



Northern Ireland- political developments October 2009 to January 2010

Standard Note: SN/PC/05297

Last updated: 26 January 2010

Author: Oonagh Gay

Section Parliament and Constitution Centre

This Note gives an update on political events in Northern Ireland from October 2009 to January 2010. Devolution of policing and justice remains under discussion between the Democratic Unionist Party and Sinn Fein. Peter Robinson stepped down as First Minister on 11 January 2010, following allegations relating to the activities of his wife Iris Robinson. However, he remains involved in on-going discussions about the devolution of policing and justice to Northern Ireland.

Contents

1	Background	2
2	Transfer of Policing and Justice	2
	2.1 Dual mandates	3
3	Decommissioning and paramilitary activity	4
	3.1 22 nd report of the International Monitoring Commission	4
	3.2 Decommissioning by UDA	4
4	Peter Robinson steps aside as First Minister	4
5	Assembly elections?	5

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

1 Background

The Northern Ireland Assembly was first elected in July 1998. Devolution, however, was suspended on 14 October 2002 under the terms of the *Northern Ireland Act 2000*. Following a number of attempts to do so, devolution was restored on 8 May 2007 after emergency legislation was passed in the House of Commons giving effect to a settlement reached between Sinn Fein and the DUP on 26 March 2007.

At the most recent Assembly elections, held on 7 March 2007, no single party won a majority of seats. The DUP, with 36 seats, and Sinn Fein, with 28 seats, returned the greatest number of MLAs. The four-party executive formed following the election, using the d'Hondt system¹, is headed by First Minister Peter Robinson, of the DUP, and Deputy First Minister Martin McGuinness, of Sinn Fein.

In November 2008 the First and Deputy First Ministers announced that they had come to an agreement that would facilitate the devolution of policing and justice powers to Northern Ireland. Despite this, a great deal of work, including gaining cross-community support for a financial package for the transfer, remained to be done. The *Northern Ireland Act 2009* added to the options contained within the *Northern Ireland Act 1998* for the method of appointing the Minister to head the department. For further information on the background to the devolution of policing and justice powers see earlier versions of this note and Library Research Paper 09/18 *The Northern Ireland Bill*.²

On 7 March 2009 two British soldiers were shot and killed outside Massereene Barracks in County Antrim. The Real IRA claimed responsibility for the shootings. On 10 March policeman Stephen Carroll was killed in Craigavon, County Armagh. Responsibility was claimed by a group calling themselves the Continuity IRA. Dissident activity continued to increase, culminating in an attack on a Roman Catholic police officer, Peadar Heffron, on 8 January 2010.

On 30 December Iris Robinson announced that she would stand down as an MP and MLA due to a battle with depression.³ Following a BBC Spotlight investigation, however, allegations were made of an affair between Mrs Robinson and a young man to whom she subsequently was said to have given funding for a small business, without making a declaration of the donations from businessmen.⁴

On 11 January Peter Robinson stood down as First Minister for six weeks to resolve the standards of conduct issues relating to himself and his wife Iris.

2 Transfer of Policing and Justice

The *Department of Justice Bill* passed all its stages in the Northern Ireland Assembly on 30 November.⁵ The Bill is of a preparatory nature, establishing a Department of Justice in Northern Ireland to oversee policing and justice and setting out the arrangements for the appointment of a minister to head that department. A full text of the Bill is available at

¹ An explanation of the d'Hondt system is available on the Northern Ireland Assembly website at <http://www.niassembly.gov.uk/io/summary/d'hondt.htm>

² All available at http://www.parliament.uk/works/notes_on_parliament_and_constitution.cfm#devolution

³ "Iris Robinson announced on Monday she will quit as MP and MLA for Strangford due to her battle with depression", 30 December 2009 *Belfast Telegraph* and 'Resignation may mark end of another DUP family firm' 30 December 2009 *Belfast Telegraph*

⁴ "Iris Robinson to step down as MP and MLA next week" 9 January 2010 *BBC News*

⁵ "NI justice bill passes last stage", 1 December 2009 *BBC News*

http://www.niassembly.gov.uk/legislation/primary/2009/nia1_09.htm.

