

NORTHERN IRELAND ACT 2006*

(2006 c.17)

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An Act to make provision for preparations for the restoration of devolved government in Northern Ireland and for the selection of persons to be Ministers on such restoration; to make provision as to the consequences of selecting or not selecting such persons; and for connected purposes. [8th May 2006]

PROGRESS OF THE BILL

Hansard, HC Vol.445, col.256 (1R); col.331 (Order); col.594 (PM); cols 597, 641 (2R); col.737 (Cttee); col.807 (3R); HL Vol.681, col.386 (1R); col.417 (2R); col.573 (MfA); col.717 (Cttee); col.733 (Rep); col.766 (3R).

INTRODUCTION AND GENERAL NOTE

Summary

The Northern Ireland Act 2006 (c.17) (“the Act”), so-called emergency legislation, was rushed through parliament between April 20, 2006 and May 8, 2006.

The Act followed from the Navan Fort, County Armagh announcement on April 6, 2006, by the United Kingdom (“UK”) Prime Minister, the Rt. Hon. Tony Blair MP, and the Irish Premier, Bertie Ahern TD, that one last attempt would be made to save the Belfast Agreement: a Northern Ireland (“NI”) assembly would be arranged for May 15, 2006; and its 108 members would have a limited period to agree a provincial executive including Sinn Féin.

The Act provides for the amending of the Northern Ireland Act 1998 (c.47) (“NIA”) and the repealing of the Northern Ireland Act 2000 (c.1) (“NIA”). But it mainly creates a new, transitional, assembly, to be wound up immediately after November 24, 2006. The inspiration for the Act was the Northern Ireland (Elections) Act 1998 (c.12), which governed the shadow assembly, from Royal Assent on May 7, 1998, up until devolution, which took place on December 2, 1999.

The Act interrupted the passage of the Northern Ireland (Miscellaneous Provisions) Bill (which had been introduced on February 16, 2006), providing for *inter alia* the future devolution of policing and justice functions from London to Belfast. On May 9, 2006 (the day after Royal Assent for this Act), the Irish Foreign Minister, Dermot Ahern TD, dropped a bombshell in an *Irish Times* interview, Sinn Féin; he said, would not have to sign up for policing, before the restoration of the executive (including three Sinn Féin ministers) under this Act.

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MPs and peers acquiesced raggedly in the government's plan, the latest in a long series, while toying with reform for Westminster and Stormont. Criticism became focussed on the extensive powers the secretary of state was giving himself.

Relevant Documents and Reports

Brief reference will be made to the key moments in the eight-year implementation of the Belfast Agreement, with reference to the themes of devolution and suspension, provided for respectively in the NIA 1998 and NIA 2000.

(i) The Belfast Agreement, April 10, 1998 (Cm.4705 of 2000)

This international agreement, I submit, was centred on the devolution of powers to NI (as had been envisaged in the earlier 1985 Anglo-Irish agreement). This point has implications for the Navan Fort joint statement (see below).

The most relevant sections of the Belfast Agreement regarding devolution are: the British-Irish Agreement, recitals and article 2; the Declaration of Support, paragraph 5; Strand One; Strand Two, paragraph 1; Strand Three, first paragraph 2 and second paragraphs 7 and 9; Rights, Safeguards and Equality of Opportunity, first paragraph 5, first paragraphs 6 to 8 and second paragraph 1; and Validation, Implementation and Review, paragraphs 1, 3, 4 and 7. See further: A. Morgan, *The Belfast Agreement: a practical legal analysis* (1st ed., London 2000).

The NIA 1998 received Royal Assent on November 19, 1998, and subsequently came into force. Powers were devolved from London to Belfast on December 2, 1999. The NIA 2000 received Royal Assent on February 10, 2000, and came into force two days later. The NI assembly was suspended. Since December 2, 1999, there have been the following periods of suspension (with the reasons in parentheses):

- February 12, 2000 to May 29, 2000 (failure of the IRA to begin decommissioning);
- August 11, 2001 (a tactical suspension, following the resignation of the Rt. Hon. David Trimble MP as first minister);
- September 22, 2001 (a second tactical suspension, controversially to avoid an assembly election); and
- October 15, 2002, which is continuing (discovery of a IRA spy ring at Stormont).

The assembly only sat between: December 1999 and February 2000; May 2000 and August 2001; and September 2001 and October 2002. David Trimble entered government with Sinn Féin on three occasions. From December 2, 1999, the NI assembly has been suspended for most of the time. Following the second assembly elections on November 26, 2003, it continued not to meet.

(ii) The Weston Park Proposals, August 1, 2001

These (which were not accepted) followed David Trimble's resignation on July 1, 2001. The principal purpose was to keep the NI assembly afloat. However, the February 2000 suspension had upset Sinn Féin: according to its constitutional view of the Belfast Agreement, the UK could not act unilaterally as regards NI without the Irish government. This was nonsense. An act of the Westminster parliament had provided for devolution; another Act, or even order of the secretary of state, could suspend devolution. UK sovereignty even permits the ending of devolution (pending, no doubt, a later political attempt to restore the institutions).

