" *BBC News* 6 April 2006 <http://news.bbc.co.uk/1/hi/uk/4884338.stm>

We urgently need to have an input into, and make changes to, direct rule decisions on education, water rates and the Review of Public Administration to name but three. This is our job.<sup>31</sup>

## **F. Mr Hain's statement on 18 April 2006**

On 18 April Mr Hain announced to the Commons that he would bring forward emergency legislation to enable the Assembly to meet on 15 May, with an agreement to restore the institutions of devolved government by 24 November 2006:

The joint statement indicated that the Northern Ireland Assembly would be recalled on 15 May, with a view to reaching agreement to restore the institutions by 24 November. Last week, I nominated a new Presiding Officer, Eileen Bell. I have every hope that she will soon be overseeing the transition of the Assembly to full devolution. A woman of real courage, strength and ability, she is highly regarded by all, and could be the symbol of a new political era of co-operation and progress, leaving behind sectarianism and division.

We will aim to discuss with the parties next week how the Assembly will function after 15 May, including its standing orders. I will also be introducing an emergency Bill on 20 April, for taking through the House next week. I know that this is an extremely tight timetable, but the Bill will have only about half a dozen clauses in total and hon. Members will appreciate the urgency. We need to get the parties back in the Assembly and talking now to provide them with the maximum opportunity for securing agreement by 24 November at the very latest.

The Bill will arrange for the Assembly to be recalled with the express purpose that it sets about electing a First and Deputy First Minister on a cross-community basis, and then forms an Executive, under the d'Hondt formula. As soon as that is done, power will automatically be devolved, as happened in December 1999, and all the Assembly's other functions will be resumed.

Our hope and intention is that the Assembly will elect an Executive within six weeks, as envisaged by paragraph 35 of strand 1 of the Good Friday agreement. However, if that time frame proves to be too short, the Assembly will have a further 12-week period after the summer in which to complete the task. During that period, it will be open to the parties to engage in further discussion, both among themselves and with the Government, on improving the running of the institutions. The Assembly will also have opportunities to prepare for government by considering issues that are crucial to the future of Northern Ireland, such as the economy and reforms to education, water charges and public administration.

The Bill will have obvious implications for Orders in Council. Some of the forthcoming Northern Ireland legislation on transferred matters will obviously be appropriate for consideration by the restored Assembly, and Ministers will naturally be willing to take account of views on such matters, if they are provided on a cross-community basis.

It would be preferable to all democrats if the parties were quickly able to take up the mantle of government so that the decisions that affect the everyday lives of people in Northern Ireland were taken by locally accountable politicians. However, in the meantime, I will not delay implementing vital reforms that this Government consider essential to the better running of Northern Ireland. While

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<sup>31</sup> *ibid*

those decisions may not always be popular, they are necessary in the public interest, to put Northern Ireland on the road to becoming world class.

Mr Hain set out the alternative, should the parties not reach agreement by that date:

If, however, the Assembly has been unable to achieve a power-sharing Executive by 24 November, there will be no choice but to cancel Assembly Members' salaries and allowances forthwith, and to cancel the election due in May 2007. It would be absurd to elect Members unwilling to discharge their duties to an Assembly that would not have sat for more than four and a half years. Restoration of the Assembly and Executive would then be deferred until there was a renewed political willingness to exercise devolved power. The two Governments would then continue their commitment to developing north-south co-operation and structures as set out in the Good Friday agreement. In this scenario, the agreement would remain very much alive.<sup>32</sup>

In response to questions from the Conservative spokesman, David Lidington, he emphasised that there was 'no question of joint authority or joint governance'.<sup>33</sup> He also stated that there would be further emergency legislation later in 2006 to amend the Belfast Agreement provisions, should the parties reach agreement:

I am grateful for the hon. Gentleman's general support on the emergency legislation and will be happy to take him through the detail when we have an opportunity to do so. I am being very cautious about Orders in Council; I know there is sensitivity to them in Parliament, both in this place and the House of Lords. However, I want some flexibility to make progress. I had hoped to include in the Bill provision by Order in Council, should we be in a position to reach a final agreement, and also to amend the strands 1 to 3 arrangements, which everybody understands will be necessary in terms of the original architecture; for example, the Democratic Unionist party has made its position clear.

