

NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) ACT 2006*

(2006 c.33)

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An Act to make provision about registration of electors and the Chief Electoral Officer for Northern Ireland; to amend the Northern Ireland Act 1998; to make provision about donations for political purposes; to extend the amnesty period for arms decommissioning in Northern Ireland; and to make miscellaneous amendments in the law relating to Northern Ireland. [25th July 2006]

PROGRESS OF THE BILL

Hansard, HC Vol.442 col.1579 (1R); Vol.443 col.1166 (2R); col.1246 (PM); Vol.445 col.131 (PM); cols.132, 257 (Cttee); col.331 (Order); Standing Committee B, cols.3, 43; Vol.446, col.1011 (Rep); col.1090 (3R); Vol.449 col.765 (PM); col.766 (Lords amendments); HL Vol.682 col.377 (1R); Vol.682 col.1353 (2R); Vol.683 col.213 (Motion); col.GC115 (Grand Cttee); Vol.684 col.137 (Motion); col.871 (Rep); col.1287 (3R); col.1736 (Commons reasons).

INTRODUCTION AND GENERAL NOTE

Summary

The Northern Ireland (Miscellaneous Provisions) Act 2006 (c.33) (“the Act”) is formally, as the title suggests, a *pot-pourri* of discrete issues. It began with seven parts, and ended with six. However, the introduction of the Northern Ireland (Miscellaneous Provisions) Bill (“the Bill”) is best understood in terms of the Blair government’s increasingly desperate attempts to save the

1998 Belfast Agreement. The original Bill contained concessions to Sinn Féin, on electoral registration and political donations, but especially the devolution of policing and justice. There were no concessions subsequently to the Democratic Unionist Party (“DUP”) (despite suggestions at second reading in the House of Commons), on strands one, two and three of the devolved institutions, because of the failure to agree on devolution (before and after April 6, 2006, when the Rt. Hon. Tony Blair MP and Bertie Aherne TD, the United Kingdom (“UK”) and Irish leaders, announced emergency legislation: what would become the Northern Ireland Act 2006 (c.17)) (“NIA 2006”).

The Bill, however, was the occasion for an important undertaking by the government - as a result of a successful amendment in the House of Lords on July 13, 2006 (later rejected by the House of Commons) - to reform the order in council procedure for Northern Ireland (*Hansard*, HL Vol.684, cols 889-900 and 1289; HC Vol.449, cols 766-775).

Relevant Documents and Reports

Because this is a miscellaneous provisions bill, it is best to take it part by part, dealing with the major subjects in turn.

Parts 1 (registration of electors) and 2 (chief electoral officer) originated in a consultation paper, Electoral Registration in Northern Ireland (“Electoral Registration”), published on August 5, 2005. The Northern Ireland Office (“NIO”) responded on January 23, 2006.

Part 3 (donations for political purposes) also originated in a consultation paper of August 5, 2005, Political Donations in Northern Ireland (“Political Donations”). The NIO responded in the same document of January 24, 2006.

Part 4 (devolution of policing and justice etc.) is the major part of the Bill, even though it only had four of the original 34 clauses. This was clear from a written ministerial statement in the House of Commons on the day of first reading (*Hansard*, Vol.442, cols 119-20WS).

The development of this policy has to be traced from the 1998 Belfast Agreement, through the joint declaration of 2003 and the comprehensive agreement of 2004. Part 4 is only enabling legislation: the devolution of policing and justice requires the restoration of the Northern Ireland assembly - the purpose of the NIA 2006.

(i) The Belfast Agreement, April 10, 1998

This was an international agreement between the UK and Irish states. So much is evident from its third publication as Cm.4705, after entry into force, in May 2000. The legal face of the Belfast Agreement is the British-Irish Agreement (“BIA”), to which is annexed a multi-party agreement (“MPA”) - not all of which has legal effect. The political face of the Belfast Agreement is the MPA with the BIA annexed for, as it were, information (see further, A. Morgan, *The Belfast Agreement: a practical legal analysis* (London, 2000)).