The covering letter to the Weston Park proposals referred to "the stability of the institutions", as one of the four outstanding issues. However, this was not dealt with in the 22 paragraphs of proposals. Instead, the party leaders were to sign an attached draft all-party statement on the institutions. It began: "In the context of all these steps that are now being taken to implement the Agreement in all its aspects, the parties reaffirm their commitment to the full and stable operation of the institutions, which are the democratic core of the Agreement."

(iii) The Hillsborough Joint Declaration, May 1, 2003

This document (which was not accepted) developed the theme of stability. Proposals were contained in three paragraphs, under "Political Institutions": "The political institutions, across all three strands, are the democratic core of the Agreement. The two Governments, with the parties, have been working towards, and wish to see, the restoration of the Northern Ireland institutions as swiftly as possible. In the context of definitive acts of completion, the British Government

would be prepared to repeal the power in the Northern Ireland Act 2000 to suspend these institutions by order.”

This did not mean that Westminster could not suspend by (new) statute, or that the UK was accepting that it had shared sovereignty over NI through the Belfast Agreement with the Irish state.

(iv) The Comprehensive Agreement, December 8, 2004

This agreement, negotiated by, or on behalf of, the Democratic Unionist Party (“DUP”) and Sinn Féin, was also not accepted. Paragraph 1 referred to “the need for a clear commitment on all sides to the stability of the political institutions”. Under “Political Institutions”, the repeal of the NIA 2000 was again promised: “the British Government will lift suspension in February 2005 once legislation has been introduced in the British Parliament to amend a number of aspects of the Northern Ireland Act 1998 and related legislation. This legislation will also provide for the removal of the power of suspension.”

(v) The Navan Fort Joint Statement, April 6, 2006

Navan Fort (the ancient capital of Ulster) was the venue for the announcement of one last chance, and the origin of this Northern Ireland Bill (“the Bill”). Tony Blair and Bertie Ahern sounded a different political note in the third of their 11 paragraphs: “We cannot force anyone to enter the political institutions. Every part of the political process over the past eight years has been voluntary. What we can do is to set out what we believe to be a practical framework and a reasonable timescale for moving forward. While we are conscious of the view that further confidence needs to be established, we also know that time alone is not enough: trust will not build itself in the absence of positive engagement by all the parties. Everyone in Northern Ireland is aware of the dangers of a political vacuum.”

A transitional assembly (similar to a constitutional convention) was announced for Monday May 15, 2006. The conditions precedent for devolution were the election of a first minister and deputy first minister, and the allocation of ministerial posts under the d’Hondt formula. Strangely, it was assumed this would not happen in the normal six-week period (before the July 12 parades). There would then be a summer recess (of 11 weeks). The assembly would be given another chance, during a second period, this time of 12 weeks, ending on November 24, 2006.

If successful, devolution would follow. “At that point”, the joint statement hinted, “the British Government’s power to suspend the Assembly will lapse for good.” The meaning of for good was simply: if there is devolution, there would be no need for suspension. The NIA 2000 could be repealed.

The threat of the two governments, to inspire agreement, comprised: the cancelling of salaries and allowances for the 108 assembly members and their staffs; the postponement of the May 2007 assembly elections; and, contrary to the Belfast Agreement (but evocative of the 1985 Anglo-Irish agreement), direct rule with a greener, north-south, tinge (but also an east-west dimension): “the Governments agree that [no assembly and executive] will have immediate implications for their joint stewardship of the process. We are beginning detailed work on British-Irish partnership arrangements that will be necessary in these circumstances to ensure that the Good Friday Agreement, which is the indispensable framework for relations on and between these islands, is actively developed across its structures and functions. This work will be shaped by the commitment of both Governments to a step-change in advancing North-South co-operation and action for the benefit of all.”

(vi) Ministerial Statement, April 18, 2006

Two days after Easter, the secretary of state for NI, the Rt. Hon. Peter Hain MP, in a statement to the House of Commons, announcing the Bill, repeated words of the prime minister at Navan Fort: “if the parties do not choose to close [the] chapter of mistrust soon, the Government will be forced to close the book on devolution for the foreseeable future.” (*Hansard*, Vol.680, col.1016).

The Bill occasioned little in the way of Parliamentary reports. The House of Commons library provided information: HC Research Paper 06/23. The Delegated Powers and Regulatory Reform committee in the House of Lords reported on the Bill in its Eighteenth Report on April 27, 2006 (HL Paper 169) (“the Delegated Powers report”). The committee approved s.3, and suggested a fuller explanation of the secretary of state’s power to make directions for the assembly. The Constitution Select Committee in the House of Lords wrote to the minister, Lord Rooker, on April 28, 2006, and received a belated reply on May 4, 2006. The committee raised two important

aspects of constitutional principle: the November 24, 2006 deadline without an opportunity for assembly elections in 2007; and the Henry VIII powers in s.3, with the possibility of amendment of the NIA 1998. The minister replied: if the transitional assembly fails, “there is really no ground for supposing that an election will change matters”; and repeating what the minister David Hanson MP had said in the House of Commons on April 27, 2006 (which did not refer to the NIA 1998).