However, the political disagreement between Sinn Fein and the DUP over the timing of transfer has intensified in this period. Martin McGuinness indicated that Sinn Fein would expect a resolution by Christmas, but in his speech to the DUP conference, Peter Robinson indicated that he would not be held to any deadline for the transfer.⁶ Meanwhile both Gordon Brown and David Cameron agreed new funding arrangements to support policing and justice if necessary.⁷

There was public disagreement between Martin McGuinness and Peter Robinson at the meeting with the Irish Taoiseach, Brian Cowen on 15 December.⁸ But at the end of December 2009 there was some press comment to the effect that an agreement would be made on the issue of the Parades Commission, paving the way for DUP acceptance of devolution.⁹ Commentators have pointed out that the DUP was facing electoral competition from the Traditional Unionist Voice party, headed by Jim Allister, and that unionists were concerned about a divisive Assembly election. On 16 December Shaun Woodward announced that he would reappoint the current Parades Commissioners for another year, pending agreement on the future of the Commission.¹⁰

On 11 December the SDLP wrote to the First and Deputy First Minister, nominating Margaret Ritchie for the post of policing and justice minister according to an agreed timetable; no other nominations were received. The Alliance Party indicated that it would not nominate until remaining issues had been dealt with.¹¹

On 12 January 2010 there were all party talks with the Northern Ireland Secretary at Stormont, with some indications of optimism as to a resolution.¹² However, the question of abolishing the Parades Commission continues to be a barrier to resolution and on 25 January Gordon Brown and Brian Cowen held talks in Northern Ireland in an effort to save the talks.¹³

The Assembly and Executive Review Committee are working on the detail of the transfer of powers. Its forward programme is viewable at

http://www.niassembly.gov.uk/assem_exec/2007mandate/assem_exec_fwp.htm

2.1 Dual mandates

On 24 November the Assembly agreed a motion to allow more time to deal with ending double-jobbing. The Ulster Unionists failed to get party backing for a commitment to end the practice by the next Assembly election.¹⁴ The Conservative Party tabled amendments to the *Northern Ireland Assembly Members Bill* in order to end payment for MLAs if they are also an MP or an MEP.¹⁵ The *Belfast Telegraph* reported that the Conservative Party would make

⁶ "DUP will not walk away from Assembly" 21 November 2009 *Belfast Telegraph*

⁷ "Cameron ends long silence with Sinn Fein" 22 October 2009 *Times*. See HC Deb 21 October 2009 c909 and Dep 2009/2572

⁸ "Stony faces, sharp words...the gulf between our first ministers", 15 December 2009 *Belfast Telegraph*.

⁹ "Stormont: New year deal on parades will save assembly, say unionists" 31 December 2009

¹⁰ "Parades commissioners re-appointed", 17 December 2009 *BBC News*

¹¹ "Margaret Ritchie nominated for justice ministry", 11 December 2009 *BBC News*

¹² "Back devolution, unionists urged" 13 January 2010, *BBC News*

¹³ "Late night policing and justice talks 'hard going' 26 January 2010 *BBC News*

¹⁴ "Assembly members in bitter clashes", 24 November 2009 *Belfast Telegraph*

¹⁵ "Tory move could end double-jobbing in months", 15 December 2009 *Belfast Telegraph*

double-jobbing a central issue in the election campaign in Northern Ireland.¹⁶ The amendments were debated at the first day in Grand Committee of the *Northern Ireland Assembly Members Bill*, when the Opposition spokesman, Lord Glentoran, indicated that he would bring back the amendments at Report.¹⁷

3 Decommissioning and paramilitary activity

3.1 22nd report of the International Monitoring Commission

This was published on 4 November 2009. The [International Monitoring Commission report](#) warned of the active nature of a number of republican dissident groups, which posed ‘a major challenge to the law enforcement and other agencies on both sides of the border.’ Shaun Woodward made a written ministerial statement as follows:

The IMC report on the serious threat posed by dissident republicans. They conclude that the activities of both the Real IRA and the Continuity IRA, including the murders of Sappers Quinsey and Azimkar and PC Carroll in March and a number of other extremely serious incidents, are designed to undermine peaceful political progress. The IMC note that the completion of devolution could be a potent intervention “because policing and justice would no longer be a point of contention across the political divide” but rather be “a platform for co-operation against those trying to undermine the peace process”. The Government remain committed to do all they can to provide a solid foundation for a devolved Department of Justice.

