



## **The Northern Ireland (Miscellaneous Provisions) Bill 2005-6- Major Amendments**

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This short note examines major amendments to the *Northern Ireland (Miscellaneous Provisions) Bill* during its passage through both Houses. Amendments to the Bill and the various printings of the Bill may be viewed at

[http://www.publications.parliament.uk/pa/pabills/200506/northern\\_ireland\\_miscellaneous\\_provisions.htm](http://www.publications.parliament.uk/pa/pabills/200506/northern_ireland_miscellaneous_provisions.htm) Background is given in Research Paper 06/14 *The Northern Ireland (Miscellaneous Provisions) Bill*

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## A. Commons stages

The *Northern Ireland (Miscellaneous Provisions) Bill* had its second reading in the Commons on 13 March 2006. Among other provisions, clauses 10-12 of the *Northern Ireland (Miscellaneous Provisions) 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. The Bill was amended in the Commons to take account of the introduction of the *Northern Ireland Bill 2005-6* which provided for the summoning of existing Assembly Members in order to debate the formation of an Executive. On 19 April 2006 Government amendments to remove the clauses in the *Miscellaneous Provisions Bill* giving the Secretary of State power to bring forward the date of the next Assembly elections were passed.<sup>1</sup> The junior minister, David Hanson stated:

Right hon. and hon. Members will understand that we have not yet published the new Bill that will give effect to the proposals outlined by the Taoiseach and my right hon. Friends the Prime Minister and the Secretary of State and that the details will not be made available until the Bill is formally introduced shortly. However, in the light of the arrangements proposed by my right hon. Friends the Prime Minister and the Secretary of State about the recall of the Assembly on 15 May and the potential end date for that recall towards the end of November—from memory, I think that it is 24 November—the procedural arrangements for calling an early election will not now be necessary. Therefore, I am happy that clauses 10 to 12 are no longer required. We want to delete them in due course, because we do not believe that they are necessary, given the new political framework proposed by my right hon. Friends. I also very much hope that the Assembly will return and that a new election, as originally envisaged when the Bill was introduced, will not now be needed, because there is a clearly identified framework.<sup>2</sup>

The Conservative Opposition spokesman, David Lidington expressed support for the proposal to recall the existing Assembly in May.<sup>3</sup> The amendment also received support from Lorely Burt, for the Liberal Democrats and the clauses were withdrawn without a division.

The Bill also makes a number of changes designed to strengthen electoral integrity in Northern Ireland and provides for the possibility of devolving police and justice functions to the Assembly and Executive; as a consequence, it creates 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.

The Government Minister, David Hanson, introduced a new clause at report stage, designed

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<sup>1</sup> HC Deb 19 April 2006 c190

<sup>2</sup> HC Deb 19 April 2006 c192

<sup>3</sup> HC Deb 19 April 2006 c195

It has always been the Government's position that policing and justice can be devolved on a sustainable basis only with broad cross-community support. We have put in place a triple lock, as the Assembly must wish to have devolution, the Secretary of State must wish to agree it on behalf of the Government, and the House of Commons must approve it. Consistent with that position, it is our view that the support of the majority of sections of the community in Northern Ireland is essential if the devolution of policing and justice is to succeed. The amendments give legal effect to that position. New subsection (2A) inserted into section 4 of the Northern Ireland Act 1998 by new clause 3(3) accordingly provides that the Secretary of State shall not introduce an order to devolve policing and justice unless a number of caveats are in place.

First, the Assembly motion asking the Secretary of State to do that must be tabled by the First and Deputy First Ministers acting jointly. Secondly, that motion should receive support in the Assembly from a majority of designated Unionists and a majority of designated nationalists. Having listened to the discussion, it is self-evident that unless the Assembly has that support it is not worth considering forcing devolution on it. The fact that under the amendments the First and Deputy First Ministers would have to introduce a proposal shows that a majority of community support is necessary. We want a majority of nationalists and designated Unionists to support it, too. New clause 5 (5) introduces a drafting change to that effect.