The Bill

As noted, the Bill had its first reading in the House of Commons on April 20, 2006. There was no vote on second reading on April 26, 2006 (though the surviving Ulster Unionist Party (“UUP”) MP, Lady Hermon, stated she was opposed). It was not amended; however, there was cross-party support for an assembly role in orders in council. The Bill had its first reading in the House of Lords on April 27, 2006. There were no amendments; the liberal democrats failed to reform orders in council. Royal Assent followed on May 8, 2006, less than 30 minutes after third reading.

The Structure of the Act

The Act has six sections and three schedules. It is not divided into parts and/or chapters. The substantive sections are 1 and 2, which govern the three schedules.

COMMENCEMENT

The Act received Royal Assent (as noted) on May 8, 2006. Since there is no provision for commencement, it is presumed that all sections and schedules came into force on May 8, 2006.

ABBREVIATIONS

“DUP”:	Democratic Unionist Party
“NI”:	Northern Ireland
“NIA 1998”:	Northern Ireland Act 1998 (c.47)
“NIA 2000”:	Northern Ireland Act 2000 (c.1)
“the Act”:	Northern Ireland Act 2006 (c.17)
“the Bill”:	Northern Ireland Bill (Bill 169, HL Bill 99)
“the Delegated Powers report”:	Eighteenth Report of the Delegated Powers and Regulatory Reform committee, HL Paper 169
“UK”:	United Kingdom
“UUP”:	Ulster Unionist Party

1. Preparations for restoration of devolved government

- (1) The Secretary of State may refer to the Assembly any of the following matters-
 - (a) the election from among its members of persons to hold the offices of First Minister and deputy First Minister on the restoration of devolved government in Northern Ireland,
 - (b) the making of nominations from among its members of persons to hold office as Northern Ireland Ministers on such restoration, and
 - (c) such other matters as the Secretary of State thinks fit.
- (2) Schedule 1 contains provision about the Assembly.
- (3) Nothing in this Act affects the operation of section 1 of the 2000 Act (suspension of devolved government).
- (4) But subsection (3) is subject to section 2(7) and paragraphs 2 and 3 of Schedule 2.

GENERAL NOTE

Devolution and Suspension

The NIA 1998 provided for devolution on December 2, 1999. Section 3(1) laid out the test: if it appears to the secretary of state that sufficient progress has been made in implementing the Belfast Agreement. The secretary of state was empowered to lay before Parliament a draft order in council, appointing a day for the commencement of Pts II and III (legislative powers and executive authorities) of the NIA 1998.

The NIA 2000 then took over. Section 1 governed suspension, meaning that the NI assembly could not meet. Sections 2 and 3 provided for the ending of suspension, and s.4 started the cycle again: “The effect of an order made by the Secretary of State revoking a restoration order is that section 1 comes into force again.”

Section 3(2) disapplied s.16 of the NIA 1998, providing for the joint election of the first minister and deputy first minister. If they held office at suspension, they resume office at restoration, as long as they remain eligible. Eligibility is nowhere defined in the NIA 2000. It may be inferred from s.16(6) of the NIA 1998 that they must remain members of the NI assembly.

It is also relevant that the NI assembly, which met first on July 1, 1998, and to which powers were devolved on December 2, 1999, was the New Northern Ireland Assembly: s.1(1) of the Northern Ireland (Elections) Act 1998. On December 2, 1999, it was renamed the Northern Ireland Assembly: s.4(5) of the NIA 1998.

This Act makes no direct reference to standing orders. These were provided for in the Northern Ireland (Elections) Act 1998, under s.1(6) and para.10 of the Schedule, whereby the secretary of state would determine standing orders and notify the presiding officer, and in the NIA 1998, s.41 and Sch.6, whereby the NI assembly was required to agree standing orders with cross-community support. However, standing orders are included in the directions of the secretary of state, provided for in Sch.1, para.4 of this Act.

Standing orders are an important mechanism for the implementation of the Act.

The secretary of state sent draft standing orders, seemingly to all members of the assembly. They were made available to MPs and peers on and after April 26, 2006. The reason for this appears to have been the Delegated Powers report. The committee asked the government (as noted) to provide an explanation regarding secretary of state directions. It quickly released the draft standing orders.

On May 11, 2006, three days after royal assent, the secretary of state determined the standing orders and notified the presiding officer (also appointing a DUP member and a Sinn Féin member as deputies to the presiding officer).

At committee stage in the House of Lords on May 8, 2006, Lord Maginnis of Drumglass secured an undertaking for one important amendment to the draft standing orders: the numbers of party members, for the purposes of d’Hondt, would be the number on the day of a vote. He had suggested, as an alternative, the date of assembly election (November 26, 2003). While his party, the UUP, would have lost out if November 26, 2003 had given way to May 15, 2006 (the government’s first choice), there was an apparent unionist advantage in replacing May 15, 2006 with the later date of vote (and permitting an independent unionist to vote with the UUP to the disadvantage of Sinn Féin).

The standing orders of May 11, 2006 show that the secretary of state acted on the suggestion. Standing order 3(g) permits a member to correct his party membership before each relevant meeting of the assembly. Standing order 16(b) refers to the political party with the highest figure under the d’Hondt formula.

