



RESEARCH PAPER 06/56  
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# **The Northern Ireland (St Andrews Agreement) Bill 2006-7**

**Bill 7 of 2006-7**

This Bill represents a further attempt to create the conditions necessary to restore devolution to Northern Ireland. The Northern Ireland Assembly has been suspended since October 2002, and the *Northern Ireland Act 2006* gave the Secretary of State powers to dissolve it if a First and Deputy First Minister were not elected by 25 November 2006. On 13 October 2006 the British and Irish Governments published the *St Andrews Agreement*, which set out a series of adjustments to the *Belfast Agreement 1998*, as well as other proposals. This Bill gives legislative effect to those elements of the *St Andrews Agreement* that require primary legislation, in relation to the operation of the institutions of the *Belfast Agreement*, providing for a statutory Ministerial Code, amendments to the pledge of office and changes to the procedure for appointing First and Deputy First Ministers. There is a new target date for restoration of devolution of 26 March 2007. The Bill requires a restored Executive to develop strategies relating to the Irish and Ulster Scots languages and to poverty and social exclusion, as well as to report to the Secretary of State a year after restoration on progress towards the devolution of policing and justice matters. The Commons is due to debate all stages on Tuesday 21 November, with royal assent planned for 23 November 2006.

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## Summary of main points

The Northern Ireland Assembly was first elected in July 1998, but devolution was suspended on 14 October 2002, under the terms of the *Northern Ireland Act 2000*. The UK Government, working with the Irish Government and the Northern Ireland parties, has made a number of attempts to restore devolution since that date. The most recent Assembly elections took place on 26 November 2003, but the Assembly did not convene, since it remained suspended. Assembly Members continue to receive roughly 70 per cent of their pay and receive allowances.

The *Northern Ireland Bill 2006-7* is the latest attempt to ensure that devolution returns to Northern Ireland. The *Northern Ireland Act 2006*, which received royal assent on 8 May 2006, provided for the restoration of devolved government through the selection of ministers to form the Executive. The Act specified that the selection had to occur by 25 November 2006. The Assembly elected in 2003 finally convened in May 2006 solely for the purpose of determining the ministers, but without any legislative powers. The Act gave the Secretary of State powers to bring forward an order under the *Northern Ireland Act 2000* to restore devolution once he was satisfied that the election of the First and Deputy First Minister had taken place satisfactorily. Should the Executive be formed, then the 2006 Act extended the term of the Assembly a further year, providing for elections in May 2008. If, on the other hand, no election took place by 25 November, the Secretary of State would dissolve the Assembly indefinitely, retaining the power to decide when or if elections should be held again. Salaries and allowances for Members of the Assembly would be terminated immediately.

The *Northern Ireland Bill 2006-7* develops the legislative framework of the 2006 Act. The requirement to elect the First and Deputy First Minister by 25 November no longer remains in force, but a transitional period is now planned for the restoration of devolution with the new target date of 26 March 2007. Elections for a new Assembly will take place on 7 March 2007. Salaries and allowances for Members of the Assembly continue to be payable.

The Bill also makes a number of amendments to the *Northern Ireland Act 1998* which gave legislative force to the *Belfast Agreement*. It decouples the election of the First and Deputy First Minister, so that the elections are conducted separately. There is power to review this arrangement after 2011. It provides for a statutory Ministerial Code, designed to buttress individual ministerial accountability, and codifies the duties of individual ministers in relation to the North South Ministerial Council and the British Irish Council. It restricts Assembly Members' ability to change their political designation. There are new duties for a restored Executive to develop strategies relating to Irish and Ulster Scots language and to poverty and social exclusion, as well as a requirement to report to the Secretary of State a year after restoration towards the devolution of policing and justice. The Order introducing selective education in secondary schools is amended so that a restored Assembly has powers to overturn its effect, and provisions to reconstitute district policing partnerships are included.

The Bill extends to the UK, apart from clauses 20-21. Most clauses come into effect on royal assent. The Bill has been declared compatible with ECHR rights. A further *Justice and Security (Northern Ireland) Bill* was announced as part of the Queen's Speech on 15 November 2006, and is expected to include changes to the powers of the Northern Ireland Human Rights Commission, among other topics.

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# 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>

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<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.

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>2</sup>

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

A review of the Belfast Agreement with all the political parties began in early 2004, but 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.<sup>3</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 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>4</sup> These were entitled the *Proposals by the British and Irish Governments 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>2</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>3</sup> <http://www.nio.gov.uk/index/media-centre/media-detail.htm?newsID=10254>

<sup>4</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 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 leader David Trimble in Upper Bann. The Ulster Unionists lost five of their six seats and their vote share fell by 9.0%.<sup>5</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.

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

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<sup>5</sup> Research Paper 05/03, *General Election 2005*, p17

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



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 two year plan for de-militarisation, contingent on the security situation.<sup>8</sup>

On 26 September General John de Chastelain, chairman of the Independent International 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>

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>

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<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*

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

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>

The DUP issued a policy document which contained proposals for the restoration of the Assembly without the restoration of the Executive.<sup>19</sup> This position was opposed by the SDLP who 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>20</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>21</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>22</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

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

<sup>20</sup> “SF has accepted Shadow Assembly-Eddie McGrady” 21 February 2006 SDLP Press Release

<sup>21</sup> “New deal is the only way forward” parties warn” 17 February 2006 *Belfast Telegraph*

<sup>22</sup> “Row as NI talks session collapses” *BBC News*; “Sinn Fein ‘were not excluded from Assembly talks’ says NIO” 21 February 2006 *Belfast Telegraph*

2006. This was examined by both Houses in March 2006.<sup>23</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.

### **C. The Northern Ireland (Miscellaneous Provisions) Bill 2005-6**

The *Northern Ireland (Miscellaneous Provisions) Bill* had its second reading in the Commons on 13 March 2006. Among other provisions, clauses 10-12 of this Bill would have given the Secretary of State power to bring forward by order the date of the Northern Ireland Assembly election due in May 2007. 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. Subsequently two bills were introduced in 2003 to vary the date of the next election, which finally took place on 26 November 2003.

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>24</sup> Under this procedure, the Secretary of State makes the order, which is subsequently laid before Parliament for approval. Subsequently the *Northern Ireland Bill* had its second reading in the Commons on 26 April. This provided for a recall of the existing Assembly and clauses 10-12 were removed from the *Northern Ireland (Miscellaneous Provisions) Bill* by Government amendment on 19 April 2006.

The *Northern Ireland (Miscellaneous Provisions) Bill* also made changes designed to strengthen electoral integrity in Northern Ireland and provided for the possibility of devolving police and justice functions to the Assembly and Executive; as a consequence, it created the possibility of rotating ministers to take responsibility for these functions. For further information see Library Research Paper 06/14 *The Northern Ireland (Miscellaneous Provisions) Bill*. There are provisions 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.

### **D. 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 five main proposals:

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<sup>23</sup> Lords, on 29 March 2006, Commons on 28 March 2006

<sup>24</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

- 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.

The full text of the Joint Statement by the Prime Minister and the Taoiseach made at Armagh was deposited in the House and is available on the internet.<sup>25</sup>

In responses to press questions after the statement the Prime Minister and the Taoiseach denied suggestions that a shadow Assembly was being created.<sup>26</sup> The reactions of the Northern Ireland parties to the Joint Statement may be found on the BBC website.<sup>27</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.<sup>28</sup>

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<sup>25</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

<sup>26</sup> "PM's statement on Irish power-sharing" No 10 website PM speeches 2006 at <http://www.number10.gov.uk/output/Page9290.asp>

<sup>27</sup> "Reaction to Northern Ireland devolution plan" *BBC News* 6 April 2006 <http://news.bbc.co.uk/1/hi/uk/4884338.stm>

<sup>28</sup> *ibid*

## **E. The Northern Ireland Bill 2005-6**

On 18 April 2006 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 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.

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>29</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>30</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.

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<sup>29</sup> HC Deb 18 April 2006 c19-21

<sup>30</sup> *ibid* c24

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>31</sup>

The Bill was introduced and published on 20 April 2006. Sections 1 and 2 provided 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 intended that the Bill would come into effect before 15 May 2006 to enable an Assembly without legislative powers to convene on that day. The Secretary of State was given wide powers to appoint a Presiding Officer and to draft an initial set of Standing orders.

Where no agreement is reached on the establishment of an Executive, 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 *Northern Ireland Bill* passed through all its stages in the Commons on 26-27 April and completed its Lords stages on 8 May. It received Opposition support.

On 26 April 2006 the Tenth Report of the Independent Monitoring Commission was published.<sup>32</sup> It was more positive than the Eighth Report, stating “ it remains our absolutely clear view that the PIRA leadership has committed itself to following a peaceful path”.. The Report was welcomed by the Prime Minister and the Taoiseach. A number of NI parties raised concerns about suggestions in the report that assets acquired illegally by PIRA might be at the disposal of Sinn Fein for electoral campaigning.<sup>33</sup>

## **F. Summoning of the Assembly under the *Northern Ireland Act 2006***

The Secretary of State issued standing orders which would govern the conduct of the Assembly, including the procedures involving designation of identity for the purposes of cross community votes.<sup>34</sup> This was a subject of some debate during the passage of the Northern Ireland Bill, since designation is crucial for the selection of the Executive via the d’Hondt mechanism. <sup>35</sup> Lord Rooker, for the Government, announced during Lords Committee that the draft standing orders would be amended to take account of potential variations in party strengths during the life of the Assembly:

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<sup>31</sup> *ibid* c25

<sup>32</sup> See [http://www.nio.gov.uk/independent\\_monitoring\\_commission\\_tenth\\_report.pdf](http://www.nio.gov.uk/independent_monitoring_commission_tenth_report.pdf)

<sup>33</sup> “SF dismisses report while parties raise funds issue” 27 April 2006 *Irish Times*, cited in Northern Ireland Devolution Monitoring Report May 2006, p22, Constitution Unit, University College London

<sup>34</sup> MGP 06/1189 May 2006. For further information see Library Research Paper 06/23 *The Northern Ireland Bill*

<sup>35</sup> See for example, Lord Maginnis HL Deb 2 May 2006 c427

As noble Lords will understand better than I do, the Northern Ireland Act 1998 provides for party strengths to be assessed, for d'Hondt purposes, on the first day that the devolved Assembly meets. That is necessarily very close to the date that d'Hondt is run because standing orders for the devolved Assembly require it to happen within seven days. Our draft standing orders stayed in line with the 1998 Act by setting party strengths at day-one levels, but, under the arrangement that we plan, d'Hondt would not run until after a successful election had taken place for the First Minister and Deputy First Minister. We hope that that will come early in the life of the Assembly but it could come later. So, on reflection, we think it would be more faithful to the devolved arrangements to amend the draft standing orders—that is, the draft standing orders published last week, which will be revised this week—to ensure that party strength will be assessed on the date that d'Hondt is run. You cannot get more up to date than that and it allows for some of the things that the noble Lord, Lord Maginnis, mentioned at Second Reading last week to take place.<sup>36</sup>

The Assembly met on 15 May. Eileen Bell, from the Alliance Party, had been nominated by the Secretary of State as Presiding Officer.<sup>37</sup> There were some initial developments in that David Ervine, leader of the Progressive Ulster Unionists (PUP— a party with links to protestant paramilitaries) announced that he would join the Ulster Unionist Party Assembly Group. The move was widely interpreted as improving the position of the UUP under the d'Hondt mechanism, enabling the Party to hold a third ministry at the expense of SF.<sup>38</sup> The Speaker told the Business Committee that she was taking legal advice about the move.<sup>39</sup> On 11 September she made a Speaker's ruling which concluded that the grouping of the PUP with the UUP could not be considered as a party in the Assembly:

The characteristics of a political party under the Political Parties, Elections and Referendums Act 2000 can be summarised as: a short, suitable name; a headquarters, or at least an address for the purpose of communication; officers of the party, including at least a leader, a treasurer and a contact person, called a “nominating officer”, for the purpose of liaising with the Electoral Commission and others; a constitution; a scheme for financial support of the party; and an intention to contest elections.