I had hoped to include an Order-in-Council provision in the Bill, but it seems that there is opposition to that, so we shall have to look at emergency legislation later in the year, should there be the conditions for the necessary all-party agreement and the restoration of the institutions that we desire. I shall obviously consult the hon. Gentleman on all the detail as we go through the process.<sup>34</sup>

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

This Bill is designed to pre-empt plans in clauses 10-12 of the *Northern Ireland (Miscellaneous Provisions) Bill* to give the Secretary of State power to bring forward by order the date of the Northern Ireland Assembly election due in May 2007. This would have taken place by amending section 31 of the *Northern Ireland Act 1998*. Under section 31 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. Subsequently two bills were introduced in 2003 to vary the date of the next election, which finally took place on 26 November 2003.

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<sup>32</sup> HC Deb 18 April 2006 c19-21

<sup>33</sup> *ibid* c24

<sup>34</sup> *ibid* c25

The power in the Miscellaneous Provisions Bill related only to the election planned for May 2007, and would have come into effect on royal assent. The order was subject to the affirmative resolution procedure, but there was also provision to use the urgency procedure.<sup>35</sup> Under this procedure, the Secretary of State makes the order, which is subsequently laid before Parliament for approval. The Bill is currently at Commons committee stage, which is expected to last until 2 May. However, on 19 April Government amendments to remove clauses 10-12 from the Bill were passed.<sup>36</sup> The junior minister, David Hanson stated:

Right hon. and hon. Members will understand that we have not yet published the new Bill that will give effect to the proposals outlined by the Taoiseach and my right hon. Friends the Prime Minister and the Secretary of State and that the details will not be made available until the Bill is formally introduced shortly. However, in the light of the arrangements proposed by my right hon. Friends the Prime Minister and the Secretary of State about the recall of the Assembly on 15 May and the potential end date for that recall towards the end of November—from memory, I think that it is 24 November—the procedural arrangements for calling an early election will not now be necessary. Therefore, I am happy that clauses 10 to 12 are no longer required. We want to delete them in due course, because we do not believe that they are necessary, given the new political framework proposed by my right hon. Friends. I also very much hope that the Assembly will return and that a new election, as originally envisaged when the Bill was introduced, will not now be needed, because there is a clearly identified framework.<sup>37</sup>

There was some criticism from Opposition parties as to a pace of policy development leading to the amendments:

**Mark Durkan (SDLP):** We would love to take great comfort in the journey that these three clauses have made from being necessary as a contingency to being utterly redundant in a matter of weeks. If they had made that journey by going past the certainty of a restoration date and a known future election date for the Assembly, we could have taken such comfort, but, in the absence of such certainty, we cannot. As the hon. Member for Belfast, North (Mr. Dodds) has said, it seems that the Government are busking on this issue and hoping that whatever happens catches the eye of somebody who passes by.<sup>38</sup>

The Conservative Opposition spokesman, David Lidington expressed support for the proposal to recall the existing Assembly in May.<sup>39</sup> The amendment also received support from Lorely Burt, for the Liberal Democrats and the clauses were withdrawn without a division.

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<sup>35</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>36</sup> HC Deb 19 April 2006 c190

<sup>37</sup> HC Deb 19 April 2006 c192

<sup>38</sup> HC Deb 19 April 2006c194

<sup>39</sup> HC Deb 19 April 2006 c195

The *Northern Ireland (Miscellaneous Provisions) Bill* also provides for changes to electoral registration, and allows for the possible devolution of policing and justice functions to the Assembly and Executive, creating the possibility of rotating ministers to take responsibility for these functions. Further details are available in Research Paper 06/14 *The Northern Ireland (Miscellaneous Provisions) Bill*.