This Section

Section 1 plus Sch.1 empower the secretary of state, not to restore the existing NI assembly, but to call a new, temporary, transitional assembly (May 15, 2006 to, at the latest, November 24, 2006).

This compromise arose because of political differences. The government favoured a shadow assembly, back to the position of July 1, 1998 to December 2, 1999 (though it never explained how it could be achieved legally). The nationalists wanted a fully functioning assembly. The unionists preferred a legislative body, encroaching upon Westminster. Thus, the new mongrel body. It resembles a shadow assembly, because its principal function is to prepare for the restoration of devolution. The secretary of state told the House of Commons on April 27, 2006, regarding the pan-nationalist demand of full restoration: “if we had reintroduced the Assembly by ending direct

rule under the Northern Ireland Act 2000, and so ending the authority of Ministers and the special legislative powers, we might have created chaos ... At the very first opportunity for more than three and a half years we would have marched ourselves straight into a crisis." (*Hansard*, Vol.445, col.777).

Subsection (1)

Reference is made to ("the Assembly". This is defined in s.5 with reference to Sch.1, para.1. This makes clear that the members elected to the NI assembly on November 26, 2003 constitute a new assembly, "whose purpose is to take part in preparations for the restoration of devolved government in Northern Ireland." This point was emphasized by the Rt. Hon. Dr Ian Paisley MP, intervening on the secretary of state at the beginning of second reading on April 26, 2006 (*Hansard*, HC Vol.445, col.597).

It is also clear that any taking of office by a first minister and deputy first minister, and ministers, would have to await the restoration of the suspended NI assembly. The assembly enabled on May 8, 2006 remains preparatory throughout its life.

Subsection (2)

This introduces Sch.2.

Subsections (3) and (4)

These make clear that the NI assembly is not being restored under the NIA 2000. That depends upon the success of this assembly under this Act. The reference to s.1 of the NIA 2000 (suspension of devolved government in Northern Ireland) presumably includes the schedule to that act.

Subsection (4) introduces s.2(7) and Sch.2, paras.2 and 3. Section 2(7) makes s.1(4) and para.5 of the schedule of the NIA 2000, which deal with vacant offices, either before or at suspension, subject to s.2 of this Act. Schedule 2, paras.2 and 3 deal with the restoration order and the consequential repeal of the NIA 2000. In other words, suspension continues, as does direct rule, but, since the purpose of this Act is preparation for restoration, there has to be provision for that restoration.

2. Selection of persons to be Ministers on restoration of devolved government

- (1) Schedule 2 shall have effect if (and only if) the Secretary of State-
 - (a) is satisfied that each of the following conditions is met, and
 - (b) being so satisfied, notifies the presiding officer or any deputy presiding officer of the Assembly, before 25th November 2006, that he intends to make a restoration order in accordance with Schedule 2 on the date specified in the notification.
- (2) Condition 1 is that the Assembly has elected from among its members-
 - (a) a person to hold the office of First Minister, and
 - (b) a person to hold the office of deputy First Minister,
 on the coming into force of a restoration order.
- (3) Condition 2 is that persons have been nominated from among the members of the Assembly to hold each of the Ministerial offices on the coming into force of a restoration order.
- (4) Condition 3 is that each of the persons elected or nominated under this section has affirmed the terms of the pledge of office in respect of the office for which he has been elected or nominated.
- (5) Schedule 3 shall have effect if (and only if) the Secretary of State does not give the notification mentioned in subsection (1) before 25th November 2006.

- (6) In this section “the Ministerial offices” means the Ministerial offices provided for by the determination under section 17(1) of the 1998 Act (Northern Ireland Ministers) having effect immediately before the most recent suspension of the Northern Ireland Assembly by virtue of section 1 of the 2000 Act.
- (7) The following provisions of the 2000 Act are subject to this section-
 - (a) section 1(4), and
 - (b) paragraph 5 of the Schedule.

GENERAL NOTE

This Section

This section further empowers the secretary of state. No reference is made to May 15, 2006. However, provision is made for the date of November 24, 2006. The section provides for the alternatives: success or failure.

Subsection (1)

This subsection introduces sch.2: selection of ministers. Though the Act came into force generally on May 8, 2006, Sch.2 does not have effect until: (1) the secretary of state is satisfied that certain conditions are met; and (2) he notifies the presiding officer before November 25, 2006 (the origin of the cut-off date of November 24, 2006) that he intends to make a restoration order under the NIA 2000 as amended pending repeal. This is the successful scenario.

Subsections (2) to (4) and (6)

These are the three conditions precedent to the secretary of state notifying the presiding officer that he intends to make a restoration order.

Ministerial offices, in subs.(3), is defined in subs.(6) below. This is because, under s.98(1) of the NIA 1998, minister is defined unhelpfully as in s.7(3), “unless the context otherwise requires”. The definition in s.7(3) is, unless the context otherwise requires, that minister is inclusive of the first minister and deputy first minister. This subsection displaces that statutory presumption.

Subsection (6) makes clear that ministers are to be nominated to the departments that existed, and continue to exist, on the last suspension on October 15, 2002.