In making a decision about any future list for publication, I shall require a party to have all those characteristics. From the information available, I do not consider that the Ulster Unionist Party Assembly Group (UUPAG) has yet demonstrated all those characteristics. I trust that Members will find this clear and helpful.<sup>40</sup>

On 22 May Gerry Adams formally nominated Ian Paisley as First Minister and Martin McGuinness as Deputy First Minister. The nomination was immediately rejected by the DUP.<sup>41</sup> Attention then moved to the establishment of an Assembly committee to discuss

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<sup>36</sup> HL Deb 8 May 2006 c724-5

<sup>37</sup> “Hain appoints Eileen Bell as Presiding Officer” 10 April 2006 *Northern Ireland Office Press Notice*

<sup>38</sup> “Lawyers probe Ervine’s shock UUP move” 16 May 2006 *Belfast Telegraph*

<sup>39</sup> Business Committee Minutes 16 May 2006 at [http://www.niassembly.gov.uk/theassembly/business\\_committee/bus\\_comm\\_minutes060516.htm](http://www.niassembly.gov.uk/theassembly/business_committee/bus_comm_minutes060516.htm)

<sup>40</sup> Assembly Official Record 11 September 2006, available at <http://www.niassembly.gov.uk/theassembly/Plenary/060911.htm>

<sup>41</sup> “Assembly stalls as DUP refuses to sit with Sinn Fein” 23 May 2006 *Belfast Telegraph*



the return of devolution, as promoted by the Secretary of State.<sup>42</sup> The Secretary of State issued a direction for the Assembly to establish a committee. However, the Preparation for Government Committee met on 5 June but failed to agree a chairperson.<sup>43</sup> Mr Hain also announced that the Assembly would hold a plenary debate on 13 June to discuss industrial rating.<sup>44</sup> There have already been two amendments to the Assembly's Standing orders.<sup>45</sup>

On Monday 12 June Mr Hain formally issued a direction to nominate the two deputy speakers, Francie Molloy from Sinn Fein, and Jim Wells of the DUP, to chair the Committee on an alternate basis. The Committee met on 12 and 13 June.<sup>46</sup> The Assembly went into recess on 7 July 2006, but the Committee continued to meet with attendance from the DUP and SF. A subgroup on the Economic Challenges facing Northern Ireland was established, and has issued a report. Minutes of the Committee are available on the Assembly website, although the verbatim report (Hansard) is not comprehensive, since at times the Committee deliberated in private.<sup>47</sup> It produced a report on institutional issues in September 2006 which reviewed each of the Belfast Agreement's institutions and made a series of proposals.<sup>48</sup> It considered revisions to the Ministerial Code of 2000 put forward by the Office of the First and Deputy First Minister (OFMDFM) and concluded that aspects should be given statutory force.<sup>49</sup>

The Independent Monitoring Committee's (IMC) eleventh report was published in September 2006. This dealt with the British Government's normalisation programme.<sup>50</sup> The IMC's twelfth report was published on 4 October 2006.<sup>51</sup> It offered a positive view of developments within the IRA:

2.19 We believe that what we say above, taken together, presents convincing evidence of PIRA's continuing commitment to the political path. It is implementing the policy, sometimes vigorously (though legally) so far as individual members are concerned. We refer above to the disbanding of those departments which were directly involved in the campaign of terrorism; such structures as remain are largely concerned with preserving the cohesion of the organisation and serving the wider purpose of the republican movement as a whole in a period of major change of strategy and direction. We believe that the leadership does not consider a return to terrorism as in any way a viable option and that it continues to direct its members not to engage in criminal activity.

In response to the report, Tony Blair said:

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<sup>42</sup> "Devolution Committee is the main priority, says Hain" 23 May 2006 *Belfast Telegraph*

<sup>43</sup> "Committee problems 'raise doubts'" 5 June 2006 *BBC News*

<sup>44</sup> "Adams anger over Assembly U-turn" 2 June 2006 *BBC News*

<sup>45</sup> See [http://www.niassembly.gov.uk/theassembly/amend\\_so\\_main.htm](http://www.niassembly.gov.uk/theassembly/amend_so_main.htm)

<sup>46</sup> "Wells to chair committee meeting" 13 June 2006 *BBC News*

<sup>47</sup> [http://www.niassembly.gov.uk/theassembly/CPFG/cpfg\\_commpage.htm](http://www.niassembly.gov.uk/theassembly/CPFG/cpfg_commpage.htm)

<sup>48</sup> [http://www.niassembly.gov.uk/theassembly/CPFG/CPFG\\_Reports/report\\_institutional\\_issues.pdf](http://www.niassembly.gov.uk/theassembly/CPFG/CPFG_Reports/report_institutional_issues.pdf) The Secretary of State was required to issue a direction to ensure the printing of the report

<sup>49</sup> For general background on UK Ministerial Codes see Library Standard Note no 3750

<sup>50</sup> Eleventh Report of the International Monitoring Commission September 2006 at <http://www.independentmonitoringcommission.org/publications.cfm?id=40>

<sup>51</sup> Twelfth Report of the International Monitoring Commission October 2006 at <http://www.independentmonitoringcommission.org/documents/uploads/IMC%2012th%20Report%20pdf.pdf>



"The IRA has done what we asked it to do, and while issues like policing remain to be solved, the door is now open to a final settlement, which is why the talks next week in Scotland are going to be so important." <sup>52</sup>

Ian Paisley was quoted as commenting that the assessment that the IRA "is progressively abandoning its terrorist structures shows that the pressure being brought to bear on republicans by the unequivocal policies of the DUP is working."<sup>53</sup> On 9 October he held private talks with Sean Brady, the Catholic Archbishop of Armagh and Primate of All Ireland.<sup>54</sup>

The IMC issued a separate Twelfth report on demilitarisation measures. Peter Hain made a written ministerial statement to the Commons on 10 October on the Eleventh and Twelfth reports:

**The Secretary of State for Northern Ireland (Mr. Peter Hain):** The Secretary of State for Northern Ireland (Mr. Peter Hain):

...As the report concludes, the IRA is not the same organization it was three years ago. The IMC's clear conclusion is that the leadership of the IRA does not consider a return to terrorism in any way a viable option; and that it continues to direct its members not to engage in criminal activity. Importantly, the IMC assesses that the IRA has disbanded its structures which were responsible for procurement, engineering and training and has stood down volunteers.

The IMC also concludes that the leadership has maintained a firm stance against the involvement of members in criminality and taken action against members who have continued such activity. We also note that the report says that where individuals have been involved, as individuals, in criminality, that has not been sanctioned, and it should not call into question the leadership's position.

The IMC concludes that there is convincing evidence of the IRA's continuing commitment to the political path and believe that it is no longer credible to suggest otherwise. The significance of these statements cannot, and should not, be underestimated.

I also acknowledge and welcome the report's finding that the work of IRA members, along with that of loyalist paramilitaries, contributed significantly to the most peaceful marching season since the 1960s.

Like the IMC, the Government, however, believe that further progress needs to be made on the issue of policing, though welcoming the report's conclusion that the IRA leadership has accepted the need for engagement

It is also important to note the report's conclusion that some members of the UDA and UVF continue to try to move their organizations away from violence and criminality—though, like the IMC, I agree that there is much more to do if the loyalist organizations are to match the profound change brought about by the IRA.

The Government believe that the necessary progress can be made at the upcoming talks in Scotland. But, while we accept that individual parties will, quite rightly, make their own assessment, we believe this report does lay the basis for the final settlement of the conflict in Northern Ireland—and, as such, presents a

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<sup>52</sup> "IRA campaign is over, says Blair" 4 October 2006 *BBC News*

<sup>53</sup> "Blair hails IRA's clean bill of health" 5 October 2006 *Independent*

<sup>54</sup> "Paisley meets Catholic primate" 10 October 2006 *Guardian* "An amazing conversion" 10 October 2006 *Independent*

unique opportunity for this generation to reach that final resolution, an opportunity the Government hope the parties will now seize..<sup>55</sup>

Indications of the SF position on policing were given by their policing and justice spokesperson, Gerry Kelly, in the *Belfast Telegraph* 21 September 2006, where devolution, and agreement on the timing for a new Policing and Justice Department appeared to be pre-conditions for SF participation in the Police Service of Northern Ireland board.<sup>56</sup> A special Ard Fheis (conference) of the SF party would be necessary.

The DUP issued a six point plan for devolution, including changes to the Belfast Agreement to improve ministerial accountability, commitment by SF to the rule of law, a financial package, equality measures and a timetable for devolution.<sup>57</sup>

Recently the DUP expressed concern about the prospect of an amnesty for ‘on-the-runs’:

**Mr. Peter Robinson (Belfast, East) (DUP):** Is the Secretary of State aware of how damaging it would be to the prospects for restoration— *[Interruption.]*

**Mr. Speaker:** Order. The hon. Gentleman should be heard on this matter.

**Mr. Robinson:** Thank you, Mr. Speaker.

Is the Secretary of State aware of how damaging it would be to the prospects for restoration if the Government were to return to the issue of on-the-run terrorists being given what amounts to an amnesty? Although we welcome the earlier answer from the Minister of State that no legislation is to be brought before the House, will the Secretary of State reassure the House and settle the nerves of my colleagues and me by assuring us that no other procedure will be used to allow on-the-run terrorists to return?

**Mr. Hain:** There is no other procedure. There is no prospect of an amnesty. The legislation was tried; it was withdrawn when support for it collapsed, not least in this House, and we have absolutely no intention of bringing legislation back. That, I think, should reassure the hon. Gentleman. What we shall look for in the next few days is delivery—not promises—from Sinn Fein on policing and respect for the rule of law, and then a commitment from all the parties to a power-sharing Executive.<sup>58</sup>

## II Modifying the Belfast Agreement

### A. Background

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

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<sup>55</sup> HC Deb 10 October 2006 c7W

<sup>56</sup> “Republicans move closer to playing a role in policing” 20 September 2006 *Belfast Telegraph*

<sup>57</sup> “Robinson addresses Conservative conference” 3 October 2006 at [www.dup.org.uk](http://www.dup.org.uk)

<sup>58</sup> HC Deb 11 October 2006 c291

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 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>59</sup>

On 30 August 2006 the *Newsletter* reported that drafting of a new Northern Ireland bill was advancing, designed to encompass proposals in the Comprehensive Agreement of December 2004 to increase individual ministerial accountability.<sup>60</sup>

The SDLP have expressed frustration for some time that the negotiations behind the Comprehensive Agreement have not been made publicly available. For example, during the debates on the *Northern Ireland (Miscellaneous Provisions) Bill*, the SDLP leader Mark Durkan said:

Why will not the Government lay in the Library all the other commitments that they have given in this regard, so that the rest of us can at least see what they are and, if necessary, debate them in the Chamber? A member of the SDLP sought under the terms of the Freedom of Information Act 2000 to gain sight of the various side deals, many of which presumably affect strand 1 institutions and matters such as the devolution of justice and policing. However, we were denied sight of any of those documents on the ground that their disclosure might colour or jeopardise the Government's relationship with the Irish Republic. Yet they deal solely with strand 1 matters, which the DUP says that it is very good at safeguarding, saying that there is no Irish Government interest or input in them. We cannot have sight of any of the deals that were, according to Sinn Fein, done and dusted, and that obviously matter so much, according to the hon. Member for Belfast, East, on the ground that they affect the relationship with the Irish Government.<sup>61</sup>

## **B. The St Andrews Agreement**

Intensive talks were held over 11-13 October in St Andrews, Scotland between the British and Irish Prime Ministers and the Northern Ireland political parties. On 13 October

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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)

<sup>60</sup> "New legislation which will rewrite sections of the Belfast Agreement is being prepared by the Government 30 August 2006 *Newsletter*

<sup>61</sup> HC Deb 17 May 2006 c1030

a *St Andrews Agreement* was published. It is available on the Northern Ireland Office website and has been placed in the Commons Library.<sup>62</sup>

The Agreement bears some resemblance to the Comprehensive Agreement issued by the British and Irish Governments in December 2004 when the Northern Ireland parties failed to reach agreement. Similarities include the acceptance of the need for a statutory ministerial code and greater accountability of individual Ministers to the Executive and Assembly; new mechanisms for the appointment of the First and Deputy First Minister, the repeal of the *Northern Ireland Act 2000*, which allows for the suspension of the Assembly, amendments to the North South institutions and to the British Irish Council, and commitments by Sinn Fein to support the Northern Ireland Police Service.