The IMC also acknowledge the very real progress towards decommissioning made by loyalists. They conclude that the UVF is an organisation on its way to going out of business and that the leadership of the UDA has given a significant lead to change the organisation and shown remarkable commitment and progress in community development. I, too, hope that the UDA will follow through on the commitments they have made and complete the decommissioning process.¹⁸

3.2 Decommissioning by UDA

On 9 February 2010 the decommissioning procedure under the 1996 legislation is due to end and the Government have made clear that there will no further extensions. In mid December it became clear that the UDA were preparing to decommission. Initially a meeting between the UDA and Martin McGuinness was planned, but the meeting did not go ahead at the last minute.¹⁹ However on 6 January 2010 the UDA confirmed that its weapons had been put beyond use, an action confirmed by independent witnesses.²⁰

4 Peter Robinson steps aside as First Minister

On 11 January 2010 the Speaker of the Assembly announced the following:

Mr Speaker: I am conscious that we are proceeding to Question Time, but it is important that I share with you a letter that I have just received from the First Minister. I wish to inform the House that I have received written notice from the First Minister, Peter Robinson, that, under section 16A(11) of the Northern Ireland Act 1998, he has designated Mrs Arlene Foster, the Minister of Enterprise, Trade and Investment, to

¹⁶ “Tories to target double-jobbing at General Election” 1 January 2010 *Belfast Telegraph*

¹⁷ HL Deb 12 January 2010 c75-82GC

¹⁸ HC Deb 4 November 2009 c45WS

¹⁹ “UDA pulls out of meeting with McGuinness at eleventh hour” 17 December 2009 *Belfast Telegraph*

²⁰ “[UDA confirm guns decommissioned](#)”, 6 January 2010 – BBC News

exercise the functions of the office of First Minister. The designation takes immediate effect.²¹

Later, Arlene Fisher noted in response to a question

The Acting First Minister: I thank the Member for her question. First of all, the Departmental Solicitor's Office has already considered the allegations made in the 'Spotlight' programme and advised Peter Robinson that he was not in breach of the ministerial code, the Pledge of Office, the ministerial code of conduct or the seven principles of public life. It is important to say that first of all. As well as that, Peter Robinson has now written to the Chairpersons of the Committees on Standards and Privileges in both Westminster and the Assembly to ask them to conduct a full investigation into the allegation made by the BBC 'Spotlight' programme. It needs to be made very clear that the process that the First Minister has asked to be initiated involving senior counsel is not intended to be an alternative to other processes that may, and undoubtedly will, be carried out.

However, I will go to the heart of the Member's question: the First Minister very much believes that an early indication needs to be given in relation to the allegations. I personally am confident, and my party is very confident, that this will confirm that Peter Robinson, the First Minister, acted entirely properly at all times.²²

The text of section 16A(11) of the *Northern Ireland Act 1998* under which Ms Foster has been appointed stems from section 8(6) of the *Northern Ireland (St Andrews Agreement) Act 2006* and is as follows:

(11) The holder of the office of First Minister or deputy First Minister may by notice in writing to the Presiding Officer designate a Northern Ireland Minister to exercise the functions of that office—

- (a) during any absence or incapacity of the holder; or
- (b) during any vacancy in that office arising otherwise than under section 16B(2),

but a person shall not have power to act by virtue of paragraph (a) for a continuous period exceeding six weeks.

An earlier version of this provision existed in the *Northern Ireland Act 1998*, section 16(5). On 1 July 2001 David Trimble had stepped down, designating Reg Empey to undertake the functions of First Minister for a period of up to six weeks.²³

Ms Foster has indicated that she will be continuing with negotiations about the transfer of policing and justice matters.²⁴

5 Assembly elections?

Commentators have speculated on the various scenarios should the Executive collapse in view of the current difficulties and elections occur.

Section 16B (3) of the 1998 Act provides that where the positions of First and Deputy First Ministers become vacant, the relevant nominating parties would propose new

²¹ Northern Ireland Assembly [Hansard 11 January 2010](#)

²² *Ibid*

²³ See The Northern Ireland Assembly Chronology at <http://archive.niassembly.gov.uk/Narrative.htm>

²⁴ "A low key day one for Arlene in her new job", 13 January 2010 *Belfast Telegraph*

Ministers within 7 days, using set procedures. However, if the parties fail to nominate, then section 32(3)(b) of the *Northern Ireland Act 1998*, comes into play, as amended by the *Northern Ireland (St Andrews Agreement) Act 2006*. Here, the Secretary of State has discretion to set the date of the election, as follows:

32 Extraordinary elections

(1) If the Assembly passes a resolution that it should be dissolved the Secretary of State shall propose a date for the poll for the election of the next Assembly.