The pledge of office in subs.(4) is a reference to s.16(10) of the NIA 1998, cross-referring to Annex A of Strand One of the Belfast Agreement (reproduced for convenience in Sch.4 of that Act).

Subsection (5)

This subsection provides for the scenario of failure. It introduces Sch.3: no selection of ministers. The absence of any one or all of conditions 1-3 in subs.(2)-(4), plus the consequential failure to notify the presiding officer about an intended restoration order, means that, on November 25, 2006, Sch.3 will take effect.

Subsection (7)

This subsection is referred to above in s.1(4). The Explanatory Notes [Bill 169 - EN] state: “Subsection (7) ensures that there is no conflict between the requirement that the Assembly members participate in preparations for devolution under this Bill, and the 2000 Act, under which the Northern Ireland Assembly is currently suspended.”

3. Power to make consequential provision etc

- (1) The Secretary of State may by order made by statutory instrument make-
 - (a) any supplementary, incidental or consequential provision, and
 - (b) any transitional or saving provision,
 that he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

- (2) An order under this section may in particular-
 - (a) make different provision for different cases or purposes;
 - (b) amend, repeal or revoke any enactment passed or made on or before 25th November 2006.
- (3) In this section “enactment” includes-
 - (a) any of sub-paragraphs (2) to (9) of paragraph 3 of Schedule 2,
 - (b) any provision of, or of any instrument made under, Northern Ireland legislation, and
 - (c) any provision of subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).

GENERAL NOTE

This section needs to be read with s.4.

This Section

This section empowers the secretary of state to amend legislation by order. At committee stage in the House of Commons on April 27, 2006, the minister, David Hanson MP, answering the charge of “sweeping dictatorial powers”, said: “It is intended to be used to sweep up any consequential or unforeseen matters relating to, particularly, the recall of the Assembly, the repeal of the 2000 Act, the postponement of elections or the dissolution of the Assembly ... the Bill was put together in some haste following the decision of the Prime Minister and the Government to adopt this route. Changes may well be needed that would require primary legislation unless we give the Secretary of State this power.” (*Hansard*, Vol.445, col.802).

Subsection (1)

The legal test is drawn broadly: “that he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.” Given that the purpose of the Act will be interpreted as restoring devolution to NI, and courts might construe this as saving the Belfast Agreement and even “the peace process” (see para.5 of the NIO memorandum annexed to the Delegated Powers report and para.48 of the Explanatory Notes [Bill 169 - EN]), the secretary of state has been given a considerable power.

Subsections (2) and (3)

Could the secretary of state amend the date of November 25, 2006 in s.2(1)(b) above? Subsection (3) purports to define enactment, used in subs.(2). The inclusive definition refers to Westminster subordinate legislation (as defined by the Interpretation Act 1978 (c.30)) and all NI legislation, primary and secondary. But the reference in subs.(3)(a) to particular provisions of this Act, dealing with the consequences of a restoration order, suggests that subs.(2) and (3) cannot be read to include any other provisions of this Act. This point did not arise in the Parliamentary debates.

4. Parliamentary procedure for orders under section 3

- (1) Subsections (3) to (7) have effect in the case of a statutory instrument which contains (alone or with other provisions) an order under section 3 which amends or repeals any provision of-
 - (a) an Act, or
 - (b) Northern Ireland legislation.
- (2) Any other statutory instrument containing an order under that section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A statutory instrument of a description mentioned in subsection (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

- (4) But subsection (3) does not apply if the order declares that the Secretary of State considers it expedient for the order to be made without that approval.
- (5) An order containing a declaration under subsection (4)-
 - (a) must be laid before Parliament after being made, and
 - (b) ceases to have effect if it is not approved by a resolution of each House of Parliament before the end of the period of 40 days beginning with the date on which it is made.
- (6) Subsection (5)(b) does not prejudice-
 - (a) anything done as a result of the order before it ceased to have effect, or
 - (b) the making of a new order.
- (7) In calculating the period of 40 days mentioned in subsection (5)(b), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

GENERAL NOTE

This section is consequential upon s.3.

This Section

Subsections (1) and (2)

These provide for two types of s.3 orders: the positive resolution procedure (including urgency procedure) for Westminster Acts and all NI legislation in subs.(3)-(7); and the negative resolution procedure for Westminster subordinate legislation (plus, significantly, where the urgency procedure has been chosen, at the secretary of state's discretion, for Westminster Acts and NI legislation).

Query why reference is made to "an Act" in subs.(1) when s.3(3)(a) includes only Sch.2, para.3(2) to (9) of this Act? Does the reference to "with other provisions" answer this point?

5. Interpretation

In this Act-

- "the 1998 Act" means the Northern Ireland Act 1998 (c. 47);
- "the 2000 Act" means the Northern Ireland Act 2000 (c. 1);
- "the Assembly" has the meaning given by paragraph 1 of Schedule 1;
- "First Minister", "deputy First Minister" and "Northern Ireland Minister" have the same meaning as in the 1998 Act;
- "the pledge of office" has the meaning given by section 16(10) of the 1998 Act;
- "restoration order" means a restoration order under section 2(2) of the 2000 Act (order restoring devolved government).