## **II The Northern Ireland Bill**

### **A. The framework of the Bill**

The Bill was introduced and published on 20 April 2006. Clauses 1 and 2 provide for the restoration of devolved government through the selection of Ministers to form the Executive, with detailed arrangements set out in Schedule 2. Only at this point would the suspension of devolution be ended, since the *Northern Ireland Act 2000* would continue to operate even after this Bill received royal assent. The Government intends that this Bill come into effect before 15 May 2006 to enable an Assembly without legislative powers to convene.

The *Explanatory Notes* refer to Article 3 of the First Protocol of the *European Convention on Human Rights*, (free elections at reasonable intervals) noting:

48. The Bill does provide for the postponement of elections to the Northern Ireland Assembly and the dissolution of the Northern Ireland Assembly in certain circumstances. However, the overall purpose of the Bill is to enhance political accountability in Northern Ireland by restoring devolved government, and all of its provisions are designed to achieve that aim. Further, even in the absence of devolved government, the law in the United Kingdom provides for the holding of free elections to the Westminster Parliament and for local elections. Article 3 of the First Protocol does not enshrine a right to devolved government. So the requirements of that Article are in any case fully met in respect of Northern Ireland.

Where no agreement is reached then under Schedule 3 the Secretary of State would have power to postpone the election of the Assembly due in May 2007 and to dissolve the Assembly indefinitely.

The Bill extends to the UK, but as the *Notes* state, the practical effect is in Northern Ireland only.

### **B. Appointment of the Presiding Officer**

The Northern Ireland Assembly first met on 1 July 1998, under powers in the *Northern Ireland Elections Act 1998*. This Act gave the Secretary of State wide powers to determine its procedures, including the appointment of the initial Presiding Officer and the Deputy Presiding Officer under para 3 of the schedule. Lord Alderdice, of the Alliance Party, was nominated as initial Presiding Officer and later confirmed in office following a cross community vote under section 39 of the *Northern Ireland Act 1998*. He resigned on 29 February 2004. Mr Hain announced on 10 April that he had asked Eileen Bell,



former deputy leader of the Alliance party, to act as initial Presiding Officer<sup>40</sup> According to press reports, the leader of the Alliance party, David Ford, was not aware of the appointment until an hour before. The decision has implications for the voting strength of the Alliance Party within the Assembly, reducing the number of seats held from 6 to 5.<sup>41</sup> The Assembly Standing Orders currently state that at the first meeting of a new Assembly the eldest member of the Assembly would take the chair to preside over initial business, should the former Presiding Officer not be re-elected.<sup>42</sup>

Para 3 of Schedule 1 to the Bill gives the Secretary of State power to appoint a presiding officer and up to three deputies.

### C. Standing Orders of the Assembly

As noted above, when the Assembly first met, the Secretary of State had wide powers to determine the initial Standing Orders. Mr Hain indicated in his statement on 18 April that he would consult with all parties about them in detail before issuing them, and that the Assembly could amend the Standing Orders once in existence.<sup>43</sup> The current Standing Orders are available on the Assembly website.<sup>44</sup>

Para 4 of Schedule 1 states:

4(1) Proceedings are to be conducted in accordance with directions determined by the Secretary of State from time to time and notified to the presiding officer or any deputy presiding officer

4(2) The provision that may be made by the directions include provision which corresponds, or is similar to, any provision of standing orders made (or treated as made) under section 41 of the 1998 Act

The Secretary of State is also given power to secure provision of staff, premises and facilities, under para 4(6). Members are accorded qualified privilege under para 4(6), equivalent to that given in the *Northern Ireland Act 1998*.

### D. Devolution and Direct Rule

Under devolution, 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*.

Under the *Northern Ireland Act 1998* 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.

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<sup>40</sup> "Hain appoints Eileen Bell as Presiding Officer" NIO PN 10 April 2006

<sup>41</sup> "Alliance 'in the dark' over Bell role" *Belfast Telegraph* 11 April 2006

<sup>42</sup> Standing Order 3(2)

<sup>43</sup> Hc Deb 18 April 2006 c26

<sup>44</sup> <http://www.niassembly.gov.uk/sopdf/pdf/So9.pdf>

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)). Section 19 allows the First Minister and Deputy First Minister to appoint junior ministers, as approved by Assembly resolution.