On Government amendments Nos. 2, 3, 4, 7 and 10, as my right hon. Friend the Secretary of State and I have made clear during the passage of the Bill it is the Government's intention to ensure that the Assembly has the greatest possible flexibility to determine the departmental models to oversee policing and justice.<sup>4</sup>

There continued to be some criticism of the new provisions from Liberal Democrat and SDLP spokespeople. Nevertheless, the clause was added without a vote.<sup>5</sup>

David Hanson also introduced a new clause at report stage, promoting sustainable development in Northern Ireland. The clause creates a statutory duty for sustainable development on public authorities in Northern Ireland. They will ensure that public authorities act in a manner that best contributes to the objectives of sustainable development. The clause was added without a vote.<sup>6</sup>

## **B. Lords stages**

Two amendments were passed at Lords report stage, against Government advice. Further detail is given below:

### **1. Donations from Irish citizens**

On 13 July 2006, at report stage, an Opposition amendment removed clause 12 altogether from the Bill. According to the unamended version of the Bill, when the final disapplication period ends, Northern Ireland parties and Northern Ireland regulated donors would no longer be exempt from the prohibition on accepting overseas donations generally. They would be able to accept donations from Irish citizens and other Irish bodies who can currently donate to Irish parties, in recognition of the special place Ireland occupies in the political life of

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<sup>4</sup> HC Deb 17 May 2006 c1019

<sup>5</sup> HC Deb 17 May 2006 c1052

<sup>6</sup> HC Deb 17 May 2006 c1017

Northern Ireland. Clause 12 inserted new sections 71A to 71C into the 2000 Act in order to achieve this. During the debate, a number of Opposition peers expressed concern as to the lack of detail in the Bill on the operation of the donations regime, and the fact that although Irish citizens would continue to be able to donate to parties registered in Northern Ireland, Commonwealth citizens would not.<sup>7</sup> The Minister, Lord Rooker, promised to write to peers before Third Reading on the question of permissible donors. At Committee stage on 22 June 2006 he had said:

Irish citizens and bodies will have to meet the prescribed conditions set out in United Kingdom legislation to be able to donate to Northern Ireland parties. The prescribed conditions which additional categories of donors will have to meet can only be described in an order made by the Secretary of State following consultation with the Electoral Commission. The Bill also makes it clear that such an order would have to be laid before, and approved by a resolution of each House of Parliament<sup>8</sup>

However, there was concern that the Minister could not give further details about the prescribed conditions during the passage of the Bill. The Opposition amendment was carried by 148 votes to 111. The effect of the removal of the clause is that donations from Irish citizens and other bodies to political parties in Northern Ireland would not be permissible from November 2007.

## **2. Orders in Council procedures**

At report stage 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 passed or rejected, and not amended. Orders in Council are used for most legislation in excepted, reserved and transferred subject areas. The only exception is where the Government decide on primary legislation.<sup>9</sup>

As the Bill presently stands, the amendment would come into effect, should a new Executive not be formed and the current Assembly be dissolved. According to its sponsor, the Opposition spokesman, Lord Glentoran, the order would allow both Houses to vote on suggested amendments to a draft Order in Council which the Secretary of State would then consider or incorporate, or not, as he saw fit. This would avoid the potential of a clash between one House and the other.<sup>10</sup> In response the Minister, Lord Rooker, emphasized that the Government were planning for success and did not want to unveil schemes which would amount to a Plan B.<sup>11</sup> Nevertheless, the amendment was passed by 148 votes to 113.<sup>12</sup>

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<sup>7</sup> HL Deb 13 July 2006 c884

<sup>8</sup> HL Deb 22 June 2006 cGC138

<sup>9</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

<sup>10</sup> HL Deb 13 July 2006 c890

<sup>11</sup> HL Deb 13 July 2006 c893

<sup>12</sup> HL Deb 13 July 2006 c898

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

With the leave of the House, because this is the last opportunity I will have to speak on the Bill as it passes through the House, I have a short point to add. We all agree on the significance of the Bill currently before the House. It recognises and builds on the ongoing transformation of Northern Ireland. It looks to the future and recognises the possibilities that lie ahead. I have set out why I do not believe that the amendment inserting the process for amending Orders in Council that was accepted on Report is helpful. 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.