Annex A of the *St Andrews Agreement* set out *Practical Changes to the Operation of the Institutions*, discussed below in Part III. Other annexes referred to a financial package for Northern Ireland and future security arrangements there. Annex B dealt with a package of issues on human rights, equality, victims and statutory commitments on the promotion of the Irish language and the Ulster Scots language, heritage and culture.

The *St Andrews Agreement* envisaged that parties would indicate their acceptance of the proposals by 10 November, and then the Assembly would meet to nominate the First and Deputy First Minister on 24 November. However, devolution was no longer expected to take place immediately, as envisaged in the *Northern Ireland Act 2006*. Instead, a new Programme for Government Committee would agree all the necessary changes relating to ministerial responsibilities by 26 March, with the result that the rest of the Executive could be selected using the d'Hondt procedure and the Executive would function immediately on that date.

The proposed timetable of events was given at Annex D, as follows:

#### **TIMETABLE FOR IMPLEMENTATION OF THE ST ANDREW'S AGREEMENT**

13 October	Governments publish St Andrews Agreement Parties consult, including through the DUP Assembly group, the Sinn Fein Ard Comhalde and other appropriate party bodies, on the St Andrew's Agreement and respond by 10 November
17 October	New Programme for Government Committee begins regular meetings to agree priorities for new Executive with parties represented at leadership level
20/21 November	Legislation at Westminster to give effect to the St Andrew's Agreement, including practical changes to the institutions (Annex A)
24 November	Assembly meets to nominate FM/DFM
January	IMC Report
March	Endorsement by the electorate of the St Andrew's Agreement

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<sup>62</sup> [http://www.nio.gov.uk/st\\_andrews\\_agreement.pdf](http://www.nio.gov.uk/st_andrews_agreement.pdf)

14 March        Members of the Executive nominated by party leaders  
26 March        Power devolved and d'Hondt run

Failure to agree to establish the Executive will lead to immediate dissolution of the Assembly, as will failure to agree at any stage, and the Governments will take forward new partnership arrangements on the basis previously announced.

Peter Hain made a statement to the Commons on 16 October 2006. He said:

There were two main issues to be resolved at St. Andrews if we were to achieve restoration of the power-sharing Executive: the need for support for policing and the rule of law across the whole community, which would enable, in due course, the safe devolution of policing and justice to the Assembly; and changes to the operation of the Good Friday agreement's institutions.<sup>63</sup>

The Conservative spokesman, David Lidington offered his party's support in principle for the forthcoming legislation but asked about the timing of the Ard Fheis needed for Sinn Fein to offer formal support to the PSNI and about changes to the pledge of office. Mr Hain noted:

On the pledge of office, the hon. Gentleman will see in annexe A, paragraph 8, that the preparation for government committee is being asked to consider that matter. It is important for at least four of the parties that the issue be addressed. We shall have to see what emerges from that consideration and where we can take it.

The hon. Gentleman asked when an ard fheis will be called. That is a matter for Sinn Fein's internal procedures, but the agreement contains a reference to the Sinn Fein executive, the ard comhairle, which needs to meet sooner rather than later. He is right to say that we will need to know by 10 November whether we are in business—whether we are in a position to proceed with the emergency Bill with all-party support, or not. That will be crucial.<sup>64</sup>

Lembit Opik, the Liberal Democrat spokesman, expressed concern that the cross-community voting provisions for the appointment of the First Minister and Deputy First Minister were to be amended. Ian Paisley commented on the importance of the full recognition and support for the PSNI. Mark Durkan, for the SDLP, emphasised wider issues such as water rates reform and the review of public administration.<sup>65</sup>

The first part of the *St Andrews Agreement* timetable came under pressure on 17 October, when the new Programme for Government Committee was due to meet in the presence of Ian Paisley and Gerry Adams. The DUP pressed for clarification as to whether the First and Deputy First Minister would be required to take an amended oath of office on 24 November, which would give support to the PSNI.<sup>66</sup> The *St Andrews Agreement* states that "before the government legislates on the pledge of office it will consider the outcome of further Preparation for Government Committee discussions on

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<sup>63</sup> HC Deb 16 October 2006 c588

<sup>64</sup> HC Deb 16 October 2006 c592

<sup>65</sup> *ibid* c594-7

<sup>66</sup> "St Andrews deal hits glitch over unionist demand for Sinn Fein oath" 18 October 2006 *Guardian*

policing and the rule of law". The DUP issued a four page consultation document for its members on the Agreement on 18 October 2006.<sup>67</sup>

The new Programme for Government Committee (separate from the Preparation for Government Committee) was established by direction of the Secretary of State.<sup>68</sup> The British Irish Interparliamentary Body held its first meeting in Belfast on 23 October 2006 to debate the *St Andrews Agreement* proposals.<sup>69</sup>

The *Victims and Survivors (Northern Ireland) Order 2006* establishes a statutory office of Commissioner for Victims and Survivors for Northern Ireland, fulfilling one of the commitments in Annex B of the *St Andrews Agreement* on Human Rights, Equality, Victims and other issues. The appointment by the NIO of the interim Victim's Commissioner, Bertha MacDougall, in October 2005 was recently the subject of a judicial review in the High Court, where Mr Justice Girvan concluded that 'appointment powers in this case were not carried out with regard to the principle of merit' and breached section 76 of the *Northern Ireland Act 1998*.<sup>70</sup> He called for an inquiry into the lack of candour shown by the Northern Ireland Office to the court.<sup>71</sup>

Following the commitments in Annex C of the *St Andrews Agreement*, on 1 November the Chancellor, Gordon Brown, held talks on a financial package for Northern Ireland if the Executive were restored. A Treasury Press Notice stated:

The Chancellor set out a funding package for the Northern Ireland Executive (NIE) worth £50 billion over the next ten years that could follow a final agreement. As part of the package, and in advance of the conclusion of the Comprehensive Spending Review, the Government would commit to at least £35 billion of funding for the NIE over the next four years. This would provide the incoming Northern Ireland Executive with certainty to plan public service delivery. To meet the long-term challenges faced by Northern Ireland, the Government would further support an updated £18 billion capital investment strategy to 2017.<sup>72</sup>

There was some press comment to the effect that much of this package was not 'new' money and that the package did not contain concessions on water rates, the new rating system or corporation tax.<sup>73</sup> Annex C of the *St Andrews Agreement* sets out commitments to introducing a cap on domestic rates under the new capital values system and the possibility of further rate reliefs for pensioners on lower incomes. There

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<sup>67</sup> *Your Verdict: What is it to be?* Available from <http://www.dup.org.uk/>

<sup>68</sup> See Assembly Business Committee minutes 17 October 2006 at [http://www.niassembly.gov.uk/theassembly/business\\_committee/bus\\_comm\\_minutes061017.htm](http://www.niassembly.gov.uk/theassembly/business_committee/bus_comm_minutes061017.htm)

<sup>69</sup> "Body to debate St Andrews proposals! 23 October 2006 *Belfast Telegraph*. The website is at <http://www.biiipb.org/>

<sup>70</sup> *In a matter of an application by Brenda Downes for judicial review* 2006 NIQB 77 at [http://www.courtsni.gov.uk/en-GB/Judicial+Decisions/Judgments/j\\_j\\_girc5669.htm](http://www.courtsni.gov.uk/en-GB/Judicial+Decisions/Judgments/j_j_girc5669.htm)

<sup>71</sup> "NIO chiefs face unwelcome glare of the spotlight" 10 November 2006 *Belfast Telegraph*

<sup>72</sup> "Chancellor sets out St Andrews agreement funding package if devolution is restored" 1 November 2006 HM Treasury website at [http://www.hm-treasury.gov.uk/newsroom\\_and\\_speeches/press/2006/press\\_82\\_06.cfm](http://www.hm-treasury.gov.uk/newsroom_and_speeches/press/2006/press_82_06.cfm)

<sup>73</sup> "So what's it really worth, Gordon?" 2 November 2006 *Belfast Telegraph*

is an enabling power within the *Rates (Amendment) (Northern Ireland) Order 2006*, which would allow a restored Assembly to introduce a valuation cap.<sup>74</sup>

One of the DUP's main concerns has been the question of policing. Sinn Fein is due to debate the question of supporting the Northern Ireland Police Service (PSNI) at its special meeting (Ard Fheis) shortly. The *Northern Ireland (Miscellaneous Provisions) Act 2006* made adjustments to the *Belfast Agreement* to facilitate the creation of a new policing and justice department. The *St Andrews Agreement* states:

7. It is our view that the implementation of the agreement published today should be sufficient to build the community confidence necessary for the Assembly to request the devolution of criminal justice and policing from the British Government by May 2008.

However, DUP politicians have stated that this represents a target date only, and that devolution of police and justice is likely to take considerable time to occur.<sup>75</sup>

There has been criticism of the Agreement from within the Unionist political community. Robert McCartney, leader of the UKUP, has queried how democratic government could work when the DUP and Sinn Fein would have mutual powers to veto each other's proposals.<sup>76</sup> The SDLP has also criticised elements of the Agreement as unworkable, but its leader, Mark Durkan, said that his party would not block the restoration of devolution.<sup>77</sup>

On 10 November 2006 Peter Hain and the Irish Foreign Minister, Dermot Ahern, stated that their contacts with the Northern Ireland political parties meant that "the St Andrews Agreement, implemented in good faith, represents the basis for a political settlement". Mr Hain promised to bring in legislation as foreshadowed by the Agreement.<sup>78</sup>

However, there were last-minute difficulties with the process, as indicated in this extract from the *Irish Times* 13 November 2006:

The election rather than a referendum will be particularly challenging for the Ulster Unionist Party and the SDLP, with DUP and Sinn Féin convinced they can gain seats. More immediately, though, the concern for the British and Irish governments is how to ensure that Friday week's November 24th deadline for appointing a shadow First Minister and Deputy First Minister is met. In the St Andrews Agreement timetable the Assembly is to meet on November 24th to nominate the Rev Ian Paisley and Mr McGuinness in these designate posts. Failure to achieve this deadline would result in the dissolution of the Assembly and the collapse of the agreement, Mr Hain again made clear at the weekend, which would also mean there would be no elections. A standoff is in place on this issue because the DUP wants Mr McGuinness to take a pledge of office on November 24th committing himself to supporting the

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<sup>74</sup> HL Deb 7 November 2006 c113WA

<sup>75</sup> "Police up ahead on twisty road to devolution" 9 November 2006 *Belfast Telegraph*

<sup>76</sup> "The DUP has caved into blackmail" 12 November 2006 *Belfast Telegraph*

<sup>77</sup> "Ministers could be nominated by letter" 8 November 2006 *Belfast Telegraph*

<sup>78</sup> "Statement by Peter Hain and Dermot Ahern" 10 November 2006 *Northern Ireland Office*

PSNI, even though the governments' requirement for this pledge is March 26th when the Executive and Assembly are scheduled to be fully reinstated. Sinn Féin however, insists no such pledge can be taken on Friday week because it would be seen to pre-empt a special Sinn Féin ardfheis.<sup>79</sup>

In the event, this Bill omits the deadline of 25 November for filling the offices of First and Deputy First Minister, and creates a new target date of 26 March 2007, following new elections to the Assembly on 7 March 2007.