Agreement on the number of ministries to be established was reached on 18 December 1999 along with negotiations on the North South implementation bodies.<sup>45</sup> As a result ten ministries were set up under the terms of the *Departments (Northern Ireland) Order 1999*.<sup>46</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*.

At present direct rule is in operation under the terms of the *Northern Ireland Act 2000*.

Under the Bill, the *Northern Ireland Act 2000* and direct rule continue in force until an Executive is formed. It is only at this point that the Secretary of State would make an order for full restoration of the devolved institutions. Any such restoration order would be made under the powers in the *Northern Ireland Act 2000*. The *Explanatory Notes* state that the 2000 Act would then be repealed on the day after the restoration order took effect.<sup>47</sup> The *Explanatory Notes* make clear that the alternative is the indefinite postponement of the May 2007 election:

7. In the event of failure to elect the FM/DFM and nominate Northern Ireland Ministers (and have them affirm the terms of the pledge of office) before 25th November 2006, the Bill provides for the immediate indefinite postponement of the May 2007 election (although the Secretary of State would be able to

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<sup>45</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>46</sup> SI 1999 no 283 (N.I.1)

<sup>47</sup> Para 6

reschedule the election for sometime after this date). The Assembly, as provided for by the Bill, would cease to exist on 25<sup>th</sup> November and the Northern Ireland Assembly elected on 26<sup>th</sup> November 2003 would be dissolved either in May 2007 (the scheduled date of the next Northern Ireland Assembly election), or at an earlier date if the Secretary of State made an order for this purpose. This reflects Government policy that a further election to a body that is not sitting should not be held. The Government's intention is that members of the Northern Ireland Assembly would cease to be paid (under provisions of the 2000 Act rather than under the Bill). Direct rule under the 2000 Act would remain in place.

Clause 1(3) provides that nothing in the Bill affects the operation of direct rule under section 1 of the *Northern Ireland Act 2000*. Clause 2 sets out three conditions for the restoration of devolved Government. The conditions are as follows:

- (2) Condition 1 is that the Assembly has elected from among its members—
  - (a) a person to hold the office of First Minister, and
  - (b) a person to hold the office of deputy First Minister,
 on the coming into force of a restoration order.
- (3) Condition 2 is that persons have been nominated from among the members of the Assembly to hold each of the Ministerial offices on the coming into force of a restoration order.
- (4) Condition 3 is that each of the persons elected or nominated under this section has affirmed the terms of the pledge of office in respect of the office for which he has been elected or nominated.

Once the conditions are met, the Secretary of State may notify the Presiding Officer that he intends to bring forward a restoration order. He must make the notification before 25 November 2006 for restoration to go ahead.

Clause 2(7) ensures that there is no conflict between the requirement of this Bill that the Assembly members participate in the selection of the Executive and the continued suspension of the Assembly under the *Northern Ireland Act 2000*. Para 2(8) of Schedule 2 provides that the restoration order may make provision to treat the preparations for devolution as having been undertaken by the 'full-devolution' Assembly- the term used in the *Explanatory Notes*. The *Explanatory Notes* gives as an example its use to avoid the need for Members to sign the Roll again.

There are further provisions in para 3 of Schedule 2 to clarify the effect of legislation made during the suspension of the Assembly as set out in the *Explanatory Notes*:

