



House of Commons

Session 1998-99

*Arrangement of Clauses (Contents)*

# Northern Ireland Bill

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*These notes refer to the Northern Ireland Bill  
as introduced in the House of Commons on 12th July 1999 [Bill 136]*

## NORTHERN IRELAND BILL

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### EXPLANATORY NOTES

#### INTRODUCTION

1. These Explanatory Notes relate to the Northern Ireland Bill as introduced in the House of Commons on 12 July 1999. They have been prepared by the Northern Ireland Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill, and have not been endorsed by Parliament.
2. These notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a part of a clause does not seem to require any explanation or comment, none is given.

#### SUMMARY AND BACKGROUND

3. The Northern Ireland Bill is intended to give effect to the "Failsafe clause" in the joint statement on political advance in Northern Ireland that was made on 2 July 1999 (the "Joint Statement") by the British and Irish Governments at the conclusion of discussions in Belfast between the Governments and the political parties in Northern Ireland. The statement is set out in Schedule 2 to the Bill.
4. The Bill accordingly provides for the suspension of institutions in accordance with the Joint Statement, for their resumption and for arrangements during the suspension period.
5. The Bill would modify the operation of the Northern Ireland Act 1998, which gives effect to the Belfast Agreement (that is, the Good Friday Agreement of 10 April last year), providing for devolved Government and its interaction with institutions reflecting the broader relationships of which Northern Ireland is a part, within the island of Ireland ("North-South") and between the two islands ("East-West").
6. The North-South and East-West bodies were themselves established by international agreements made in pursuance of the Belfast Agreement. The suspension will therefore also require a further agreement between the British and Irish Governments, a draft of which will be made available during the parliamentary passage of the Bill.

#### *Current legal position*

7. The key provisions of the Northern Ireland Act 1998 on which this Bill would operate are not at the time of introduction in force; neither are the associated international agreements. An Assembly was elected in Northern Ireland on 25 June, and first met on 1 July, last year, and on that occasion elected a First Minister-designate and Deputy First Minister-designate (Rt Hon David Trimble MP and S'amus Mallon MP). The statutory basis for this is the Northern Ireland (Elections) Act 1998 (a "paving" provision, passed in advance of the Northern Ireland Act last year, which will be repealed when that Act is fully operational). The Assembly operates, in advance of devolution, in accordance with Standing Orders determined under that Act by the Secretary of State. Meanwhile, direct rule continues in Northern Ireland on the foundation of the Northern Ireland Act 1974, under which executive functions are carried out under the control of the Secretary of State, and there are special powers of legislation for Northern Ireland by Order in Council.

### *The transition to devolution*

8. The Assembly has met from time to time in Belfast, but political agreement necessary for an advance to devolution has so far been lacking. Although the Assembly Standing Orders provide for the selection of "shadow" ministers by the d'Hondt process specified in the Agreement, the Secretary of State has consequently not yet set a date for the Assembly to meet for the purpose. (Shadow ministers would assume full ministerial office on devolution, once having affirmed the pledge of office).

9. Under the Joint Statement, a sitting of the Assembly would be called by the Secretary of State for Thursday 15 July, in order for the d'Hondt process to run. Assuming the shadow ministers are then selected in the way envisaged in the Agreement, the Secretary of State will lay before Parliament on 16 July, with a view to its approval the same day, a draft Order in Council under section 3 of the Northern Ireland Act 1998, appointing 18 July as the day for the coming into effect of key elements of that Act. There will be a associated commencement order, not subject to Parliamentary approval, giving effect to a number of other provisions in it, including the provisions on constitutional status in section 1 of the Act.

10. When these provisions come into force on 18 July, the international agreements will also engage, setting up the North-South and East-West bodies (and also terminating the Anglo-Irish Agreement of 1985, and triggering amendments to the Irish Constitution that form part of the Good Friday Agreement, including those relating to constitutional status which were agreed in the referendum in the Republic on 22 May last year).