On Irish donations to political parties, I regret that the amendment was pushed to a vote and the clause was removed on Report. I have written in detail to noble Lords about this matter. The effect is to bar entirely donations from Irish citizens and other bodies to political parties in Northern Ireland from November next year. This change clearly goes against the spirit of the Good Friday agreement and would have serious repercussions for the parties and the political process in Northern Ireland. That is why the Government will seek to overturn that amendment in another place.<sup>13</sup>

There were comments from the Liberal Democrat spokesman and from the former leader of the Ulster Unionist Party:

**Lord Smith of Clifton:** My Lords, before the Minister sits down, I find it rather strange that he is making these statements which would be best made next Tuesday when the Bill comes back to us to consider Commons amendments. We do not have much opportunity to comment on what he said. However, for these Benches, the words that the noble Lord uttered are helpful, and I thank him.

**Baroness Farrington of Ribbleton:** It may assist the House if we treat my noble friend's intervention as the Minister speaking early in the debate on the Motion of the noble Lord, Lord Glentoran, which, as a result, will allow any noble Lord who wishes to speak.

**Lord Trimble:** My Lords, I welcome the part of the statement made by the noble Lord, Lord Rooker, regarding an amendability stage for Orders in Council. This is huge step forward and something that for 30 years we in the Ulster Unionist Party have been pressing for. It will take one of the more unacceptable edges off direct rule and help to make it more democratic. I hope that it will put an end to the scandalous

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<sup>13</sup> HL Deb 19 July c1289

situation that obtained in this House last week when legislation was forced through against the wishes not just of the Northern Ireland Members but of the people of Northern Ireland without the opportunity of discussing it in detail and focusing on aspects that could have been changed. There could have been legislation last week that would have been acceptable to people and which would have achieved most of the Minister's aims had there been the opportunity to deal with it in the way which I now hope will happen after November of this year. So I welcome that.

However, I must also say that I do not welcome what the Minister said about the other change that was made on donations. I disagree entirely with his comment about the amendment being contrary to the Belfast agreement. That is not how I read the Belfast agreement and I claim to have a little expertise on the matter.<sup>14</sup>

An Opposition amendment on the exclusion of ministers from office was rejected by 97 votes to 149.<sup>15</sup>

### **C. Lords amendments in the Commons, and in the Lords**

The Commons debated the Lords amendments on 25 July 2006. The junior minister, David Hanson, repeated the assurances of Lord Rooker that the Government would re-examine the procedures for Orders in Council should devolution not be restored by 24 November 2006. This amendment was removed without a vote, but there was a division on the amendment to remove clauses 12 and 13 which the Government won by 260 votes to 16.<sup>16</sup>

The Bill returned to the Lords the same day where the Lords accepted the Commons changes. Therefore clauses 12 and 13 on political donations were reinserted, and the clause on orders in council was removed. Lord Rooker promised that:

If we are unable to restore devolution on 24 November, we will quickly introduce measures to make direct rule more accountable, including provisions that will enable Orders in Council to be amended the light of views expressed by members of both Houses of parliament in a way which reflects the spirits of the amendments passed in your Lordships' House.<sup>17</sup>

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<sup>14</sup> HL Deb 19 July c1289

<sup>15</sup> HL Deb 19 July 2006

<sup>16</sup> HC Deb 25 July 2006 c782

<sup>17</sup> HL Deb 25 July 2006 c1740