### **III The Northern Ireland (St Andrews Agreement) Bill 2006-7**

The Bill's main purpose to make adjustments to the *Belfast Agreement* and the *Northern Ireland Act 1998* in order to encourage the parties in Northern Ireland to form a devolved Executive and restore legislative power to the Assembly. However, there are additional provisions to cover new issues and initiatives.

#### **A. A Transitional Assembly**

An Assembly was elected in Northern Ireland in November 2003, but did not function as devolution had been suspended since October 2002, using powers under the *Northern Ireland Act 2000*. The *Northern Ireland Act 2006*, which received royal assent on 8 May, provided the legislative authority to convene the Assembly Members to participate in a process designed to select a new Executive, so restoring devolution. If they were successful in electing the FM/DFM and nominating Northern Ireland Ministers before 25 November 2006 (and if all those elected or nominated affirmed the terms of the pledge of office) the Secretary of State would be able to make an order for full restoration of the devolved institutions under the *Northern Ireland Act 2000*. The *Northern Ireland Act 2006* also affected the timing of the next elections to the Assembly, due in May 2007. If devolution took place, then the elections would be postponed until May 2008. If devolution was not achieved, then the Secretary of State was given the power to dissolve the Assembly and postpone the date of election indefinitely. Salaries and allowances would cease to be paid.

##### **1. The Bill**

This Bill makes provision for a new transitional Assembly to be created from 25 November 2006, which is intended to evolve into the real Assembly on the new target date of 26 March. **Clause 1** provides that the transitional Assembly will consist of current Assembly members whose purpose is to take part in preparations for the restoration of devolved government, and so the suspension of devolution under the *Northern Ireland Act 2000* continues until 28 March 2007, when the 2000 Act is repealed under **Schedule 4**. One of the effects of the repeal of the 2000 Act is that primary legislation would be required should the UK government wish to revert to a position of direct rule.

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<sup>79</sup> "Northern Assembly election set to be held next March" 13 November 2006 *Irish Times*



If the election of the First and Deputy First Minister and the rest of the Executive take place by 26 March, then **Schedule 2** provides for the restoration of devolved government. However, under **Clause 2**, the Secretary of State has power at any time up to 27 March 2007 to dissolve the Assembly under **Schedule 3** if he considers that ‘there would be no reasonable prospect’ that each of the Ministerial offices would be filled according to that Schedule. These provisions closely follow the either/or form of the *Northern Ireland Act 2006*.

Full details of the interconnected nature of this Part of the Bill is given in the *Explanatory Notes*. In particular Clause 2(3) and (4) provide for a scenario where the Secretary of State has made an order restoring devolution, but not all of the ministerial offices have been filled by the end of 26 March. In these circumstances, he must make an order revoking restoration, to come into effect on 27 March 2007. **Clause 22** repeals the whole of the *Northern Ireland Act 2006*. The *Explanatory Notes* state that without this repeal, the Assembly would have been dissolved and next elections to the Assembly suspended indefinitely. The repeal also has the result of removing the 25 November deadline for the appointment of the First and Deputy First Minister.

**Schedule 1** gives the Secretary of State power to direct the place and timing of meetings, as well as conferring the same power on the Presiding or Deputy Presiding Officer. The Secretary of State may also direct the conduct of proceedings, overriding the standing orders also provided for in the Schedule. Para 6 ensures that the current Presiding Officer and her deputies carry over her role into the transitional Assembly. There appear to be more possibilities for broader debates than provided for under the *Northern Ireland Act 2006*, reflecting the transitional nature of arrangements until March 2007.

## **B. Appointment 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, takes 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

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.

Section 2 of the *Northern Ireland Act 2006* gives the Secretary of State power to decide whether the three necessary conditions have been met in order to restore devolution. The 2006 Act provided in Schedule 1, paras 4(3-5) that the methods of selecting the First and Deputy First Minister and the rest of the Executive must correspond or be similar to the requirements of the *Northern Ireland Act 1998*.

Schedule 2 came into force once the Secretary of State decided that the conditions had been met. Para 2(4) made clear that those elected or nominated under Section 2 of the 2006 Act 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) provided those who have affirmed the Pledge of Office would be deemed to have done so under the 1998 Act when the restoration order came into force.

The procedure for appointment/election was one of the issues identified as requiring resolution as part of the report from the Preparing for Government Committee in September 2006. A long standing concern of the DUP is the requirement to nominate the two Ministers jointly. The *Comprehensive Agreement* of December 2004 envisaged decoupling the joint nomination set out in the Northern Ireland Act 1998 and instead requiring the whole Executive to be endorsed by a vote of the Assembly.<sup>80</sup>

The *St Andrews Agreement* stated as follows:

**9. Appointment of Ministers in the Executive.** An amendment would be made to the 1998 Act on appointment of Ministers in the Executive. The Nominating Officer of the largest party in the largest designation in the Assembly shall make a nomination to the Assembly Presiding Officer for the post of First Minister. The Nominating Officer of the largest party in the second largest designation in the Assembly shall similarly nominate for the post of Deputy First Minister. The d'Hondt procedure will then run, as already set out in the 1998 Act, to fill the Ministerial posts in the Executive. Where a vacancy arose later in the office of the FM or DFM, the nominating officer(s) of the party(ies) entitled to nominate as above for the office(s) would do so and the nominee would take up office once he had taken the pledge of office. Where a vacancy arose in another ministerial office, it would be filled as at present. It will be a matter for the standing Institutional Review Committee referred to in paragraph 12 to consider whether the new procedures should continue beyond the life of the present Assembly.

The *Sunday Times* reported on 12 November that the Government was considering a plan to allow Peter Hain, the Northern Ireland secretary, to choose the ministers. This would require Sinn Fein and the Democratic Unionists to agree by letter to accept the nominations at some future date, if their conditions are met.<sup>81</sup>

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<sup>80</sup> Annex B, para 9

<sup>81</sup> "Plan to let Hain choose leader" 12 November 2006 *Sunday Times*

## 1. The Bill

This Bill makes a number of changes to the arrangements envisaged under the *Northern Ireland Act 2006*. Under **Schedule 1** the proceedings to be conducted by the Transitional Assembly shall include the making of nominations from among its members of persons to hold office as First Minister and Deputy First Minister. There is no reference to the 25 November deadline of the 2006 Act, since **Clause 22** repeals the *Northern Ireland Act 2006* in its entirety and the Bill does not repeat a November deadline.

**Clause 8** substitutes new sections 16A, 16B and 16C for section 16 of the *Northern Ireland Act 1998*. It provides that the nominating officer of the largest party of the largest political designation in the Assembly, following a general election of the Assembly, nominates an Assembly Member to be First Minister. Then the nominating officer of the second largest party of the second largest political designation nominates the Deputy First Minister. Further nominations are feasible if the Member nominated does not take up the role. So the requirement to elect the First and Deputy First Minister jointly on a cross community vote is repealed. **Schedule 1, para 11** defines 'cross-community support' to make clear that the Members need to be designated as Nationalist or Unionist in accordance with standing orders (see below).

Once these two nominations have been made, the d'Hondt procedure for filling the rest of the ministerial offices, under section 18 of the 1998 Act is run. The *Explanatory Notes* state that "these procedures take place within seven days following the first meeting of the Assembly after an election, new section 16A(3) and may be re-run if the individuals nominated do not take up office within a period to be specified in standing orders (new sections 16(6) and (7))".

There some complex provisions on determining what is termed the "political designation", of Nationalist, Unionist or Other to deal with occasions where, due presumably to party split or disintegration, the largest party in the Assembly no longer represents the largest political designation held by the Members of the Assembly. Members may not change their designation once they have registered it in the Assembly roll on the date of its first meeting following an election. New section 16C(3) states that a political party is taken to be Nationalist if more than half of the Assembly Members who belong to the party were designated Nationalist at the first meeting of the Assembly, and that there is equivalent definition for Unionist and Other parties. Section 16C(6) applies where the largest party within the largest designation is not the largest party within the Assembly. Here, the responsibility for designating the First Minister falls to the largest party within the Assembly.

There is provision under new section 16C for a party which has been excluded from the Assembly (under the *Northern Ireland (Monitoring Commission etc) Act 2003* or otherwise) to have its seats disregarded.

Section 16C defines the term "nominating officer" as either the nominating officer under the terms of Part 2 of the *Political Parties, Elections and Referendums Act 2000* or a person nominated by him to act as such. It also provides that where two parties hold equal numbers of Assembly seats, the largest party is to be determined by assessing the one which holds the largest number of first preference votes under the Single Transferable Vote system of electing the Assembly.

The *Explanatory Notes* state that if “one of the [First or Deputy First Ministers] ceases to hold office, the other technically does as well (because the offices are jointly operated—see new section 16B(2)(a) but he may continue to exercise the functions of the office to ensure continuity of government (new section 16C(3))”. There are also provisions to deal with the effects of exclusion:

60. New section 16C(9) provides that the incumbent First and deputy First Minister both cease to hold office if either of their predecessors ceased to hold office as a result of an exclusion order under section 30(2) or 30A(5) and that period of exclusion comes to an end (unless any period of exclusion of the party under the other provision has not come to an end). The procedure in new section 16B will be used to fill the resulting vacancies.

The persons nominated may not take office until each has affirmed the Pledge of Office. Under **Clause 11** (discussed more fully below) there is provision for the Assembly and Secretary of State to revert to the procedures of electing the First and Deputy First Ministers jointly following an election in 2011, if there is sufficient agreement.

**Schedule 5** makes a series of consequential amendments, including amendments to the *Northern Ireland (Miscellaneous Provisions) Act 2006*.

**Clause 14** gives the Executive new powers to call for witnesses and documents by inserting a new section 44 into the *Northern Ireland Act 1998*. The procedure is slightly unusual, in that the new section applies the provisions of section 44 of the 1998 Act, relating to Assembly powers, to the Executive, with some modifications. The power is only exercisable for a senior officer of a Northern Ireland Department where a matter falls within the Executive’s functions under section 20(3) and (4) of the Act.

Initial press reports following the publication of the Bill suggest that the DUP do not expect the appointments of the First and Deputy First Ministers to be made until after the elections for the Assembly scheduled for 7 March 2007. Similarly, Sinn Fein have stressed that the Pledge of Office would only apply when or if ministers are selected early in 2007.<sup>82</sup> However, the Assembly is expected to meet on 24 November, with press reports that a suspension of standing orders might take place to allow the appointments.<sup>83</sup>

### C. 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 Schedule 4 of 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*

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<sup>82</sup> “Date set for NI Assembly election” 16 November 2006 *BBC News*

<sup>83</sup> “Assembly crisis is eased as talks yield a blueprint” 16 November 2006 *Belfast Telegraph*

*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>84</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>85</sup>

## 1. The Bill

**Clause 7** makes additions to the terms of the Pledge of Office in Schedule 4 of the *Northern Ireland Act 1998*, as follows:

- To promote the interests of the whole community, represented in the Northern Ireland Assembly towards the goal of a shared future;
- To participate fully in the Executive Committee, the North-South Ministerial Council and the British-Irish Council;
- To observe the joint nature of the offices of First Minister and deputy First Minister
- To uphold the rule of law based as it is on the fundamental principles of fairness, impartiality and democratic accountability, including support for policing and the courts as set out in paragraph 6 of the St Andrews Agreement.
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Paragraph 6 is reproduced in clause 7(2). This Pledge will be taken at the time of taking office.