There are 11 so-called sections to the Belfast Agreement. Section 9 is policing and justice. Paragraph 7 reads in full: “The participants also note that the British Government remains ready in principle, with the broad support of the political parties, and after consultation, as appropriate, with the Irish Government, in the context of ongoing implementation of the relevant recommendations, to devolve responsibility for policing and justice issues.”

(ii) The 2000 Criminal Justice Review

This was established, under the Belfast Agreement, on June 27, 1998. It reported on March 30, 2000. It did not consider the devolution of policing and justice as such.

Paragraph 1.11 reads strangely: “The focus of our work has been guided by a desire to propose practical confidence building measures for a fresh political climate. We assumed throughout our work that the Belfast Agreement would continue to be implemented and that the political process would continue...We also took account of [para.7 of the policing and justice section of the Belfast Agreement]. As a result, and because this was the wish of many of those we consulted, our recommendations are made on the assumption that criminal justice matters will be devolved to the Northern Ireland administration.”

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

Political talks took place at this Staffordshire conference centre on July 9-11, 13 and 14, 2001. There was no agreement to restore devolution in Northern Ireland. However, on August 1, 2001 - and facing a deadline of August 12, 2001 for the re-election of the first minister and deputy first

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minister - the two governments published a 22-paragraph set of proposals (plus an accompanying draft statement). The Weston Park proposals were not accepted.

Policing was described as one of the four outstanding issues. Though there were six paragraphs on policing, including the new policing board, there was no reference to the devolution of policing and justice.

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

Further political talks took place at Hillsborough near Belfast on March 3 and 4, 2003. The UK and Irish governments failed to secure political agreement. The conference did not resume on April 10, 2003, as planned. London and Dublin subsequently published their so-called joint declaration on May 1, 2003 (though the date April 2003 remains on the texts).

The Hillsborough joint declaration comprises: a 17-page joint declaration, including three annexes, by the two governments; a separate agreement, plus annex, on the proposed independent monitoring commission (which Sinn Féin continued to oppose); and a two-page Proposals in Relation to On the Runs (OTRs) (which the unionists said they had not supported).

There were five paragraphs on policing and justice. Paragraph 20 reads in full: "The British Government has accepted, under the Agreement, the desirability of devolving policing and justice on a basis that is robust and workable and broadly supported by the parties. In accordance with the paper contained in Annex 2, the British Government would take an early initiative to facilitate a dialogue between the parties to address and agree the practicalities of such further devolution, including the necessary institutional arrangements, with a view to the introduction of the necessary legislation in the Westminster Parliament at the earliest opportunity and with a view to ensuring that it is achieved within the lifetime of the next Assembly [that is, 2003-07]."

Annex 2, on the devolution of policing and justice, ran to 21 paragraphs. It included four departmental models: (1) a single department under a single minister (perhaps with a junior minister from the opposite tradition); (2) a single department under two ministers (or the first minister and deputy first minister); (3) adding policing and justice to the office of the first minister and deputy first minister; (4) separate policing and justice departments, one under a nationalist, and the other under a unionist, minister.

In the 1998 assembly elections (which determined, through the d'Hondt system, the appointment of ministers), the results had been: Ulster Unionist Party ("UUP"), 28; Social Democratic and Labour Party ("SDLP"), 24; DUP, 20; and Sinn Féin, 18 (plus another 18 from minor parties). The UUP took the first portfolio and the SDLP the second. So, if policing and justice had been devolved, the two centrist parties would have controlled the one or two proposed departments. (This would also have been the case if the first minister and deputy first minister had been involved, either as ministers or as the persons who appointed ministers.)

Things changed significantly in the 2003 Assembly elections: DUP, 30; UUP, 27; Sinn Féin, 24; and SDLP, 18 (with 9 from the minor parties). However, on 15 January 2004, there were three defectors from the UUP to the DUP. Later, the DUP effectively expelled a member, Paul Berry MLA. And later still, the UUP recruited a loyalist member, David Ervine MLA. The first and second portfolios would have gone consecutively to: (1) DUP and UUP; (2) DUP and Sinn Féin; (3) DUP and Sinn Féin; and (4) DUP and UUP. Sinn Féin would have been able to get its hands on policing and/or justice - due largely to DUP rivalry with the UUP. (Moreover, there would always have been a Sinn Féin deputy first minister, so, if the first minister and deputy first minister were to appoint ministers, a DUP first minister would be supporting the appointment of a Sinn Féin minister.)