34. Paragraph 3(4) to (6) is designed to provide certainty in relation to legislation made during the period of Assembly suspension. Paragraph 3(4) provides that the restoration order and the repeal of the 2000 Act will not affect the operation (on or after the coming into force of the restoration order) of Orders in Council that were made under paragraph 1(1) of the 2000 Act during suspension (that is, Orders on matters which are the responsibility of the Northern Ireland Assembly under the 1998 Act). Paragraph 3(5) provides that such Orders in Council should be read as Acts of the Northern Ireland Assembly so far as the context permits this (largely replicating paragraph 3(1) of the Schedule to the 2000 Act). Paragraph 3(6) and (8) similarly provides that orders and determinations made under section 6 of, or paragraph 9 of the Schedule to, the 2000 Act are not affected by the repeal of the 2000 Act. Paragraph 3(7) is intended to ensure that any consequential, transitional or saving provision

included in the restoration order made by virtue of paragraph 2 of Schedule 2 continues to operate despite the repeal of section 7(2) of the 2000 Act (see, in particular, paragraph 2(8) of Schedule 2 to the Bill).

## **E. Election of the First and Deputy First Ministers and Executive**

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 a 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. Cross-community support, as defined in section 4(5) of the 1998 Act, can take two forms:

- Parallel consent : a majority of the members voting, including a majority of designated nationalists voting and a majority of designated unionists voting; or
- Weighted majority: the support of 60% of the members voting, including 40% of the designated Nationalists voting and 40% of the designated unionists voting

Under the Standing Orders of the Assembly, Members may designate their political identity<sup>48</sup> On 2 November 2001, this was amended to clarify that a Member could change his designation only once during an Assembly session. This provision, while unusual, has a precedent in the new Belgian constitution of 1994, in Article 43(1) where the elected members of each chamber are divided into a French language group and a Flemish language group for certain cases defined in the constitution.

Section 18 of the 1998 Act requires ministries to be allocated according to the proportion of seats held by each party in the Assembly, by using the d'Hondt formula. This is a mathematical calculation used to allocate seats under party list voting systems. It uses a series of divisors to allocate seats (1,2,3,4 etc). It is considered to favour larger parties, in contrast to the St Lague formula. The d'Hondt formula is also used to allocate seats on Assembly Committees and under clause 29 of the *Government of Wales Bill*, currently before Parliament, will also be used to allocate party strengths on committees of the National Assembly for Wales.<sup>49</sup> A Liberal Democrat amendment to remove the requirement to use d'Hondt formula for the allocation of seats in Wales was defeated at Lords Committee stage on 19 April 2006.<sup>50</sup>

Clause 2 gives the Secretary of State power to decide whether the three necessary conditions have been met in order to restore devolution. The Bill provides in Schedule 1, paras 4(3-5) that the methods of selecting the First and Deputy First Minister and the rest

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<sup>48</sup> As provided for in s4(5) of the *Northern Ireland Act 1998*. See SO 3(8) as printed on 9 March 1999

<sup>49</sup> See *Explanatory Notes* to the Bill paras 131-137 for a detailed explanation of the formula.

<sup>50</sup> HL Deb 19 April 2006 c1128-11

of the Executive must correspond or be similar to the requirements of the *Northern Ireland Act 1998*.

(3) The provision that may be made by the directions for the purposes of the election referred to in section 1(1)(a) of this Act includes provision which corresponds, or is similar, to any provision of section 16 of the 1998 Act.

(4) The provision that may be made by the directions for the purposes of the nominations referred to in section 1(1)(b) of this Act includes provision which corresponds, or is similar, to any provision of section 18 of the 1998 Act.

(5) Sub-paragraphs (2) to (4) do not affect the generality of sub-paragraph (1).

The exact mechanics of the selection will be set out in directions determined by the Secretary of State under para 4(1) of Schedule 1. The definition of ‘similar’ to in relation to the 1998 Act provisions may prove controversial.

Schedule 2 comes into force once the Secretary of State decides that the conditions have been met. Para 2(4) makes clear that those elected or nominated under Clause 2 of the Bill will hold the office of First Minister and Deputy First Minister and the other Ministerial offices under devolution, and not the previous holders of those offices prior to suspension. Para 2(5) provides those who have affirmed the Pledge of Office under clause 2 of the Bill will be deemed to have done so under the 1998 Act when the restoration order comes into force. There is similar transitional provision for the Presiding Officer and the three deputies.