## D. Community designation

Under the standing orders of the Assembly which operated until 2002, Members could designate their political identity.<sup>86</sup> The designation is key to the allocation of ministries, amongst other functions. 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. On 2 November 2001, the standing orders of the Assembly were amended to clarify that a Member could change his designation only once during an Assembly session. The Assembly elected in 2003 also has provisions in its standing orders to allow for designation, and allows only for one change of designation during the lifetime of the Assembly established under the 2006 Act. These

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<sup>84</sup> Ministers are defined as First Minister, Deputy First Minister or Northern Ireland Minister under section 7(3) of the 1998 Act

<sup>85</sup> Available at <http://www.opsi.gov.uk/acts/en2003/2003en25.htm>

<sup>86</sup> As provided for in s4(5) of the *Northern Ireland Act 1998*. See SO 3(8) as printed on 9 March 1999

standing orders provide that a MLA may correct his designation until one hour before the start of the first meeting of the Assembly (Standing Order 3(g)).<sup>87</sup>

The current procedures in use under the *Northern Ireland Act 2006* are set out in the standing orders determined for the Assembly by the Secretary of State in May 2006, and deposited in the Library.<sup>88</sup> These were determined under paragraph 4(1) of Schedule 1 to the *Northern Ireland Act 2006*.<sup>89</sup>

## 1. The Bill

**Clause 13** inserts a new section 5A into the *Northern Ireland Act 1998* to require standing orders of the Assembly to provide that a Member may only change his designation: that is, Nationalist, Unionist, or Other if he changes his political party affiliation between elections. The term ‘political party’ is not explicitly defined in this Bill.

**Schedule One, para 10** provides that members of the Transitional Assembly will be deemed to have signed the roll of membership, with the designation already made following the *Northern Ireland Act 2006*.

**Clause 17** inserts a new paragraph 5 into Schedule 6 of the *Northern Ireland Act 1998*. The effect is to preserve the right to vote in the Assembly where a vacancy in membership would otherwise prevent this right. Equivalent provision is made for the Transitional Assembly in **Schedule 1**, para 9(6).

## E. Ministerial Code

There has been much discussion between the parties involving the tightening of the Ministerial Code, to allow for more ministerial accountability. The Ministerial Code was originally agreed by the Executive in January 2000, to be reviewed in late 2000. In the event, the Code had not undergone review by the time of suspension in October 2002. A new draft forms Appendix 6 of the Programme for Government Committee report of September 2006, but not all elements were agreed by the parties. Under the statutory Pledge of Office in the 1998 Act, ministers are already required to abide by the terms of the Ministerial Code. The DUP have argued for elements of the new Code to be spelt out in legislation and envisage that a significant breach of the Pledge would be actionable in the courts.

The *St Andrews Agreement* stated that there would be amendments to the *Northern Ireland Act 1998* to create a statutory Ministerial Code, which would place a duty on ministers and junior ministers to act in accordance with the Code’s provisions on ministerial accountability. It went on:

3. The 1998 Act would be amended to require inclusion in the Code of agreed provisions in relation to ministerial accountability. Consistent with paragraphs 19 and 20 of the Agreement, this would provide for the Executive to be the forum for:

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<sup>87</sup> See Standing orders determined by the Secretary of State Dep 06/1007 May 2006

<sup>88</sup> Dep 2006/1007

<sup>89</sup> Background to this Act is given in Library Research Paper 06/23 *The Northern Ireland Bill*

(i) the discussion of, and agreement on, issues which cut across the responsibilities of two or more Ministers, including in particular those that are the responsibility of the Minister of Finance and Personnel.

(ii) prioritising executive proposals;

(iii) prioritising legislative proposals;

(iv) recommending a common position where necessary – for instance, on matters which concern the response of the Northern Ireland administration to external relationships;

(v) agreement each year on (and review as necessary of) a programme incorporating an agreed budget linked to policies and programmes (Programme for Government).

4. The Code will also provide for the discussion of and agreement on any issue which is significant or controversial and:

(a) clearly outside the scope of the agreed Programme for Government or

(b) which the First Minister and Deputy First Minister agree should be brought to the Executive.

5. The new Code would be discussed by the parties and agreed by the Executive when formed. The First Minister and Deputy First Minister would propose the Code to the Assembly. It would have effect once endorsed by cross-community support there. Any amendments to the Code would require cross-community support in the Assembly.

The creation of a statutory Ministerial Code is a unique development within the UK tradition. Although the devolved administrations in Scotland and Wales have adopted versions of the *Ministerial Code* published by the UK Government, none of these Codes is statutory. There has been pressure from the Committee on Standards in Public Life and the Public Administration Select Committee for an independent investigator of alleged breaches of the UK *Ministerial Code*. In March 2006, the Prime Minister appointed the Comptroller and Auditor General, Sir John Bourne, as his Independent Adviser on Ministerial Interests. Further information is given in Library Standard Note No 3750 *The Ministerial Code*. The pressure to investigate breaches tends to lie in relation to allegations about failure to register private interests, rather than questions of ministerial accountability. However, the current UK Code contains both ethical and constitutional duties for ministers.

In contrast, the proposed statutory Northern Ireland Code focuses on ministerial accountability. The pressure in Northern Ireland has been to codify as much as possible the behaviour of individual ministers representing different parties, within an Executive which does not follow traditional British notions of collective responsibility.<sup>90</sup>

## 1. The Bill

**Schedule One** requires the Transitional Assembly to prepare and consider a draft Ministerial Code. There is a new target date for the Assembly to approve the Code, on a cross-community vote, by 24 March 2007. If the Code is not approved by then, the Secretary of State has power to make the Code.

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<sup>90</sup> For background on collective responsibility see Library Research Paper 04/82 *The Collective Responsibility of Ministers*

**Clause 5(1)** adds a new function to the Executive to discuss and agree upon significant or controversial matters “clearly outside the scope of the agreed programme referred to in paragraph 20” of the *Belfast Agreement*. This is a reference to the agreed annual programme of government. The clause adds a new section 20(4) to the *Northern Ireland Act 1998* to confer the function.

**Clause 5 (2)** inserts a new section 29A into the *Northern Ireland Act 1998* which requires ministers or junior ministers to act in accordance with the Code approved by cross community support. According to the *Explanatory Notes*, this is a reference either to the Ministerial Code prepared under Schedule 1 by the Transitional Assembly or to any replacement code prepared and approved by the Assembly in accordance with new section 28A. Amendments to the Code subsequently made by the Executive will require Assembly approval. The Clause makes some specific requirements:

(5) The Ministerial Code must include provision for requiring Ministers or junior Ministers to bring to the attention of the Executive Committee any matter that ought, by virtue of section 20(3) or (4), to be considered by the Committee.

(6) The Ministerial Code must include provision for a procedure to enable any Minister or junior Minister to ask the Executive Committee to determine whether any decision that he is proposing to take, or has taken, relates to a matter that ought, by virtue of section 20(3) or (4), to be considered by the Committee.

(7) The Ministerial Code must also include provision as to the procedures of the Executive Committee with respect to—

(a) the taking of decisions; and

(b) consideration by the Committee of decision papers that are to be considered by the North-South Ministerial Council or the British-Irish Council.

(8) The Ministerial Code must in particular provide—

(a) that it is the duty of the chairmen of the Executive Committee to seek to secure that decisions of the Executive Committee are reached by consensus wherever possible;

(b) that, if consensus cannot be reached, a vote may be taken; and

(c) that, if any three members of the Executive Committee require the vote on a particular matter which is to be voted on by the Executive Committee to require cross-community support, any vote on that matter in the Executive Committee shall require cross-community support in the Executive Committee.

(9) The Ministerial Code may include such other provisions as the Executive Committee thinks fit.

(10) Without prejudice to the operation of section 24, a Minister or junior Minister has no Ministerial authority to take any decision in contravention of a provision of the Ministerial Code made under subsection (5).”

The *Explanatory Notes* make clear that the new requirement in subsection 5 is not intended to alter an individual minister’s authority in his area of responsibility, but to ensure that ministerial decisions do not contravene a collective position taken up by the Executive. The *Notes* also state that subsection 6 is designed to provide clarity in advance to ministers, in order to avoid their breaching the provisions of the Code inadvertently.

**Schedule 7** makes minor and consequential amendments relating to Part 2 of the Bill relating to the Executive, the Ministerial Code and the Pledge of Office.



## F. Assembly procedures and committees

### 1. Statutory Assembly Committee of the Centre

A standing Committee of the Centre has existed within the Assembly for some years.<sup>91</sup> It is viewed as an important element of the Assembly's scrutiny of the Office of the First and Deputy First Minister, but was not recognised as a statutory committee under the *Northern Ireland Act 1998*. The *St Andrews Agreement* gave a commitment to put the Committee on a statutory footing. **Clause 10** amends section 29 of the *Northern Ireland Act 1998* to allow for this statutory committee to be created.

### 2. Institutional Review Committee

The *St Andrews Agreement* proposed an amendment to the 1998 Act to allow the Assembly to appoint a standing Institutional Review Committee to examine the operational aspects of the Strand One institutions (Assembly, Executive etc). Where the Committee recommended changes beyond the scope of the devolved institutions, these would be examined by the British and Irish Governments.

**Clause 11** inserts a new section 29A to provide for this new Committee. Standing orders will give detailed procedures but the clause provides that the Committee has to make a report on the provisions of Parts 3 and 4 of the 1998 Act (devolved executive authorities and the Assembly) by 1 May 2015. The *Explanatory Notes* suggest that these might include changes to provisions governing the appointment or exclusion of ministers and the question of cross community support. This clause also inserts a new section 29B requiring the Committee to review the operation of new sections 16A-C (appointment of First and Deputy First Minister and Executive) with a view to proposing to the Secretary of State that a reversion be made to the original provisions in the 1998 Act after the election of a new Assembly in 2011. If there is sufficient cross community support in the Assembly, the Secretary of State is required to bring forward the necessary statutory instrument, subject to the negative procedure.

### 3. Referrals from the Assembly

An important aspect of the *St Andrews Agreement* was greater control over the operation of the Executive by the Assembly. A new power to refer a matter to the Executive has been proposed as follows:

**6. Assembly referrals for Executive review.** An amendment to the 1998 Act would provide for referrals from the Assembly to the Executive of important ministerial decisions. Thirty members of the Assembly might initiate such a referral, within seven days of a ministerial decision or notification of the decision where appropriate. Before he could pass the referral to the Executive, the Presiding Officer, following consultation with the parties in the Assembly, would be required to certify that it concerned an issue of public importance. The Executive would consider the issue within seven days. A second referral could not be made by the Assembly in respect of the same matter. Only matters

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<sup>91</sup> Its webpage indicates its remit at <http://www.niassembly.gov.uk/centre/centre.htm>

covered by the Ministerial Code, as set out above, would require a collective decision by the Executive.

The *Agreement* noted that ministers would be required to act in accordance with any relevant decisions of the Executive or Assembly, reflecting their Pledge of Office.

#### 4. The Bill

**Clause 6** provides for 30 Assembly Members to petition the Assembly expressing concern that a decision by a minister or junior minister either:

- May have been taken in contravention of new section 28A(1), which requires ministers to act in accordance with the Ministerial Code, or
- Relates to a “matter of public importance.”

However, Clause 6(2) prevents repeated references in relation to the same decision. There is a window of 7 days in which to petition after the date on which the decision was taken or notified to the Assembly. After considering the reference, again within a deadline of 7 days following referral, the Executive notifies the Presiding Officer whether the decision did contravene section 28A(1) or is a “significant or controversial matter” and describes the proposed action in response. The *Explanatory Notes* state that section 28B does not specify what action the Executive can take, but the *Notes* give examples of possible action, such as a motion to the Assembly that a sanction for a breach of pledge of office be made available. Such a motion may only be carried on a cross-community vote.