David Lidington MP, the shadow secretary of state in the House of Commons, spoke for many when he said at second reading: "We all have to accept that we cannot have Sinn Fein back in government with their Ministers sharing in the administration of justice while the provisional republican movement refuses to recognise the courts or the police. Such a state of affairs would be grotesque." (*Hansard*, Vol.443, col.1180)

(v) The Comprehensive Agreement, December 8, 2004

The comprehensive agreement comprised: proposals from the UK and Irish governments (9 paragraphs); annex A, a timetable; annex B, UK proposals for changes to strand one and joint proposals for changes to strands two and three; and annex C, draft statements by the IRA, the independent international commission on decommissioning, the DUP and Sinn Féin. It is unclear how much, if any, the two latter parties agreed. The main point about the comprehensive agreement is that it did not work.

Paragraphs 7 and 8 dealt with policing and justice. Paragraph 7 made clear there was a deal: the UK to devolve policing and justice; Sinn Féin to join the policing board. The party had stated this would require a vote in a special conference. The UK and Irish governments had “a strong expectation” that this would happen: “The Governments expect that Sinn Féin will be in a position to join the Policing Board no later than the date on which the Bill enabling devolution of policing and justice is enacted.” The date of enactment was July 25, 2006. Sinn Féin did not join the policing board.

Paragraph 8 referred to the choreography. The independent international commission on decommissioning would confirm the Irish Republican Army (“IRA”) had decommissioned its arms. The UK government would then discuss devolution with the political parties. This Bill would then be introduced “by the summer of 2005”: “Such legislation will come into force as soon as possible, once sufficient confidence exists across the community, as expressed in a cross-community vote in the Assembly, proposed by the First Minister and Deputy First Minister.” The timescale for the Assembly vote was within two years (of December 8, 2004).

Annex A (timetable) had: committees established in the shadow assembly in January 2005 to consider the modalities of devolution; agreement in February; and legislation introduced in the “early summer” of 2005.

(vi) A Secret IRA/UK Agreement in 2005?

This, by definition, does not exist in published form; it has to be inferred from circumstances. The scene was set by: the IRA theft of £26.5m from the Northern Bank in Belfast in December 2004 (the very month of the aborted comprehensive agreement); and the killing of Robert McCartney by IRA members in January 2005 (after a Bloody Sunday march).

Thereafter, the prime minister’s chief of staff, Jonathan Powell, was believed to be in negotiations with the army council of the IRA (not always through members of Sinn Féin, a legal political party).

These negotiations bore fruit as follows: a IRA statement of July 28, 2005, formally ordering an end to the armed campaign (but not the disbandment of the IRA); and a report by the independent decommissioning body on September 26, 2005, to the effect that the IRA had finally and recently decommissioned its arsenal (but not necessarily completely disarmed, as was subsequently indicated by the independent monitoring commission).

The flow of concessions to Sinn Féin had begun, perhaps out of sequence, with the appointment of Monica McWilliams, a failed radical politician, rather than Lord Dubs, a former NIO minister, to the Northern Ireland human rights commission on June 16, 2005 (and not on July 19, 2005, when a new head - Bob Collins, formerly of the Irish broadcasting service in Dublin - was appointed to the equality commission in Belfast).

It was followed by: the announcement of the Northern Ireland (Offences) Bill, by the secretary of state, the Rt. Hon. Peter Hain MP, in the House of Commons, on October 13, 2005: this bill was introduced on November 9, 2005, but had to be abandoned because of all-party opposition on January 11, 2006, after the committee stage in the House of Commons.

Other possible concessions are: an updated programme of security normalisation (August 2005); the review of public administration (November 22, 2005) (though Sinn Féin may have simply been opportunist in being the only party to support it); and renewed support for so-called community restorative justice schemes (December 5, 2005).

(vii) The Devolution Discussion Paper

On February 16, 2006 (the day of first reading), the NIO issued a 46-page *Devolving Policing and Justice in Northern Ireland*: a discussion paper (“Devolution Discussion Paper”).