11. The legal context resulting from these steps is what the present Bill, and the accompanying international agreement, build on: the main provisions of the Northern Ireland Act 1998 will be in force, along with the associated international treaties; the Northern Ireland Act 1974, setting out the direct rule mechanism, will have been repealed.

## COMMENTARY

### Clause 1: suspension of devolved government etc.

12. *Subsection (1)* sets out the conditions in which the Secretary of State is obliged (under subsection (2)) to make a suspension order. They follow the criteria in the Joint Statement.

- In relation to *decommissioning*, the condition is that the Decommissioning Commission (on which see below) reports to the Secretary of State that there has been a failure to honour commitments relating to decommissioning (a 'commitment')

is defined in subsection (6), to mean a commitment arising under the Belfast Agreement or the Joint Statement); *or* that there has been a failure to take a step referred to in paragraph 5 of the Joint Statement, and which is specified by the Commission.

The *Independent International Commission on Decommissioning* was established in 1997, by agreement between the British and Irish Governments, as a result of decisions in the multi-party talks which the following year led to the Belfast Agreement. The Belfast Agreement itself envisages the Commission monitoring, reviewing and verifying progress on the decommissioning of illegal arms, and reporting to both Governments at regular intervals. It made a report of 2 July 1999, setting out certain further proposals for the decommissioning process, in a report to which the Joint Statement refers. Under these proposals, the Commission would specify steps in the decommissioning process, and time limits within which paramilitary organisations would need to take them.

- In relation to *devolution*, the condition for suspension is that the Secretary of State has reason to believe, after consultation, that a political party in the Assembly has failed to honour a commitment relating to devolution ("commitment" again attracting the definition in subsection (6)).

13. Under *subsection (2)* the Secretary of State is obliged to make a suspension order when the criteria are met. This is a duty (and - see subsection (5) - not subject to prior Parliamentary approval) because under the Joint Statement, the suspension is intended to be automatic and immediate. The effects include:

- the suspension of the Assembly (except for the two meetings dealt with in clause 3);
- that Ministers (including the First Minister and Deputy First Ministers) and any junior ministers, along with chairmen and deputy chairmen of statutory committees of the Assembly, cease to hold their offices; and
- that provisions for the representation of the Northern Ireland executive authorities in North-South and East-West bodies shall not have effect; and that no functions should be conferred under section 55 of the 1998 Act on implementation bodies (on the arrangements for the suspension of the implementation bodies, see the note on clause 5).

14. *Subsection (3)* gives effect to Schedule 1, which makes provision for the conduct of government and certain other matters during a suspension period.

15. *Subsection (4)* requires the Secretary of State, as soon as practicable after the making of a suspension order, to take steps to initiate a review under the "Validation, Implementation and Review" section of the Belfast Agreement.

16. *Subsection (5)* enables a suspension order to make consequential, incidental and supplementary provisions, and makes it subject to the negative resolution procedure. *Subsection (6)* sets out definitions discussed above.

## Clause 2: the suspension period

17. *Subsection (1)* defines the suspension period as beginning with the making of a suspension order, and ending on a date set by the Secretary of State in a further order.

18. By *subsection (2)*, s he must, in deciding whether to make an order ending the period, take into account any vote by the Assembly, at its post-review meeting under section 3(3), which is passed with cross-community support (a weighted majority, which

is defined in section 4(5) of the Northern Ireland Act 1998).

19. By *subsection (3)*, the order for resumption may, like a suspension order, make consequential, incidental and supplementary provision. *Subsections (4) and (5)* relate to the method of Parliamentary approval for an order ending the suspension period. In ordinary circumstances, the draft order would be subject to affirmative resolution. It may, however, be undesirable to wait for a sustained period, perhaps during a Parliamentary recess, for the resumption of devolved government and the other institutions of the Belfast Agreement. Where the Secretary of State believes it expedient to act promptly, therefore, the order could take effect immediately, but would be subject to later approval by Parliament if it was to continue in force.