GENERAL NOTE

This is an interpretative section. Reference has been made to the assembly under s.1 above. Reference has been made to first minister, deputy first minister and NI ministers under s.2 above. This definition is referring to ss.7(3) and 98(1) of the NIA 1998. Reference was made to the pledge of office in s.2 above. Reference was made to restoration order under s.1 above.

6. Short title

This Act may be cited as the Northern Ireland Act 2006.

SCHEDULES

SCHEDULE 1

Section 1

THE ASSEMBLY

The Assembly

1. There is to be an Assembly (referred to in this Act as “the Assembly”)-
 - (a) whose members at any time are to be the persons who are at that time members of the Northern Ireland Assembly, and
 - (b) whose purpose is to take part in preparations for the restoration of devolved government in Northern Ireland.

Meetings

2. Meetings are to be held at such times and places as the Secretary of State directs.

Presiding officer

3. (1) The Secretary of State may-
 - (a) appoint a presiding officer and no more than three deputy presiding officers, or
 - (b) authorise the Assembly to elect a presiding officer and no more than three deputy presiding officers in such manner as the Secretary of State may specify.
- (2) The Secretary of State may if he thinks fit exercise his powers under sub-paragraph (1)(b) after exercising his powers under sub-paragraph (1)(a) (so that an elected presiding officer and elected deputy presiding officers replace those appointed by him).
- (3) The Secretary of State may appoint a person, or authorise the Assembly to elect a person-
 - (a) to fill any vacancy in the office of presiding officer or deputy presiding officer, or
 - (b) to replace a presiding officer or deputy presiding officer who, in the opinion of the Secretary of State, is unable, unfit or unwilling to perform his functions (whether because of illness or otherwise).

Proceedings

4. (1) Proceedings are to be conducted in accordance with directions determined by the Secretary of State from time to time and notified to the presiding officer or any deputy presiding officer.
- (2) The provision that may be made by the directions includes provision which corresponds, or is similar, to any provision of standing orders made (or treated as made) under section 41 of the 1998 Act.
- (3) The provision that may be made by the directions for the purposes of the election referred to in section 1(1)(a) of this Act includes provision which corresponds, or is similar, to any provision of section 16 of the 1998 Act.
- (4) The provision that may be made by the directions for the purposes of the nominations referred to in section 1(1)(b) of this Act includes provision which corresponds, or is similar, to any provision of section 18 of the 1998 Act.
- (5) Sub-paragraphs (2) to (4) do not affect the generality of sub-paragraph (1).

Staff etc

5. (1) The Secretary of State must secure the provision of the services of such staff, the use of such premises and such other facilities as he thinks appropriate.
- (2) Expenditure incurred by the Secretary of State by virtue of this paragraph is to be paid out of the Consolidated Fund of Northern Ireland.

Privilege

6. A written or oral statement made by a member in or for the purposes of the Assembly is to be privileged from action for defamation unless it is proved to have been made with malice.

GENERAL NOTE

This schedule configures the transitional assembly, to run from May 15, 2006 to, at the latest, November 24, 2006. The secretary of state remains in the driving seat. On April 10, 2006, the se-

cretary of state announced that he had appointed as presiding officer, Eileen Bell, a member of the Alliance Party (without consulting her party leader). The word “directions” is used here, but it was made clear in Parliament that these include standing orders. Paragraph 5 contains an unusual “must” when it comes to ministerial powers. Presumably, not securing staff, premises and such other facilities is not an option. Paragraph 6 provides necessary legal protection for assembly members, given that s.50 of the NIA 1998 does not apply. However, this is only qualified privilege. It is, however, the same protection as applied between July 1, 1998 and December 2, 1999: Northern Ireland (Elections) Act 1998 para.8 of schedule.

SCHEDULE 2

Section 2(1)

SELECTION OF MINISTERS

Introduction

1. (1) This Schedule has effect in accordance with section 2(1).
- (2) In this Schedule “the effective date” means the date on which the restoration order made by virtue of paragraph 2 comes into force.