The paper defined policing and justice. These functions were principally in Sch.3 (reserved matters) of the Northern Ireland Act 1998 (“NIA 1998”) (c.47): paras 9, 9A, 10, 11, 12, 14A, 15, 15A and 17. It stated what the UK government intended to devolve: “all together and at the same time” (p.4). It “also identifie[d] some areas where devolution [was] not so straightforward and where further thought need[ed] to be given to how it should be achieved.” (p.1)

The paper repeated the models from the 2003 joint declaration; however, it then went on - denying any preference - to refer to two departments, one unionist and the other nationalist.

It was clear that the Bill’s introduction was part of a deal with the republicans, to get them on to the policing board. However, it was only enabling legislation. The Northern Ireland assembly had to be restored. It had to establish a department or departments. The assembly then had to request devolution. Parliament and the UK government had to agree. Only then, because of

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this Act, could the secretary of state devolve policing and justice by order rather than fresh legislation.

(viii) Tenth Report of the Independent Monitoring Commission

This was published on April 26, 2006, during the passage of the Bill. At second reading in the House of Lords, Lord Glentoran, for the conservatives, referred to para.2.19, dealing with the IRA. This reads in part: “We believe that the leadership has accepted the need to engage in policing if it is to achieve its aim of devolution of policing and justice ... It has not however yet determined how this might be delivered. The issue is still very controversial on the ground and has not been resolved to date with [the] IRA despite robust discussion. It remains to be seen how progress might be made on these two linked issues.”

The Queen's Speech, May 17, 2005

The Bill was not listed in the first post-election Queen's speech, for the long 2005-06 parliamentary session. However, the government did promise: “legislation ... to encourage greater voter participation in elections while introducing further measures to combat fraud and increase security.”

This Bill had been foreshadowed on October 13, 2005 by the secretary of state. It was introduced on February 16, 2006, a month following the collapse of the Northern Ireland (Offences) Bill.

The delegated powers and regulatory reform committee in the House of Lords reported on the Henry VIII powers in the Bill on June 14, 2006 (22nd Report of Session 2005-06, HL Paper 205). The secretary of state replied on June 20, 2006 (23rd Report of Session 2005-06, HL Paper 217).

The Bill

As noted, the Bill was introduced on February 16, 2006, in the House of Commons. There was no vote on second reading, on March 13, 2006. There were two committee days on the floor of the house (for electoral registration and policing and justice), and two sittings of standing committee B (for all the rest). There were a number of unsuccessful votes at report. Third reading was on May 17, 2006. Second reading in the House of Lords, late on June 7, 2006, was brief. There was one afternoon in grand committee. At report on July 13, 2006, the opposition parties succeeded in throwing out special treatment on political donations and amending the order in council system. The former was restored by the House of Commons on July 25, 2006, the upper house subsequently acquiescing because of the undertaking to reform orders in council. Royal Assent followed, at 18.22, just before the House of Lords adjourned for the summer recess.

The Structure of the Act

The Bill began with seven parts, 34 clauses and five schedules. On the first committee day in the House of Commons, the government abandoned the original part 3 (date of assembly election). This was because of the Navan Fort (Armagh) joint statement, of April 6, 2006, of the UK and Irish premiers. Parts 1, 2 and 3 amend electoral law. Part 4 deals with policing and justice. Part 5 is miscellaneous. And Pt 6 supplementary.

COMMENCEMENT

Under s.31(1) the following sections came into force at Royal Assent: ss.1, 10, 22, 23, 24, 27, 28, 29, 30(3)-(6), 31, 32 and 33.

Section 31(2) provides for Pt 3 (less s.10 but including Sch.1).

The remainder of the sections may come into force as a result of secretary of state order: s.31(3)-(6).