### **Clause 3: meetings of Assembly during the suspension period**

20. The clause requires two meetings of the Assembly to be called by the Secretary of State during the suspension period:

- the first, by *subsection (2)*, must occur within seven days of the making of the suspension order; the Assembly is to debate (but not vote on) the political situation that led to the making of the order, and the issues that would be the subject of a review;
- the second, by *subsection (3)*, is to be held within seven days of the review's conclusion, and the Assembly is to debate, and vote on, any action proposed to be taken (by itself or others) in consequence of the review. If a vote has cross-community support, the Secretary of State is by clause 2(2) to take it into account in deciding whether to end the suspension period.

### **Clause 4: restoration of devolved government**

21. The clause provides for resumption of devolved government at the end of a period of suspension.

22. By *subsection (2)*, if both the former First and Deputy First Ministers are still entitled to hold office, they resume their offices. If either or both are no longer eligible (eg by resignation), section 16 of the Northern Ireland Act 1998 would require a new joint election for the two offices, within six weeks; *subsection (3)* covers this.

23. *Subsections (4) to (6)* similarly make provision in the case of other Northern Ireland Ministers, or junior Ministers, and the Chairmen and Deputy Chairmen of Statutory Committees, all of whom would have ceased to hold their offices on suspension. They again resume their offices if eligible, otherwise the subsections engage the relevant provisions in the 1998 Act for the filling of vacancies, which may extend to a rerun of the d'Hondt process for the selection of a team of ministers.

### **Clause 5: implementation bodies**

24. This clause provides for the transfer of functions in connection with the suspension and resumption of implementation bodies. It should be read in conjunction with part B of the Annex to the proposed international agreement, which contains provision for the suspension of the bodies.

- The bodies would at first operate (under the authority of the British and Irish Governments) only to the extent necessary to carry out existing activities, and

comply with legal commitments: no new functions would be conferred on them, nor would any new policies or actions be decided in respect of them.

- Within four months of a suspension, the Governments would agree on arrangements for the transfer of the bodies' functions to Northern Ireland or Irish departments or agencies, except where, before the bodies were originally set up, functions had been discharged on a cross-border basis (as in the cases of the functions of the present Foyle Fisheries Commission, which are due to pass on devolution to an implementation body).
- The agreement also requires arrangements for transfers of functions back to the bodies at the end of a suspension period.

25. *Subsection (1)* imposes a duty on the Secretary of State, in circumstances where arrangements to be made under the international agreement require functions to be transferred from an implementation body, by order to transfer them; *subsection (2)* imposes an analogous duty in respect of arrangements for transfers back to bodies. Orders under the clause are subject (*subsection (3)*) to negative resolution procedure.

#### **Clause 6: short title, construction and commencement**

26. This clause sets out interpretations of terms used in the Bill, and also imports the definitions used in the 1998 Act: see especially the interpretation section of that Act, section 98. *Subsection (4)* provides for the Bill to come into effect on the day after devolution day - the day appointed under section 3 of the 1998 Act for the commencement of Parts II and III (which, under the Joint Statement, is intended to be 18 July: see the 'Summary and Background' section above).

#### **Schedule 1: provisions applicable during suspension period**

27. The Schedule chiefly concerns the discharge, during the suspension period, of functions that would have fallen to the suspended institutions. It is largely based on Schedule 1 to the Northern Ireland Act 1974, which, with annual renewals, has constituted the basis of direct rule for the last 25 years. The differences from the 1974 Act chiefly derive from the fact that that Act built on the earlier scheme of devolution set out in the Northern Ireland Constitution Act 1973 and the Northern Ireland Assembly Act 1973; whereas the present schedule builds on the Northern Ireland Act 1998, which, following devolution, will have replaced the 1973 and 1974 arrangements.

28. *Paragraph 1* concerns *legislative functions*. It permits the making by Order in Council of legislation on any matter for which the Assembly could (or was obliged to) legislate. The restrictions on the legislative competence of the Assembly (see section 6 of the 1998 Act) equally apply to any such Order - so, for example, it must not be incompatible with rights set out in European Convention on Human Rights, nor with European Community law, nor may it deal substantively with an "excepted" matter as set out in schedule 2 to the 1998 Act.