Making of restoration order

2. (1) The Secretary of State must make a restoration order on the date specified in the notification under section 2(1).
- (2) The restoration order must come into force on the day following the day on which it is made.
- (3) Subsections (2) to (7) of section 3 of the 2000 Act do not apply in relation to the restoration order (and, accordingly, no person who immediately before the most recent suspension held an office mentioned in any of those subsections shall resume that office on the effective date).
- (4) On the effective date-
 - (a) the person elected under section 2 of this Act to hold office as First Minister shall become the First Minister,
 - (b) the person elected under that section to hold office as deputy First Minister shall become the deputy First Minister, and
 - (c) each person nominated under that section to hold office as a Northern Ireland Minister shall become the Northern Ireland Minister concerned;
 (and sections 16(1) and 18(1) of the 1998 Act do not apply).
- (5) The affirmation of the terms of the pledge of office under section 2 of this Act by a person to whom sub-paragraph (4) applies shall be deemed to have been made under the 1998 Act on the effective date.
- (6) The person who is presiding officer of the Assembly immediately before the effective date shall be deemed to have been elected as Presiding Officer of the Northern Ireland Assembly under section 39(1) of the 1998 Act on that date.
- (7) Each person who is a deputy presiding officer of the Assembly immediately before the effective date shall be deemed to have been elected as a deputy Presiding Officer of the Northern Ireland Assembly under section 39(1) of the 1998 Act on that date.
- (8) The provision that may be made by the restoration order by virtue of section 7(2) of the 2000 Act includes provision-
 - (a) for treating things done under or by virtue of this Act as having been done under or by virtue of the 1998 Act;
 - (b) for treating things done by or in relation to the Assembly (or members of that Assembly) as having been done by or in relation to the Northern Ireland Assembly (or members of that Assembly).
- (9) The following provisions of the 2000 Act do not apply in relation to the restoration order-
 - (a) section 2(3) (taking account of review under Validation, Implementation and Review section of Belfast Agreement), and
 - (b) section 7(4) to (7) (affirmative resolution etc procedure).
- (10) In this paragraph “the most recent suspension” means the most recent suspension of the Northern Ireland Assembly by virtue of section 1 of the 2000 Act.

Repeal of the 2000 Act on day after restoration order comes into force

3. (1) The 2000 Act shall be repealed on the day following the effective date.
- (2) The Northern Ireland Assembly may not make a determination under section 47 of the 1998 Act in respect of any period of suspension.
- (3) No instrument made during any period of suspension shall be liable to annulment or capable of being revoked in pursuance of a resolution, motion or address of the Northern Ireland Assembly.
- (4) Neither a restoration order nor the repeal of paragraph 1(1) of the Schedule to the 2000 Act shall affect the operation of any Order in Council made before the effective date under paragraph 1(1) of that Schedule.
- (5) References to Acts of the Northern Ireland Assembly in any enactment or instrument (whether passed or made before or after the coming into force of section 1 of the 2000 Act) are to be read, so far as the context permits, as including references to Orders in Council made under paragraph 1(1) of the Schedule to that Act.
- (6) The repeal of section 6 of the 2000 Act by virtue of this paragraph shall not affect the operation of any order previously made under that section.
- (7) The repeal of section 7 of the 2000 Act by virtue of this paragraph shall not affect the operation of any provision of a restoration order previously made by virtue of subsection (2) of that section.
- (8) The repeal of paragraph 9 of the Schedule to the 2000 Act by virtue of this paragraph shall not affect the operation of any determination or provision previously made by virtue of that paragraph.
- (9) Subsection (4) of section 44 of the 1998 Act shall continue to include, at the end of that subsection, the words “or during a period when section 1 of the Northern Ireland Act 2000 was in force” (notwithstanding the repeal of section 9(3) of the 2000 Act by virtue of this paragraph).
- (10) In this paragraph-
 - “instrument” includes a charter, contract or other document;
 - “period of suspension” means a period when section 1 of the 2000 Act was in force.
- (11) Sub-paragraphs (2) to (9) are not to be taken as limiting the provision that may be made by an order under section 3 of this Act.

Postponement of next Northern Ireland Assembly election to May 2008

4. (1) In section 31 of the 1998 Act (Northern Ireland Assembly: dates of elections and dissolutions), for subsection (2) substitute-
 - (2) In relation to the poll for the election of the Assembly next following the Assembly elected at the poll on 26th November 2003, subsection (1) is to have effect as if for “fourth calendar year” there were substituted “fifth calendar year”.
- (2) In section 96 of the 1998 Act-
 - (a) in subsection (2), “31(2),” shall be repealed;
 - (b) subsections (2A) to (2D) shall be repealed.
- (3) The amendments made by this paragraph shall have effect on and after the effective date.

Repeal of section 1 (1) and (2) and Schedules 1 and 3

5. The following provisions of this Act shall be repealed on the effective date-
 - (a) section 1(1) and (2),
 - (b) Schedule 1, and
 - (c) Schedule 3.

GENERAL NOTE

This schedule indicates the principal consequences of success: (1) the making of a restoration order; (2) the repeal of the NIA 2000; (3) postponement of the NI assembly elections from 2007 to 2008; and (4) repeal of certain provisions of this Act. They all turn on “the effective date”, that is the date the restoration order takes effect.

Paragraph 2 modifies the NIA 2000 for this last restoration order. Paragraph 2(3) disapplies s.3(2) to (7) of the NIA 2000, leaving only an ineffective s.3(1). This indicates that the break between the NI assembly suspended in 2002 (and re-elected in 2003) and this assembly is continued by para.2(3). According to the Explanatory Notes (Bill 169 - EN), “paragraph 2(3) ensures that when such a restoration order is made, those who previously held office at the time of suspension will not resume that office.” No previous ministers, including the politically eclipsed David Trimble and Mark Durkan, the first minister and deputy first minister at the time of suspension in

2002, are at risk of being restored to office. Paragraph 2(4) to (7) reinforces this point. Effectively, the assembly is becoming the NI assembly. This is made express in paragraph 2(8). Query the need for para.2(10)? It would appear to be superfluous, given the most recent suspension was on October 15, 2002. Can parliamentary counsel have been allowing for some sort of mistake in implementing this Act?