ABBREVIATIONS

“BIA”:	British-Irish Agreement (Belfast Agreement)
“CEO”:	Chief Electoral Officer
“Devolution Discussion Paper”:	Devolving Policing and Justice in Northern Ireland: a discussion paper
“DUP”:	Democratic Unionist Party
“EAA 2006”:	Electoral Administration Act 2006 (c.22)

“EFNIA 2002”:	Electoral Fraud (Northern Ireland) Act 2002 (c.13)
“Electoral Registration”:	“Electoral Registration in Northern Ireland”
“ENIO 2003”:	Energy (Northern Ireland) Order 2003 (SI 2003/419)
“IICD”:	Independent International Commission on Decommissioning
“JNIA 1978”:	Judicature (Northern Ireland) Act 1978 (c.23)
“JNIA 2002”:	Justice (Northern Ireland) Act 2002 (c.26)
“MPA”:	Multi-party Agreement (Belfast Agreement)
“NIA 1998”:	Northern Ireland Act 1998
“NIA 2006”:	Northern Ireland Act 2006
“NIADA 1997”:	Northern Ireland Arms Decommissioning Act 1997 (c.7)
“NIO”:	Northern Ireland Office
“Political Donations”:	“Political Donations in Northern Ireland”
“PPERA 2000”:	Political Parties, Elections and Referendums Act 2000 (c.41)
“RIA”:	Regulatory Impact Assessment
“RPA 1983”:	Representation of the People Act 1983 (c.2)
“SDLP”:	Social Democratic & Labour Party
“SEM”:	Single electricity market
“SOCPA 2005”:	Serious Organised Crime and Police Act 2005 (c.15)
“the Act”:	Northern Ireland (Miscellaneous Provisions) Act 2006 (c.33)
“the Bill”:	Northern Ireland (Miscellaneous Provisions) Bill (Bill 131, 175, 219 and HL Bill 110, 129, 140)
“UK”:	United Kingdom
“UUP”:	Ulster Unionist Party

PART 1

REGISTRATION OF ELECTORS

Anonymous registration

1. Power to make provision about anonymous registration

- (1) An Order in Council under section 84(1) of the 1998 Act (provision with respect to certain electoral matters relating to Northern Ireland) which contains a statement that it is made only for purposes corresponding, or similar, to those of section 10 of the Electoral Administration Act 2006 (c. 22) (anonymous registration) may make provision for Northern Ireland for such purposes in relation to-
 - (a) parliamentary elections, and
 - (b) elections in respect of the Northern Ireland Assembly, the European Parliament and district councils.
- (2) An Order made by virtue of subsection (1) may, if it appears to Her Majesty necessary or expedient for the purposes of the Order-
 - (a) amend the 1983 Act, the 2006 Act, this Act or any other Act (whenever passed) or any Northern Ireland legislation (whenever passed or made);
 - (b) confer power to make provision with respect to any matter-
 - (i) which relates to anonymous registration, and

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- (ii) with respect to which, under the 1983 Act, provision may be made by regulations;
 - (c) make transitional provision.
- (3) In this Part—
“the 1998 Act” means the Northern Ireland Act 1998 (c. 47), and
“the 1983 Act” means the Representation of the People Act 1983 (c. 2).

GENERAL NOTE

Parts 1 (registration of electors), 2 (the chief electoral officer) and 3 (donations for political purposes), containing nearly half the Act (ss.1-15), may be considered together as electoral law.

On August 5, 2005, as noted, the minister of state in the NIO, David Hanson MP, published two consultation papers, Electoral Registration and Political Donations. Reference was made, regarding the former, to a November 2004 commitment, and to the need for greater transparency regarding the latter.

Electoral Registration

In Electoral Registration, the government referred to attempts to deal with electoral fraud. Historically, the problem was personation by, principally but not exclusively, Sinn Féin.

The Elections (Northern Ireland) Act 1985 (c.2) provided for proof of identity by specified documents when voting. These included: driving licences and passports (with photographs); but also welfare documents (without photographs) A White Paper, *Combating Electoral Fraud in Northern Ireland* (Cm.5080), published in March 2001, pointed out that such documents were easily falsified. Thus, the Electoral Fraud (Northern Ireland) Act 2002 (c.13) (“EFNIA 2002”) was passed, providing for a specified list of photographic identity documents (including an electoral-ID card), with registration based upon signature, date of birth and national insurance number.