## F. Pledge of office and procedures for exclusion

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 Section 30 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>51</sup> The minimum period for the latter would be six 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)).<sup>52</sup>

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<sup>51</sup> Ministers are defined as First Minister, Deputy First Minister or Northern Ireland Minister under section 7(3) of the 1998 Act

<sup>52</sup> Available at <http://www.opsi.gov.uk/acts/en2003/2003en25.htm>

There are no changes in the Bill in relation to the text of Pledge of Office. However, it is necessary for the Ministers chosen by the Assembly to sign the Pledge before the Secretary of State can bring forward the restoration order.

## **G. Elections and dissolution of the Assembly**

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 noted above, this election was postponed until 26 November 2003. The next election is due on 1 May 2007.

If the Assembly elect an Executive and direct rule is ended, Schedule 2(4) would apply and the next Assembly election would be postponed until May 2008. This is achieved by substituting 'fifth calendar year' for 'fourth calendar year' in s31 of the 1998 Act. If the Assembly fail to elect an Executive, then Schedule 3(2) would apply. This gives the Secretary of State power to specify the date of the next poll by order by inserting a new section 31(2) into the 1998 Act. There would be no requirement to hold an election until the Secretary of State laid the necessary order.

Schedule 3(3) also gives the Secretary of State power to bring forward the date of dissolution of the current Assembly. It also provides that if this power is not used, then the Assembly will be dissolved on 3 May 2007. It would not meet again until there is specific provision.

## **H. Pay and allowances for Assembly Members**

While direct rule is still in operation, members of the new Assembly are subject to the provisions in paragraph 9 of Schedule 1 to the *Northern Ireland Act 2000*:

9(1) While section 1 is in force, the functions of the Assembly under sections 47 and 48 of the 1998 Act (remuneration and pensions) are exercisable by the Secretary of State.

Following the suspension of the Assembly in October 2002 the Secretary of State for Northern Ireland reduced Members' salaries from £41,321 to £31,817. Members' salaries and allowances were reviewed in November 2002 and March 2003 by the Secretary of State but no further changes were made. Following the *Northern Ireland Assembly (Elections and Periods of Suspension) Act 2003*, the Secretary of State made a further determination reducing former Members' salaries to £20,660 with effect from 1 June 2003. Provision was made for those former Members who had wished to retire at the May elections to retire on 15 August 2003.

In October 2003 the Secretary of State made an order setting the election date of 26 November 2003. All former Members continued to receive salaries until the close of nominations on 3 November 2003. From close of nominations until close of polling on 26 November 2003 all former Members standing for re-election continued to receive salaries.

Section 47(9)(a) of the *Northern Ireland Act 1998* requires Members to sign the Roll before they become entitled to salaries and allowances. However because of suspension this was not possible and the Secretary of State therefore was required to make a further determination, effective from 5 December 2003. This determination set Members salaries at the pre-deferral rate of £31,817.

The salary is approximately 70 per cent of the full rate.<sup>53</sup> Those Members who were also MPs and/or MEPs had their salaries abated by two thirds.

Under devolution certain allowances were payable under the *Allowances to Members of the Assembly Act (Northern Ireland) 2000*. The Northern Ireland Assembly webpage introducing details of allowances claimed by Members in 2003-4 explains the allowances system as follows:

## **ALLOWANCES**

### **OCA**

As a result of the Assembly's suspension on 14 October 2002 additional restrictions were applied to the definition of eligible expenditure under the Members' Office Cost Allowance (OCA) but the maximum amount claimable, £48,000, remained unchanged. However because Members were unable to sign the Roll following the elections in November 2003 no allowance was available until the Secretary of State made his post-election determination effective on 5 December 2003. As a result the Maximum OCA claimable was: £47,000 for a Member who had also been a Member during the previous mandate (maintaining constituency services throughout the year) £15,000 for a Member who had not been a Member during the previous mandate (and was therefore establishing constituency services in December 2003).