#### G. Election of a new Assembly

The *St Andrews Agreement* committed the Government to seeking the endorsement of the Northern Ireland electorate in March 2007. The Bill makes clear that this will be by means of fresh elections to the Assembly. **Clause 3** sets the date of the poll as 7 March 2007, substituting a new section 32(2) in the *Northern Ireland Act 1998*. The clause also sets the date of dissolution of the Assembly elected on 26 November 2003 as 30 January 2007. This makes a 25 day timetable, with Election Day a Wednesday. It was the practice to hold local elections on Wednesdays in Northern Ireland for several years, until the *Elections Act 2001* changed the date to Thursday. The Clause also ensures that no by-elections will be held before the polling day of 7 March 2007. **Clause 4** makes arrangements for the continued remuneration of Assembly Members. Those Members not standing again receive no remuneration from the latest date for the nomination of candidates under the election timetable.

The election timetable for the Northern Ireland Assembly was originally set out in the *Northern Ireland Assembly (Elections) Order 2001* as a 25 day timetable.<sup>92</sup> However, the most recent elections held on 26 November 2003 were on a 20 day timetable, as provided for by Section 1(4) of the *Northern Ireland Assembly (Elections and Periods of Suspension) Act 2003*. The parties will be subject to limits on their campaign expenditure, as set out in the *Political Parties, Elections and Referendums Act 2000* (PPERA). The

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<sup>92</sup> SI 2001/2599

maximum permitted spend, if a party contests all seats, is £306,000.<sup>93</sup> These limits take effect four months before polling day. The limits for individual candidates were set for the 2003 elections and are as follows: Northern Ireland Assembly: county constituency - £5,483 plus 6.2p per elector. Northern Ireland Assembly: borough constituency - £5,483 plus 4.6p per elector.<sup>94</sup>

New requirements in the *Northern Ireland (Miscellaneous Provisions) Act 2006* about public donations to political parties in Northern Ireland are due to come into effect on 31 October 2007. Further detail is given in Library Research Paper 06/14 *The Northern Ireland (Miscellaneous Provisions) Bill* and Library Standard Note no 4114.

## H. Numbers of departments and policing and justice functions

The question of the number of Northern Ireland departments has been under debate for some time, particularly in the context of the Review of Public Administration in Northern Ireland, which proposes a consolidation of local authorities and public bodies.<sup>95</sup>

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>96</sup> As a result ten ministries were set up under the terms of the *Departments (Northern Ireland) Order 1999*.<sup>97</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*.

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 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)).

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<sup>93</sup> <http://www.electoralcommission.org.uk/regulatory-issues/legcameppolparty.cfm>

<sup>94</sup> For details see the Electoral Commission's report *The Northern Ireland Assembly Elections 2003: Campaign Expenditure 2004*

<sup>95</sup> For background on the review see Library Standard Note no 4067 *Political Developments in Northern Ireland since February 2006*

<sup>96</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>97</sup> SI 1999 no 283 (N.I.1)

The Review of Public Administration has begun to take effect in Northern Ireland, with plans to reduce the number of local authorities and public bodies well advanced. 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>98</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.

The *St Andrews Agreement* indicated that streamlining the Executive would be considered as part of the return to devolution:

13. The First Minister and Deputy First Minister would appoint an Efficiency Review Panel, to examine efficiency and value for money of aspects of the Strand One institutions. The FM/DFM would put to the Assembly for approval proposals for the panel's remit, which might include the size of the Assembly and the departmental structure. The Panel would take into account as appropriate the work of the Review of Public Administration. The Panel's report would be considered by the Executive and Assembly, and, where agreed changes required legislative steps outside the scope of the devolved institutions, by the British Government in consultation as appropriate with the Irish Government.

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*. The *Northern Ireland (Miscellaneous Provisions) Act 2006* makes detailed provisions in this area, to be implemented once devolution is restored. The Act had an unusual scheme to allow for rotating ministers, or joint ministers of a new department with policing and justice functions. For background see Library Research Paper 06/14 *The Northern Ireland (Miscellaneous Provisions) Bill*.

## 1. The Bill

**Clause 5** provides that Schedules 5 and 6 shall have effect. **Schedule 5** makes amendments to the new Schedule 4A of the *Northern Ireland Act 1998*, which was inserted by the *Northern Ireland (Miscellaneous Provisions) Act 2006*. The changes relate to the procedures by which the rotating ministerial offices are appointed, to fit in with the new arrangements for appointing the Executive under Clause 8 of the Bill.

**Schedule 6** makes further amendments to the new Schedule 4A of the 1998 Act.

**Clause 18** requires the Assembly to provide a report to the Secretary of State before 17 March 2008 on its consideration of the devolution of policing and justice matters. The

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<sup>98</sup> "All change please" February March 2006 *Public Service Magazine*, produced by the civil service union FDA

report has to consider such matters as whether a request is likely to be made before 1 May 2008 that responsibility for such matters should be devolved. The *Explanatory Notes* state:

85. The clause does not affect any of the safeguards on the transfer of responsibility set out in section 4 of the 1998 Act, as amended by the Northern Ireland (Miscellaneous Provisions) Act 2006. It remains the case that the First Minister and deputy First Minister, acting jointly, must table a motion for a resolution of the Assembly that policing and justice matters be devolved; the Assembly must so resolve with cross-community support; the Secretary of State must concur and lay and draft order before Parliament; and Parliament must approve that order.

## I. Admissions for post- primary schools in Northern Ireland

### 1. Introduction and Summary

Secondary education in Northern Ireland is mostly selective with pupils going to grammar schools or secondary schools according to their performance in Transfer Tests (i.e. '11 plus' tests taken in primary school).

The system of post-primary school admissions in Northern Ireland has been under review for several years, and the Government's view is that ending academic selection for secondary education school admissions would be in the best interests of education and of the economy in Northern Ireland. The *Education (Northern Ireland) Order 2006* makes provision for the prohibition of academic selection.<sup>99</sup> However, the Government has said that the decision about commencement of this provision should rest with the Northern Ireland Assembly provided the Assembly can be restored by the (revised) target date of 26 March 2007.<sup>100</sup>

The *Education (Northern Ireland) Order 2006*, as it currently stands, states that the prohibition on academic selection will come into force on 25 November 2006, to take effect in relation to admissions from September 2010, unless the Northern Ireland Assembly is restored by 24 November 2006, in which case the commencement of the prohibition will be subject to affirmative resolution in the Assembly. As part of the negotiations leading to the St Andrews agreement, the Government decided that, provided the political parties endorsed the agreement by 10 November 2006, legislation would be introduced to amend the Order to reflect the revised target date of 26 March 2007 for the restoration of the Assembly. In the event of a restored Assembly by that date, the commencement of the provision abolishing academic selection would be subject to a resolution of the Assembly. If the Assembly is not restored by that date, academic selection will end.<sup>101</sup>

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<sup>99</sup> *Education (Northern Ireland) Order 2006*, SI 2006 No. 1915 (N.I. 11). The Order and Explanatory Memorandum on it are available electronically at:

<http://www.opsi.gov.uk/legislation/northernireland/ni-oic06.htm>

<sup>100</sup> HC Deb 23 October 2006 c1545W

<sup>101</sup> Department for Education Northern Ireland website on post-primary arrangements: [http://www.deni.gov.uk/index/22-postprimaryarrangements-new-arrangements\\_pg.htm](http://www.deni.gov.uk/index/22-postprimaryarrangements-new-arrangements_pg.htm)

The abolition of academic selection is highly controversial, and some commentators have accused the Government of using it as a political move to secure a power-sharing government.<sup>102</sup>

## 2. Background

Before the suspension of the Northern Ireland Assembly in October 2002, the then Minister for Education in Northern Ireland, Martin McGuinness, announced that Transfer Tests would come to an end.<sup>103</sup> On 24 April 2003 the Post-Primary Review Working Group - widely known as the Costello Committee – was set up to advise the Minister with responsibility for Education in Northern Ireland on future options for post-primary arrangements. The Committee's remit included taking account of the responses to the consultation on the earlier Burns Report, including the diversity of views on academic selection.<sup>104</sup>

On 26 January 2004, Jane Kennedy, the then Minister of State at the Northern Ireland Office with responsibility for education, announced that the Government had accepted the recommendations of the Post-Primary Review Working Group, and published its report.<sup>105</sup> The working group report, *Future Post-Primary Arrangements in Northern Ireland: Advice from the Post-Primary Review Working Group* recommended that the Transfer Test should end, that no other means of academic selection should replace the test and that schools should draw from a limited menu of admissions criteria to deal with any oversubscription to schools. A key aspect of the new arrangements is the 'Entitlement Framework' to enable each pupil to have access to a wide range of academic and vocational course options.

A Department for Education Northern Ireland Press Notice on the changes quoted the Minister as saying:

"There has been a lot of speculation about imposing a single type of school system. I want to make clear that these new arrangements, far from being a 'one size fits all', actually allow all existing school types to continue to exist, so long as

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<sup>102</sup> e.g. see, for example, comments by some MPs and Peers during the debates on the *Education (Northern Ireland) Order*, Fourth Standing Committee on Delegated Legislation, 28 June 2006 cc 12, 28 and 31; HL Deb 10 July 2006 c552, and BBC News Education, 'NI pupils sitting transfer test' 10 November 2006: [http://news.bbc.co.uk/1/hi/northern\\_ireland/6134526.stm](http://news.bbc.co.uk/1/hi/northern_ireland/6134526.stm)

<sup>103</sup> Department for Education Northern Ireland, Press Notice, *McGuinness announces last Transfer Test in 2004*, 11 October 2002: <http://www.nics.gov.uk/press/edu/021011r-edu.htm>

<sup>104</sup> *Education for the 21st Century: Report by the Post-Primary Review Body* (Burns Report), October 2001: [http://www.deni.gov.uk/index/22-postprimaryarrangements-new-arrangements\\_pg/22-ppa-research\\_and\\_reports\\_pg/22-ppa-rap-br\\_pg.htm](http://www.deni.gov.uk/index/22-postprimaryarrangements-new-arrangements_pg/22-ppa-research_and_reports_pg/22-ppa-rap-br_pg.htm) The Burns Report, which was published for consultation, had recommended the end of academic selection as soon as possible. Instead it wanted to see primary schools in the pupil's last three years of primary education collecting information about how well a child was performing in all aspects of school work, and the teacher discussing the pupil's profile with their parents to help them decide what type of school would be most suitable for the child.

<sup>105</sup> Written Ministerial Statement, HC Deb 26 January 2004 cc 2-3WS; Department for Education Northern Ireland, January 2004: [http://www.deni.gov.uk/index/22-postprimaryarrangements-new-arrangements\\_pg/22-ppa-research\\_and\\_reports\\_pg/22-ppa-rap-cr\\_pg.htm](http://www.deni.gov.uk/index/22-postprimaryarrangements-new-arrangements_pg/22-ppa-research_and_reports_pg/22-ppa-rap-cr_pg.htm)

they meet the Entitlement Framework. It also opens-up the possibility of new school types, such as specialist schools, which are able to respond to local needs, for example in ICT or leisure and tourism."

The Minister acknowledged that some post-primary schools would continue to be oversubscribed and so new admissions criteria would be needed: "In future, schools will select criteria from a limited menu, which will include family connections and some form of geographical factors. The Department will undertake immediate research to examine admission patterns and we hope to have criteria for consideration by the end of 2004."<sup>106</sup>

(A summary of the Costello report's recommendations is given in Annex C of this Press Notice.)