Before the EFNIA 2002, there were 1,192,136 persons on the electoral register, 94.4 per cent of those eligible. The December 2002 register, after enactment, went down to 1,072,346 persons or 85.1 per cent. “The Government believes”, reads Electoral Registration, “that the large drop in the numbers registered from the final register under the old system was in large part due to a combination of the inaccuracy resulting from the weaknesses in the household-based canvass and the withdrawal of the carry forward [where an elector stays on the register for a further 12 months without re-registration].” (p.5)

In the 2003 assembly elections, the Sinn Féin vote went down. However, it was never clear whether this was because the anti-fraud measures, regarding the register, were working or because the party’s electors found it difficult to acquire photographic identity documents (passport, driving licence or a senior smartpass).

The government proposed in Electoral Registration: (1) retaining individual registration; (2) the abolition of the annual canvass; (3) empowering the chief electoral officer to carry out a full canvass when necessary; and (4) registration up to 11 days before a poll. The explanatory notes state: “It is intended to combat a downward drift in numbers registered and the possibilities of fraud.” (Bill 131-EN para.6) But would fraud detection not lead to a downward drift in numbers?

Political Donations

In this consultation paper, the government referred to attempts to regulate donations to political parties. This was first recommended in 1998 by the standards in public life committee (then chaired by Lord Neill), in its fifth report. Donations could only be accepted from those on the electoral register (anywhere in the UK), and those of over £5,000 had to be declared. These provisions were enacted in the Political Parties, Elections and Referendums Act 2000 (c.41) (“PPERA 2000”).

Special provision was made for Northern Ireland in PERA 2002, s.70: by secretary of state order for four years at a time. In February 2001, the Northern Ireland parties were exempted from the PERA 2002 for four years. The order was renewed in February 2005, for a further two years.

The government proposed in Political Donations: (1) incorporation in the UK system from February 2007, but with a derogation permitting Irish citizens to donate; (2) alternatively, as in (1), but with the electoral commission holding information on a confidential basis.

Consultation

The government responded on both issues in the one document, as noted, on January 24, 2006 (the document bearing the previous day's date). There was no change on electoral registration. On political donations, it opted for the second option (donor confidentiality maintained by the electoral commission). This would take effect in October 2007, for three years, when, depending upon circumstances, Northern Ireland would come into line with the rest of the UK.

The Belfast Agreement

The government sought to justify its policy by reference to what it called the Good Friday agreement. The Belfast Agreement says nothing about political donations. The role of the Irish government is considerably circumscribed. The provisions on passports are considerably misunderstood. Only one MP - Lady Hermon - challenged a minister to specify the relevant paragraphs of the Belfast Agreement. Typically, a minister, David Hanson MP, said in the closing stages: "It is consistent with the Good Friday agreement to allow citizens of and businesses in the Irish Republic to donate to political parties that operate in Northern Ireland." (*Hansard*, Vol.449, col.781)

This Section

Anonymous registration - for individuals who might be at risk if their name and address was published - was only mentioned in passing in Electoral Registration. It would be provided for in what became the Electoral Administration Act 2006 (c.22) ("EAA 2006") (on July 11, 2006) (s.10). Section 10, however, was one of a handful of measures not extending to Northern Ireland (there is also provision for removal of anonymous entry). The entry comprises letters in the prescribed form and an electoral number. The registration officer applies a safety test: "would be at risk if the register contains the name of the applicant or his qualifying address."

When the government responded to consultation on January 24, 2006, it announced it would provide for anonymous registration in Northern Ireland at a future date: "The precise shape of any future scheme will need to be determined in due course. However, it will need to reflect both the differences in electoral law and practice between Northern Ireland and the rest of the United Kingdom and the particular circumstances of Northern Ireland." The explanatory notes refer to "the different registration and anti-fraud measures in Northern Ireland"; further, "it is intended that the Order will define the criteria to be applied for eligibility for anonymous registration so that only genuinely vulnerable electors will be eligible. The number of people who will be eligible is not expected to be large." (Bill 131-EN paras 27 and 29) In grand committee in the House of Lords on June 22, 2006, the minister, Lord Rooker, said: "The figure is not expected to run into tens of thousands; it may be in the hundreds or the low thousands." (*Hansard*, Vol.683, col.GC118)

The electoral commission had been strongly supportive; the political parties were at best cool on the proposal. Unionists preferred inclusion in the EAA 2006, still passing through parliament, rather than legislating, as here, for a future order in council.