### **Winding- Up Allowance**

It is recognised that Members who retired, or are not returned at an election, require a period of time in which to conclude their business and ensure that all constituency matters are concluded or passed to an appropriate colleague or representative. A period of 4 months is allowed for winding-up and a winding-up allowance is available to meet all necessary costs. Eligible costs include contractual obligations to staff, office rental agreements during the winding-up period together with any additional costs incurred terminating such agreements, expenses for postage, stationery, telephones and travelling expenses incurred during this period.

Winding-up Allowance is provided for by the *Allowances to Members of the Assembly Act (Northern Ireland) 2000*. The maximum claimable under this allowance in 2003-2004 was £16,000.

### **Resettlement Allowance**

Members who chose to retire, or are not returned, at an election are entitled to receive a resettlement allowance. Resettlement Allowances are provided for by the *Allowances to Members of the Assembly Act (Northern Ireland) 2000*. The amount payable as Resettlement Allowance is determined by a persons' length of service as a Member and their age. In November 2003

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<sup>53</sup> Information drawn from Northern Ireland Assembly website *Members Salaries and Allowances 2003-4* at [http://www.niassembly.gov.uk/members/expenses/members\\_expenses6.htm](http://www.niassembly.gov.uk/members/expenses/members_expenses6.htm) This is the latest page available at this website

Members were eligible for the minimum payment under the Act only, £20,600.<sup>54</sup>

The *Financial Assistance for Political Parties Act (Northern Ireland) 2000*, passed by the Assembly, introduced a statutory scheme to entitle political parties in the Assembly to funding on the lines of the non-statutory Short Money system. Section 51B of the *Northern Ireland Act 1998* as modified by the *Northern Ireland (Monitoring Commission) Act 2003* gave the Secretary of State power to withdraw such funding as a sanction and this has been used. Section 47B also allows the Secretary of State to withdraw salaries from individual Members or Ministers. These powers have not been used.

The first report of the Independent Monitoring Commission of 20 April 2004 commented on the continuing level of paramilitary violence in the nationalist and loyalist communities, and recommended the sanction of suspending allowances in the Assembly. The then Secretary of State for Northern Ireland, Paul Murphy, issued a direction under s51B(2) of the *Northern Ireland Act 1998* on 28 April 2004 to provide that the financial assistance payable under the *Financial Assistance for Political Parties Act (Northern Ireland) 2000* should not be payable to SF and the PUP from 29 April 2004 to 28 April 2005.<sup>55</sup>

The PUP contested the conclusions of the report and broke off contact with the Commission.<sup>56</sup> On 29 June 2004 Sinn Fein's application for the judicial review of the Secretary of State's decision to block financial assistance to its party in the Assembly was granted. On 14 February 2005 this application was dismissed by the High Court in Belfast.<sup>57</sup>

SF Members at the Assembly continued to receive pay and allowances as individual Members, as indicated by the following parliamentary answer:

**Lady Hermon:** To ask the Secretary of State for Northern Ireland how much has been paid in (a) salaries and (b) office allowances to Sinn Fein Assembly members since 29th April 2004; and if he will make a statement. [6151]

**Mr. Hain:** The total amount paid to Sinn Fein Assembly Members in respect of salaries from 29 April 2004 to 31 May 2005 was £823,239. For the same period, Sinn Fein Assembly members received Office Allowance Costs of £1,211,141.

**Lady Hermon:** To ask the Secretary of State for Northern Ireland if he will make a statement on the effectiveness of the first direction given under section 51B(2) of the Northern Ireland Act 1998 against Sinn Fein removing its entitlement to payments under the Financial Assistance for Political Parties Scheme for the 12 months from 29 April 2004. [6152]

**Mr. Hain:** The first Direction removed Sinn Fein's entitlement to financial assistance for 12 months from 29 April 2004. The assistance Sinn Fein might otherwise have received is approximately £120,000.