On 7 December 2005 a proposal for a draft Education (Northern Ireland) Order was published, and the consultation ran until 7 March 2006.<sup>107</sup> A consultation paper on the new admission arrangements including the admission criteria was issued on 28 January 2005.<sup>108</sup>

The House of Commons Northern Ireland Affairs Committee was approached by a group of Grammar School Principals, supported by the Governing Bodies Association, Concerned Parents for Education, and the Confederation of Grammar Schools' Former Pupils' Associations, who said that their voices had not been adequately heard in the debate on the proposed changes. The Committee agreed unanimously to meet the group while at the same time recognising that it should also meet groups representing other views on the future of post-primary education. The Committee visited Northern Ireland and took evidence. The Committee, which published its report in February 2006, said that whilst it would not be appropriate at this late stage in the decision-making process for it to become involved in the debate about the ending of academic selection, it was aware that people in both communities felt very strongly on both sides of the argument about academic selection, and that it was important in the period before the restoration of the Assembly for the Minister to take careful account of all the views. The report stated:

10. The Committee is keenly aware that education is a formerly devolved responsibility and we hope that there will be scope for detailed supervision of the implementation of the changes by a restored Assembly. In this context, we note the Government's desire to restore devolution during 2006. It is essential that, both before and after the restoration of devolution, the people of Northern Ireland are given every legitimate opportunity to express their concerns. We therefore encourage all interested parties to take every opportunity to participate in the present consultation process.

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<sup>106</sup> Department for Education Northern Ireland, Press Notice, *Jane Kennedy announces new post primary arrangements and confirms 11+ to end autumn 2008*, 26 January 2004: <http://www.northernireland.gov.uk/press/edu/040126bb-edu.htm>

<sup>107</sup> HC Deb 7 December 2005 c101WS

<sup>108</sup> HL Deb 4 November 2004 cc WA 43-44



11. We draw the concerns expressed in the written and oral evidence we have received to the attention of the Government and we give notice that we may return to this subject. At this stage we propose no further hearings, **but we urge that opportunity be provided for the order to be debated on the floor of the House.**<sup>109</sup>

The *Draft Education (Northern Ireland) Order 2006* was considered in the House of Commons Fourth Standing Committee on Delegated Legislation on 28 June 2006.<sup>110</sup> It was approved by the House of Commons on 5 July 2006 by 303 to 163 votes.<sup>111</sup> The House of Lords debated and approved the draft order on 10 July 2006,<sup>112</sup> and the order became law on 19 July 2006; its provisions take effect in accordance with articles 1(2) to (7) of the Order. The Order provides the broad legislative framework to implement the revised statutory curriculum, give effect to aspects of the new arrangements for post-primary education, including the curricular Entitlement Framework and contains powers to introduce new admissions arrangements. The Order includes provision for the abolition of academic selection, but makes it subject to a vote in the Northern Ireland Assembly if the Assembly is restored by 24 November 2006. The Order also introduces new arrangements for the expulsion and suspension of pupils from grant-aided schools and makes a number of other legislative changes.<sup>113</sup>

During the debate in the Standing Committee on Delegated legislation David Hanson, the Minister of State for Northern Ireland, confirmed that if the Assembly is restored (by the date in the Order) the status quo on academic selection will remain, and that it will only change by a cross-community vote in the Assembly:

**Sammy Wilson:**

.....

We will work to have the Assembly up and running as soon as possible, but it must be based on the two principles that I put forward earlier. I want the Minister to assure us that when it is up and running, the status quo will remain, and that it will be changed only by a cross-community vote in the Assembly.

**Mr. Hanson:** I know that other Members wish to speak, so just in case I do not have a full opportunity to respond to the debate, let me say that the hon. Gentleman's understanding of the procedure is correct.<sup>114</sup>

### 3. The Bill

**Clause 21** amends the Order to reflect the revised target date of 26 March 2007 for the restoration of the Assembly. Currently, the Order defers the provisions' commencement

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<sup>109</sup> House of Commons Northern Ireland Affairs Committee, *Education in Northern Ireland*, First Report of Session 2005-06, HC Paper 726, February 2006:

<http://pubs1.tso.parliament.uk/pa/cm200506/cmselect/cmniaf/726/72603.htm>

<sup>110</sup> Fourth Standing Committee on Delegated Legislation, 28 June 2006:

<http://www.publications.parliament.uk/pa/cm200506/cmstand/deleg4/st060628/60628s01.htm>

<sup>111</sup> Deferred Division, HC Deb 5 July 2006 cc 951-8

<sup>112</sup> HL Deb 10 July 2006 cc 542-565

<sup>113</sup> Department for Education Northern Ireland website on new arrangements for post-primary education: [http://www.deni.gov.uk/index/22-postprimaryarrangements-new-arrangements\\_pg.htm](http://www.deni.gov.uk/index/22-postprimaryarrangements-new-arrangements_pg.htm)

<sup>114</sup> Fourth Standing Committee on Delegated Legislation, 28 June 2006, c34



until the restoration of the Assembly on 24 November. If devolution is not restored by 26 March, the prohibition on selection will take effect. If there is not devolution, then the provisions prohibiting selection will only take effect following an affirmative resolution of the Assembly. In either case, the prohibition will only take effect in relation to admissions on or after 31 July 2010. The *Explanatory Notes* state:

91. Clause 21 also provides that, if the Northern Ireland Act 2000 is repealed under Schedule 4, schools admissions regulations may make different provision for different types of schools. This will ensure that a restored Assembly's options to agree new admissions arrangements are not constrained by a requirement for all types of schools to sue the same admissions criteria.

## J. Policing

### 1. Background

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>115</sup> The report made 175 recommendations intended to improve the accountability, effectiveness and impartiality of the police, and to make them more representative of Northern Ireland society.<sup>116</sup>

An Oversight Commissioner for Policing Reform was appointed in June 2000, and in his June 2006 report, the current Commissioner reported that 124 of the 175 Patten recommendations had been implemented.<sup>117</sup> Under the provisions of the *Police Northern Ireland Act 2000*, the Royal Ulster Constabulary has been renamed the Police Service of Northern Ireland (PSNI).

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>118</sup> as Sinn Fein have not taken up seats.

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<sup>115</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.

<sup>116</sup> *Report of the Independent Commission*, Paragraph 1.10

<sup>117</sup> Office of the Oversight Commissioner for Policing Reform, *Overseeing the Proposed Revisions for the Policing Services of Northern Ireland* - Report 16, – 6 June 2006  
<http://www.oversightcommissioner.org/reports/default.asp?page=reports>

<sup>118</sup> [http://www.nipolicingboard.org.uk/our%20people/our\\_people.htm](http://www.nipolicingboard.org.uk/our%20people/our_people.htm)

## 2. 50:50 recruitment provisions

The Patten Report recommended exceptional recruitment measures to address imbalances in the perceived religious background of the membership of the police force. These were that all candidates who wished to join the police service and who reached a specified standard of merit in the selection procedure should be placed in a pool from which an equal number of Protestants and Catholics would then be drawn for appointment.<sup>119</sup> The report specifically envisaged that these provisions would be temporary.

The changes were provided for in Part VI of the *Police (Northern Ireland) Act 2000*, which came into force on 30 March 2001.<sup>120</sup> Since then, the overall proportion of Catholics in the PSNI regulars has risen from just over 8%<sup>121</sup> to over 20%.<sup>122</sup> The target is to increase it to 30% by 2010/11<sup>123</sup> Section 46 of the 2000 Act provides for 50:50 recruitment, and section 47(2) states that this should be repealed after three years unless the Secretary of State renews the temporary provisions by order. This was done with effect from March 2004 following a review in 2003.<sup>124</sup> A further review is currently underway, and the Northern Ireland Office is conducting a consultation, which closes on 27 November 2006.<sup>125</sup>

50:50 recruitment has been controversial, particularly amongst Unionist parties, who argue that it discriminates against qualified non-Catholic recruits. The SDLP, by contrast, have argued that the provisions are necessary to ensure that Catholics are adequately represented. Sinn Fein has reportedly expressed scepticism about statistics based on the PSNI regular officers rather than the service as a whole.<sup>126</sup> In March 2006, the Cross Bench peer Lord Laird introduced a Private Members' Bill to try to reverse the 50:50 recruitment provisions. The Bill got through its stages in the Lords,<sup>127</sup> but made no progress in the Commons. The issue was also debated during the Committee stage of the *Northern Ireland Miscellaneous Provisions Bill* in response to new clauses proposed by the DUP and the UUP<sup>128</sup> although these were negatived on division.<sup>129</sup>

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<sup>119</sup> Recommendations 120 and 121, and paragraph 15.10

<sup>120</sup> SI 2001/132

<sup>121</sup> 8.2% in September 2001 – see Northern Ireland Office, *Police (Northern Ireland) Act 2000 Review of Temporary Provisions*, 2006, paragraph 21, [http://www.nio.gov.uk/police\\_\(northern\\_ireland\)\\_act\\_2000\\_-\\_review\\_of\\_temporary\\_provisions-2.pdf](http://www.nio.gov.uk/police_(northern_ireland)_act_2000_-_review_of_temporary_provisions-2.pdf)

<sup>122</sup> The proportion of PSNI regulars who were Catholic was 20.8% as at 29 October 2006 – personal communication, Northern Ireland Office official, 14 November 2006.

<sup>123</sup> Northern Ireland Office <http://www.nio.gov.uk/index/faq/niofaq-policing.htm#top>. Figures relate to Regulars, not Reserves.

<sup>124</sup> *Police (Northern Ireland) Act 2000 (Renewal of Temporary Provisions) Order 2004*, SI 2004/114

<sup>125</sup> Northern Ireland Office, *Police (Northern Ireland) Act 2000 Review of Temporary Provisions*, 2006, [http://www.nio.gov.uk/police\\_\(northern\\_ireland\)\\_act\\_2000\\_-\\_review\\_of\\_temporary\\_provisions-2.pdf](http://www.nio.gov.uk/police_(northern_ireland)_act_2000_-_review_of_temporary_provisions-2.pdf)

<sup>126</sup> "More Catholics in PSNI a watershed: Attwood", *Belfast Telegraph*, 25 July 2006, p3

<sup>127</sup> HL Deb 3 March 2006 cc505-22

<sup>128</sup> HC Deb 20 April 2006 cc310-28

<sup>129</sup> c329

### 3. District Policing Partnerships

District Policing Partnerships were established in March 2003 as part of the new accountability arrangements for policing introduced by the *Police Northern Ireland Act 2000*. The Patten Report had recommended that each district council set up what it called a “district policing partnership board” to act as a consultative body.<sup>130</sup> District Policing Partnerships can have 15, 17 or 19 members. In accordance with the 2000 Act the membership comprises of Political Members (local councillors) and Independent Members (members of the public appointed by the Policing Board through an open competition which follows a Code of Practice issued by the Secretary of State). There are 26 District Policing Partnerships which (again in accordance with the 2000 Act) must be co terminous with Police District Command Units and each local council area. In Belfast, where there are four District Command Units, there are four sub groups of the DPP.

DPPs general functions are set out in section 16 the *Police (Northern Ireland) Act 2000*. They are to:

- Provide views to the district commander on any matter concerning policing in the district
- Monitor the performance of the police in carrying out the local policing plan
- Obtain the views of the public about matters concerning the policing of the district
- Obtaining the co-operation of the public with the police in preventing crime
- Act as a general forum for discussion and consultation on matters affecting the policing of the district.

All the parties are represented on DPPs except Sinn Fein, who have boycotted them along with other policing institutions such as the Northern Ireland Policing Board.

Under schedule 1 of the *Police Northern Ireland Act 2000*, the Northern Ireland Policing Board has to be reconstituted in the event of the restoration of devolved government. By contrast, under schedule 3 the composition of District Policing Partnerships is linked to the local election cycle, with members holding office until the date of the local general election following their appointment.