(2) A resolution under subsection (1) shall not be passed without the support of a number of members of the Assembly which equals or exceeds two thirds of the total number of seats in the Assembly.

[(3) If—

(a) the period mentioned in section 16A(3) ends without the offices of First Minister and deputy First Minister and the Ministerial offices to be held by Northern Ireland Ministers having been filled; or

(b) the period mentioned in section 16B(3) ends without the offices of First Minister and deputy First Minister having been filled,

the Secretary of State shall propose a date for the poll for the election of the next Assembly.]

(4) If the Secretary of State proposes a date under subsection (1) or (3), Her Majesty may by Order in Council—

(a) direct that the date of the poll for the election of the next Assembly shall, instead of being determined in accordance with section 31, be the date proposed; and

(b) provide for the Assembly to be dissolved on a date specified in the Order.

In theory, once the date for the poll has been set, then the normal electoral timetable of 25 days would apply, under the *Northern Ireland Assembly (Elections) Order 2001*.²⁵ However, the elections in 2003 took place under shortened timetables of 20 days, as provided for in section 1(4) of the *Northern Ireland Assembly (Elections and Periods of Suspension) Act 2003*. The polling day and dissolution day for the election in 2007 was set as a 25 day period in section 3 of the *Northern Ireland (St Andrews Agreement) Act 2006*.

One aspect which has been noted by recent media comment is that should there be elections and the unionist vote continues to splinter between the various unionist parties in the Assembly, Sinn Fein might be the largest party after the election and therefore have the right to nominate a MLA as First Minister.²⁶

Section 16A of the *Northern Ireland Act 1998*, as substituted by the *Northern Ireland (St Andrews Agreement) Act 2006*, states that the nominating officer of the largest political party of the largest political designation is to nominate the First Minister and the nominating officer of the largest political party of the second largest political designation would nominate the Deputy First Minister.

²⁵ SI 2001/2599

²⁶ "Brown warns Tory meeting with unionists threatens Ulster peace" 26 January 2010 *Guardian*

Following precedents in Northern Ireland Assembly elections, the largest party is unionist. So the leader of the largest unionist party nominates the First Minister and then the leader of the largest nationalist party nominates the Deputy First Minister.

During the debates on the *Northern Ireland (St Andrews Agreement) Bill 2006-07* Lord Trimble drew attention to a new provision, not discussed at the *St Andrews Agreement* talks, but nevertheless appearing in the bill. This was new Section 16C(6) to the 1998 Act, which states:

- (6) If at any time the party which is the largest political party of the largest political designation is not the largest political party—
 - (a) any nomination to be made at that time under section 16A(4) or 16B(4) shall instead be made by the nominating officer of the largest political party; and
 - (b) any nomination to be made at that time under section 16A(5) or 16B(5) shall instead be made by the nominating officer of the largest political party of the largest political designation

Therefore, where a nationalist party was larger than a series of unionist parties, even though the overall number of MLAs designated as nationalist was lower than designated unionists, it would be for that party to make the nomination for First Minister.

Lord Trimble argued for the removal of this clause in order to prevent polarisation of political support, but in response the Government spokesman, then Lord Rooker, defended the clause on the basis that it would deny the nationalist community the hope of ever supplying the First Minister. The proposed amendment was lost and the clause remained in the bill.²⁷

One scenario discussed would be for unionist parties in the Assembly to unite in one formal group as a political party. However, such a grouping would need to meet a series of tests to be recognised as genuine. The question has come up before, in relation to a proposed party grouping of the PUP, led by David Irvine, and the UUP, led by Reg Empey in 2006. On that occasion the then Speaker of the Assembly, Eileen Bell, ruled on 11 September that the grouping did not constitute one party, stating as follows:

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.²⁸

There has been recent speculation that talks held by the Conservative spokesman, Owen Paterson with the DUP and the UUP are designed to lead to a Unionist grouping, which

²⁷ HL Deb 22 November 2006 c387-8

²⁸ Assembly Official Record 11 September 2006, available at <http://www.niassembly.gov.uk/theassembly/Plenary/060911.htm>

might have importance not only for Northern Ireland politics, but in the event of a hung Parliament in the forthcoming UK elections.²⁹

²⁹ “DUP, UUP and Conservatives meet for secret talks on strategy” 21 January 2010 Irish Times