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<sup>54</sup> [http://www.niassembly.gov.uk/members/expenses/members\\_expenses6.htm](http://www.niassembly.gov.uk/members/expenses/members_expenses6.htm)

<sup>55</sup> *The Northern Ireland Act 1998 and the Northern Ireland Act 2000 (Modification) Order 2004 SI no 1664*

<sup>56</sup> *Loyalists reject Commission talks*, 6 May 2004, *BBC News*

<sup>57</sup> Secretary of State's First Report under section 11(1) of the Northern Ireland (Monitoring Commission etc.) Act 2003, paragraph 3.14. See *In the matter of an application from Sinn Fein for judicial review* [2005] NIQB 10 at [http://www.courtsni.gov.uk/NR/rdonlyres/164E234D-91A5-45FC-BE3A-648F7AD61659/0/j\\_j\\_WEAC5196.htm](http://www.courtsni.gov.uk/NR/rdonlyres/164E234D-91A5-45FC-BE3A-648F7AD61659/0/j_j_WEAC5196.htm)



**Lady Hermon:** To ask the Secretary of State for Northern Ireland for what reasons he declined to exercise his powers under section 47 of the Northern Ireland Act 1998 to make a determination in relation to the salaries of Sinn Fein Assembly members following the 1st Report of the Independent Monitoring Commission in April 2004. [6153]

**Mr. Hain:** The Direction made by my right hon. Friend the Member for Torfaen in April 2004 concerned party funding. In his statement to the House of Commons on 20 April 2004 he said that having considered the Independent Monitoring Commission's Report, he was persuaded that it would be right to remove for a period the entitlement to the block financial assistance paid to Assembly parties.

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Following the fourth reports from the IMC recommending further sanctions on SF in February 2005 Mr Murphy announced his intention to renew the suspension for another 12 months.<sup>59</sup> The direction to remove SF entitlement to financial assistance in the Assembly for 12 months from 29 April 2005 was debated and passed in the Commons on 16 June 2005. The PUP was not the subject of further sanctions.<sup>60</sup>

The Bill does not make provision for Members' pay and allowances. However, the *Explanatory Notes* state that should devolution not be restored "The Government's intention is that members of the Northern Ireland Assembly would cease to be paid (under provisions of the 2000 Act rather than under the Bill)."<sup>61</sup> There has been speculation as to the possible payment of winding up and resettlement allowances.<sup>62</sup>

## I. Modifying the *Belfast Agreement*

The *Belfast Agreement* of 10 April 1998 proposed an inter-connected group of institutions from three 'strands' of relationships.

Strand One deals with relationships within Northern Ireland and created the Northern Ireland Assembly, its Executive and the consultative Civic Forum. Strand Two deals with relationships between Northern Ireland and the Republic of Ireland. A North-South Ministerial Conference (NSMC) brings together members of the Northern Ireland Executive and the Irish Government to oversee the work of six cross-border implementation bodies.

Strand Three deals with the East-West relationships within the British Isles. A British-Irish Inter-Governmental Conference was established to promote bilateral co-operation between the UK and Ireland.

Annex B of the *Comprehensive Agreement* of December 2004 contained proposals by the British Government for changes in the Strand One institutions (the Assembly), such as 'enhancing collectivity and accountability' and providing for a statutory Ministerial

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<sup>58</sup> HL Deb 29 June 2005 c1471w

<sup>59</sup> HC Deb 22 February 2005 c170

<sup>60</sup> HC Deb 16 June 2005 c474

<sup>61</sup> para 7

<sup>62</sup> "Closing Assembly could cost £3.5m" 19 April 2006 *BBC News*

Code, amendments to the Pledge of Office and amendments to the Assembly procedures for nominating Ministers. 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. The full text of the *Comprehensive Agreement* is available on the internet.<sup>63</sup>

It is apparent from Mr Hain's statement of 18 April that further legislation is planned to modify Strand Two and Strand Three institutions, should the Assembly agree on an Executive. However, this Bill does not make any changes in these areas.

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[http://www.nio.gov.uk/proposals\\_by\\_the\\_british\\_and\\_irish\\_governments\\_for\\_a\\_comprehensive\\_agreement.pdf](http://www.nio.gov.uk/proposals_by_the_british_and_irish_governments_for_a_comprehensive_agreement.pdf)