Schedule 8 of the Bill sets out new arrangements for the reconstitution of District Police Partnerships. These, according to the explanatory notes, are intended to be used “in the eventuality that Sinn Fein should decide to support the policing institutions in Northern Ireland.” The Northern Ireland Policing Board would have to review the composition of each DPP to consider if the “political condition” is met. This condition is met if “the political members of the DPP reflect, so far as practicable, the balance of parties prevailing among the members of the council” at the time. The Explanatory Notes give further information:<sup>131</sup>

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<sup>130</sup> paragraphs 6.26-6.37

<sup>131</sup> [http://www.publications.parliament.uk/pa/cm200607/cmbills/007/en/07007x-b.htm#index\\_link\\_16](http://www.publications.parliament.uk/pa/cm200607/cmbills/007/en/07007x-b.htm#index_link_16)

137. This Schedule sets out revised arrangements for the reconstitution of District Policing Partnerships (DPPs), which it is intended to use in the event that Sinn Fein should decide to support the policing institutions in Northern Ireland before the next Local Government Election. These provisions will be brought into force by a commencement order on a date to be determined by the Secretary of State.

138. Paragraph 2 places a requirement on the Northern Ireland Policing Board to review the membership of each DPP. The Board must consider the political membership, and in particular the balance of political parties prevailing on the date of coming into force of this Schedule. This review must be completed within fifteen days. On completion of the review the Board is required to submit a report of its findings to the Secretary of State and any report on a DPP should also be sent to the district council which established that DPP. The Board must also publish a list of the DPPs which it considers should be reconstituted, because the political members of the DPP do not reflect, so far as practicable, the balance of the parties prevailing among the members of the relevant council.

139. Paragraphs 3 and 4 set out the subsequent arrangements for the reconstitution of those DPPs affected by the Board's review. These paragraphs provide for the appointment of new political members and new independent members for those particular DPPs.

140. Paragraph 5 deals with any supplementary amendments including providing the Secretary of State with powers to take action if a district council fails to comply with the requirement to reconstitute its DPP.

## K. Irish Language and Ulster Scots

The St Andrews Agreement stated that:<sup>132</sup>

The Government will introduce an Irish Language Act reflecting on the experience of Wales and Ireland and work with the incoming Executive to enhance and protect the development of the Irish language.

The Government firmly believes in the need to enhance and develop the Ulster Scots language, heritage and culture and will support the incoming Executive in taking this forward.

The *Welsh Language Act 1993* places a duty on public sector authorities to produce schemes to give effect “to the principle that in the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated on a basis of equality.”<sup>133</sup> It gives Welsh speakers an absolute right to speak Welsh in court and it established the Welsh Language Board to promote and facilitate the use of the Welsh Language.

This Bill does not provide for equivalent provisions. The Government has made a commitment to consulting on what form legislation might take. After the restoration of

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<sup>132</sup> Annex B, [http://www.nio.gov.uk/st\\_andrews\\_agreement.pdf](http://www.nio.gov.uk/st_andrews_agreement.pdf)

<sup>133</sup> section 5

devolution in Northern Ireland, responsibility for this matter would be transferred to the Assembly.<sup>134</sup>

However, clause 15 of the Bill would place a duty on the incoming Executive Committee to adopt a strategy relating to the enhancement and protection of the development of the Irish language and also to adopt a strategy relating to the enhancement and development of the Ulster Scots language, heritage and culture.

Further information on Irish language and Ulster Scots can be found on the website of the suspended Northern Ireland Government's Department for Culture, Arts and Leisure website at <http://www.dcalni.gov.uk/FAQs/FAQs.asp?ba=language#FAQ17>

## **L. Strands Two and Three of the *Belfast Agreement***

The *Comprehensive Agreement* of 2004 envisaged amendments to the *Belfast Agreement* which would affect North/South and East/West arrangements. These were set out in Annex B. These were mainly designed to meet the concerns of unionist parties who wanted individual Ministers to be more accountable to the Executive and the Assembly. There were also differences of opinion between unionist and nationalist parties over the value of the North South implementation bodies.

The *St Andrews Agreement* committed the Government to amending the *Northern Ireland Act 1998* to provide for relevant minister to attend the North-South Ministerial Council or British-Irish Council, to arrange for another minister to attend and discharge his responsibilities, including by entering into any agreements.

Other proposals in the *St Andrews Agreement* were for Chairs and Chief Executives of North/South bodies to appear at least yearly before the relevant Assembly Committees, with provision in the Republic for similar arrangements in relation to the Oireachtas. There was also agreement for a review of the North/South bodies to be conducted by the Northern Ireland Executive and Irish Government, under the auspices of the North/South Ministerial Council. Further proposals were for a North-South Parliamentary Forum to include members from the Oireachtas and the Assembly and an Independent Consultative Forum appointed by the two Administrations and representative of civil society. Concerning East-West institutions, the two Governments indicated that they would encourage the Oireachtas, the UK Parliament and relevant elected institutions to approve an East West Parliamentary Framework to embrace all their interests.

### **1. The Bill**

**Clause 12** substitutes a new section 52A into the *Northern Ireland Act 1998* instead of section 52, in order to place a duty on the appropriate minister and junior minister to indicate whether they intend to attend the meeting of a North-South Ministerial Council (NIMC) and the British Irish Council (BIC) and if not, whether they have nominated an alternative minister. If they have not, then the First and Deputy First Minister will act jointly to nominate a minister to fulfil the role. New section 52B requires ministers to

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<sup>134</sup> Source: Northern Ireland Office official, 17 November 2006

participate in meetings of the NIMC and the BIC which they are attending. It also requires the responsible minister to ensure that sufficient information is made available to the attending minister to ensure his full participation. New section 52C places a duty on ministers who attend either Council to make an oral report to the Assembly and Executive on their attendance (unless standing orders authorise a written report). The *Explanatory Notes* give further details.

## IV Alternative arrangements (Plan B)

The Government avoided detailed speculation about government in Northern Ireland, should devolution not be set in train by the target date given in the *Northern Ireland Act 2006* of 24 November 2006. However, they promised amendments to the Order in Council procedure, which is the route used for much Northern Ireland legislation, should plans for devolution fail.

The *Northern Ireland Act (Modification) No 2 Order 2006* was debated in the Standing Committee on Delegated Legislation on 19 July 2006 and came into force on 28 July 2006.<sup>135</sup> This extends for a further 6 months the power of Westminster to legislate for Northern Ireland by way of Order in Council until 14 April 2007, but will lapse if devolution is restored before that date.

In the Northern Ireland political process work plan published by the two Governments on 29 June 2006, which appears as Appendix 8 to the report on Institutional Issues published by the Preparation for Government Committee, the alternative to the restoration of devolution is given as the launching of a 'new British Irish partnership' and the termination of salaries and allowances for MLAs from 25 November.

On 20 July 2006 Peter Hain wrote to all MLAs to explain that in the event that devolved government is not restored by 25 November, all salaries and allowances would be terminated with immediate effect. The letter asked MLAs to consider their statutory and contractual obligations to staff. Staff made redundant on or before 25 November as a result of Office Costs Allowance terminating would be able to claim the cost of the statutory redundancy payment either under the existing Winding up Allowance or as part of a special allowance in the absence of dissolution.<sup>136</sup> Presumably, Mr Hain will rescind the effects of this letter, following the publication of this Bill.

There are plans to modify the Order in Council procedure, should direct rule continue. At Lords report stage of the *Northern Ireland (Miscellaneous) Provisions Bill* an amendment was passed to allow both Houses to amend legislation for Northern Ireland brought forward under the Order in Council procedure from 26 November 2006. Since direct rule is in operation, currently, Orders in Council (which amount to primary legislation for Northern Ireland) are laid before both Houses as a form of delegated legislation which can only be passed or rejected, and not amended. Orders in Council are used for most

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<sup>135</sup> SI 2006 /2132

<sup>136</sup> Letter from Peter Hain to all MLAs 21 July 2006 (MGP 06/1937)

legislation in excepted, reserved and transferred subject areas. The only exception is where the Government decides on primary legislation.<sup>137</sup>

Afterwards, Lord Rooker said that the amendment would need further drafting changes, as it was technically deficient. On third reading on 19 July 2006, Lord Rooker said that

However, the ministerial team and I recognise the strength of feeling in both Houses about the inadequacy of the present arrangements for dealing with the bulk of Northern Ireland legislation. They are very unsatisfactory. I am therefore prepared to give the House the following undertaking: between now and 24 November, our focus is fixed on getting devolution up and running, which is plan A, and we do not want to be diverted from that. However, if that does not prove possible, for whatever reason, the Government will quickly introduce measures to make direct rule more accountable, including provisions that will enable Orders in Council to be amended in the light of views expressed by Members of both Houses in a way that reflects the spirit of the amendment passed by this House on Report. There will be an opportunity, agreed through the usual channels, for an amendability stage in the parliamentary consideration of Northern Ireland Orders in Council. We will also ensure that we legislate for Northern Ireland by primary legislation, wherever appropriate.<sup>138</sup>

When Lords amendments were considered in the Commons on 25 July, the junior Government minister David Hanson, commented on the technical difficulties with the amendment but promised Government action on a new Order in Council procedure:

My noble Friend Lord Rooker and my right hon. Friend the Secretary of State have considered the procedures in the House, and we have concluded that we need to examine how the Order-in-Council procedure is to be changed. Following last week's Lords amendments, the Government have given an undertaking that, if we are unable to restore devolution by 24 November, we will quickly introduce measures to make direct rule more accountable. Our intention is for the restoration of the devolved Assembly by 24 November. Many of the matters dealt with under the Order-in-Council procedure are properly dealt with by the Assembly, should it be reconstituted. In the event of the Assembly not being reconstituted—of course, I hope that it will be—we will consider how to make those measures more accountable, agreed through the usual channels, if I may say so, with a stage of parliamentary consideration at which Northern Ireland Orders in Council can be amended. We will also ensure that, whenever possible, we legislate for Northern Ireland through primary legislation.

**Lembit Öpik (Montgomeryshire) (LD):** I am grateful to the hon. Gentleman for being so clear that the Government have finally listened to this request. Will he assure us, however, that in the unfortunate circumstance that the Assembly does not recommence by 24 November, we will not wait for months or years for the changes to take place? Can he assure us that the timetable will be a matter of days or weeks, not months or years?

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<sup>137</sup> There is a full explanation of the treatment of NI legislation at Westminster, both during periods of devolution and suspension in Gordon Anthony and John Morison "Here, There and (Maybe) Here Again: The Story of law making for post-1998 Northern Ireland" in ed Robert Hazell and Richard Rawlings *Devolution, Law Making and the Constitution* 2005. For further details about other changes to the *Northern Ireland (Miscellaneous Provisions) Bill* see Library Standard Note no 4114

<sup>138</sup> HL Deb 19 July c1289

**Mr. Hanson:** I thank the hon. Gentleman for his contributions on these issues. Obviously, the Government's first priority is to get the Assembly up and running, with the co-operation of colleagues on both sides of the House, by 24 November. In the unhappy event that the Assembly is not reconstituted, we will take an early opportunity to examine how to make the Order-in-Council procedure more appropriate, as has been discussed in another place and here. Although that will be considered as a matter of urgency, I hope that the hon. Gentleman will understand that the first priority of officials and Ministers is to get the Assembly back up and running.<sup>139</sup>

Mr Hanson faced pressure from the Opposition benches about the timescale for the change, but he declined to be specific, other than emphasising that the Government would move 'quickly' to initiate discussions with the usual channels.<sup>140</sup> The Lords amendment was disagreed to and the Lords did not insist on their amendment.

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<sup>139</sup> HC Deb 25 July 2006 c766

<sup>140</sup> *ibid* c774