Paragraph 3(1) repeals the NIA 2000. That does not mean that Parliament could not legislate in the future to again suspend the NI assembly. Section 47 of the NIA 1998 refers to the power to determine members' remuneration. Paragraphs 3(3)-(9) contain savings provisions. Paragraph 3(11) is the opposite of a saving: the savings do not limit s.3 orders.

Paragraph 4 amends s.31 of the NIA 1998. The first NI assembly elections were on June 25, 1998: s.2(1) of the Northern Ireland (Elections) Act 1998. Section 31(1) of the NIA 1998 then provided for a four-year assembly, and elections on the first Thursday in May. However, s.31(2) went on to specify the next date as May 1, 2003. This was missed: Northern Ireland Assembly Elections Act 2003 (c.3) and Northern Ireland Assembly (Elections and Periods of Suspension) Act 2003 (c.12). The second elections took place on November 26, 2003. The date was the result of an order of the secretary of state. The third elections became due, under s.31(1) of the NIA 1998, on the first Thursday in May 2007. Thus, the effect of this amendment is to put the elections back by one full year. The reason is that if devolution was restored, ministers would not want to be facing an election shortly afterwards, in May 2007. Alternatively, an election in May 2007 could have been seen as an opportunity to test the popularity of any restoration.

Paragraph 5, in the context of a restoration order and the repeal of the NIA 2000, repeals provisions of this Act. The transitional assembly is closed down, and the consequences of failure removed from the statute book.

SCHEDULE 3

Section 2(5)

NO SELECTION OF MINISTERS

Introduction

1. This Schedule has effect in accordance with section 2(5).

Postponement of next Northern Ireland Assembly election

2. (1) In section 31 of the 1998 Act (Northern Ireland Assembly: dates of elections and dissolutions), for subsection (2) substitute-
 - “(2) The date of the poll for the election of the Assembly next following the Assembly elected at the poll on 26th November 2003 shall be a date to be specified in an order made by the Secretary of State.
 - (2A) An order under subsection (2) may not specify a date falling on or before the date on which the poll would (apart from that subsection) fall to be held under subsection (1).
 - (2B) An order under subsection (2) may include provision making such modifications of-
 - (a) any enactment (other than one contained in this Act), or
 - (b) any provision of subordinate legislation,
 as appear to the Secretary of State to be necessary or expedient for the purposes of, or in consequence of or in connection with, the order.
 - (2C) An order under subsection (2) may, in particular, make provision modifying any duty of the Chief Electoral Officer for Northern Ireland whereby (apart from the order) he must perform any function or discharge any duty on or by reference to a particular date.
 - (2D) An order under subsection (2) may also make such supplementary, incidental or consequential provision as the Secretary of State considers necessary or expedient.”
- (2) In subsection (1) of that section, for “subsection (2)” substitute “subsections (2) to (3)”.
- (3) The amendments made by this paragraph shall have effect on and after 25th November 2006.

Power to bring forward date of dissolution of current Northern Ireland Assembly

3. (1) In section 31 of the 1998 Act, after subsection (2D) insert-
 “(2E) The Assembly elected at the poll on 26th November 2003 shall be dissolved on whichever of the following dates is the earlier-
 (a) 3rd May 2007; or
 (b) such date as may be specified in an order made by the Secretary of State.”
- (2) In section 96 of the 1998 Act, in subsection (1), for “31(3)” substitute “31(2E), (3)”.
- (3) The amendments made by this paragraph shall have effect on and after 25th November 2006.

Repeal of section 1(1) and (2) and Schedules 1 and 2

4. The following provisions of this Act shall be repealed on 25th November 2006-
 (a) section 1(1) and (2),
 (b) Schedule 1, and
 (c) Schedule 2.

GENERAL NOTE

This schedule indicates the principal consequences of failure: (1) the postponement of the third assembly elections (due in May 2007); (2) the dissolution of the NI assembly; and (3) the repeal of certain provisions of this Act.

Paragraph 2 leaves it to the secretary of state to alter, by order, the date of the third assembly elections to some point after the first Thursday in May 2007. The amendments take effect, through the NIA 1998, on November 25, 2006 (and have continuing effect). Under para.5 of Sch.2, Sch.3 is to be repealed on the effective date, that is the date the restoration order comes into force. Which happens first? A secretary of state notification (by November 24, 2006) contains the date of the restoration order. This comes into force the following day, the effective date. On the effective date, there is restoration and the repeal of Sch.3. If the date of the restoration order is later than November 24, 2006, then para.2 of Sch.3 gives effect to the new s.31(2)-(2D) of the NIA 1998. However, it does not bite until the secretary of state decides to make an order postponing the assembly elections: thus the drafting, “on and after 25th November 2006”.

Paragraph 3 amends the NIA 1998, also on November 25, 2006 (with continuing effect). It allows the secretary of state to dissolve the assembly, by order, or allow it to run its natural course, to the intended May 2007 elections.

Paragraph 4 is similar to para.5 of Sch.2, save that Sch.3 becomes the law in place of Sch.2.

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