29. Any such Order in Council must generally be subject to prior affirmative resolution in each House of Parliament. But, as in the 1974 Act, there is a procedure in urgent cases by which, for example during a recess, an Order may be made, but subsequently laid before Parliament, ceasing to have effect if it has not been approved by affirmative resolution of both Houses within 40 sitting days.

30. These powers will lapse six months after the start of the suspension period, unless prolonged by an order under subparagraph (7), which would be subject to affirmative

resolution.

31. *Paragraph 2* relates to the discharge of *executive functions* during the suspension period. As under the 1974 Act, the general pattern is that the functions of Ministers are discharged by the relevant Northern Ireland departments, which would act in the discharge of all their functions subject to the direction and control of the Secretary of State. The functions of the First and Deputy First Ministers would be exercised by the Secretary of State herself. The rest of the paragraph fills out the temporary translation of functions, and makes transitional provision.

32. *Paragraph 3* concerns arrangements for Northern Ireland *subordinate legislation*, and other actions that may require the involvement of the Assembly. The effect, as in 1974, is that Northern Ireland statutory instruments subject to affirmative resolution in the Assembly are subject to negative resolution at Westminster.

33. *Paragraph 4* relates to the *Northern Ireland Assembly Commission*, which under section 40 and schedule 5 of the Northern Ireland Act 1998 discharges functions conferred by enactment or the Assembly, and has a particular responsibility to secure the provision of property, staff and services for the Assembly. During a suspension period, these functions are exercisable by the Secretary of State.

34. *Paragraph 5* makes the functions of the Assembly in respect of its members' *remuneration and pensions* exercisable by the Secretary of State.

35. Under *paragraph 6*, the governing legislation for the implementation bodies, the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 (SI 1999/859), will have effect subject to the suspension arrangements in the proposed international agreement.

36. *Paragraph 7* makes provision for the appointment of the *Comptroller and Auditor General for Northern Ireland* during a suspension period: under section 65 of the Northern Ireland Act the appointment is by Her Majesty on the nomination of the Assembly; during the suspension period, it is on the address of the House of Commons: it will be for the Secretary of State, with the agreement of the Public Accounts Committee, to move the address. There is also provision for the Comptroller's salary, which is ordinarily set by the Assembly.

37. *Paragraph 8* makes provision for certain *accounts, reports and other documents*, which would ordinarily be laid before the Northern Ireland Assembly. During the suspension period, certain financial reports and accounts are to be laid before the House of Commons, as under the 1974 Act. There is provision to designate other accounts, reports etc to be laid before both Houses of Parliament.

38. *Paragraph 9* provides that during the suspension period reports of the *Northern Ireland Ombudsman*, and the *Northern Ireland Commissioner for Complaints*, which would ordinarily be laid before the Assembly, should be laid before each House of Parliament; and it modifies the Ombudsman (Northern Ireland) Order 1996, during that period, to substitute members of the House of Commons for Assembly members in the role receiving and referring complaints.

## FINANCIAL EFFECTS OF THE BILL

39. The Bill would not of itself have any significant financial effects.

## **EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER**

40. The Bill will not require any increase in public service manpower.

## **REGULATORY APPRAISAL**

41. The proposals in the Bill will not have a specific impact on business or voluntary organisations, and no regulatory appraisal is therefore necessary.

## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

42. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement, before Second Reading, about the compatibility of the Bill with the Convention rights (as defined by section 1 of that Act). The Secretary of State for Northern Ireland has made the following statement:

In my view, the provisions of the Northern Ireland Bill are compatible with the Convention rights.

## **COMMENCEMENT**

43. The Bill comes into effect, in accordance with clause 6, on the day after devolution. Early commencement is necessary since its provisions might need, on the timetable in the Joint Statement, to apply within a few days.

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