The delegated powers committee (see above) raised the question of s.1(2)(b): the absence of parliamentary or assembly scrutiny of any statutory rules made under this section. The secretary of state wrote that it was his intention that any statutory rules would be subject to the affirmative resolution procedure.

Subsection (1)

This is an enabling provision. It refers to EEA 2006, s.10, enacted on July 11, 2006 for England and Wales and Scotland (but not brought into force). Clearly, the government did not wish to extend that measure to Northern Ireland. This subsection permits legislation by order in council, under s.84(1) of the NIA 1998, applying to elections (but not the franchise) and district council boundaries. The Northern Ireland law will have to correspond, or be similar, to that in the rest of the UK. It could, however, take account of differences in electoral law and practice. Anonymous registration would apply to all elections in Northern Ireland.

Subsections (2) and (3)

These permit consequential amendments.

2. Abolition of annual canvass

- (1) Amend section 10 of the 1983 Act (maintenance of registers: annual canvass) as follows.
- (2) In subsection (1), after “registration officer” insert “in Great Britain”.
- (3) After subsection (1) insert-
 - “(1A) The Chief Electoral Officer for Northern Ireland must conduct a canvass in Northern Ireland in such years as are determined in accordance with section 10ZA.”
- (4) In subsection (2)-
 - (a) for “for any year” substitute “under subsection (1) or (1A)”, and
 - (b) for “that year” substitute “the year in which it is conducted”.
- (5) In the heading, for “annual canvass” substitute “duty to conduct canvass”.

GENERAL NOTE

This is the first of four sections in the sub-part: periodical canvass etc. It amends s.10 of the Representation of the People Act 1983 (c.2) (“RPA 1983”).

Subsections (2)-(5)

These principally separate Northern Ireland from the rest of the UK; in effect, Northern Ireland is to become the site of an experiment in electoral practice. In England and Wales and Scotland, the annual canvass continues. The new s.10(1A) imposes a duty on the chief electoral officer (“CEO”) for Northern Ireland: a canvass in selected years. The new s.10ZA is provided for in s.3 below.

3. Timing of canvass

After section 10 of the 1983 Act insert-

10ZA “Northern Ireland: timing of canvass

- (1) A canvass under section 10(1A) must be conducted in-
 - (a) the year 2010, unless the Secretary of State makes an order providing that the requirement in this paragraph does not apply;
 - (b) every tenth year following 2010.
- (2) A canvass under section 10(1A) must be conducted in an intervening year if-
 - (a) on or before 15th April in that year, the Chief Electoral Officer for Northern Ireland has made a recommendation in favour of a canvass being conducted in that year for the purpose of meeting the relevant registration objectives, and
 - (b) the Secretary of State, having considered the recommendation, has notified the Chief Electoral Officer that he is satisfied that the public interest requires a canvass to be conducted for that purpose.
- (3) If no canvass under section 10(1A) is conducted before the end of 2015, a canvass must be conducted in 2016.
- (4) “Intervening year” means a year other than-
 - (a) 2010,
 - (b) every tenth year following 2010, and

- (c) if no canvass under section 10(1A) is conducted before the end of 2015, 2016.
- (5) The Secretary of State may not make an order under subsection (1)(a) unless-
 - (a) on or before 15th April 2010, the Chief Electoral Officer for Northern Ireland has made a recommendation against a canvass being conducted in the year 2010 for the purpose of meeting the relevant registration objectives, and
 - (b) the Secretary of State, having considered the recommendation, is satisfied that the public interest does not require a canvass to be conducted for that purpose.
- (6) The power to make an order under subsection (1)(a) is exercisable by statutory instrument.
- (7) No order is to be made under subsection (1)(a) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (8) “Recommendation” means a written recommendation to the Secretary of State.”

GENERAL NOTE

This adds a new section - 10ZA - to the RPA 1983. The new subs.(2) and (5) contain the powers of the secretary of state. He can overrule the CEO. New subs.(1) replaces the annual canvass with one every ten years, starting in 2010. However, the secretary of state may cancel the 2010 canvass (in which case, under subs.(3), 2016 becomes a long stop). The secretary of state needs the CEO to recommend cancelling a canvass. The CEO may decide to have a canvass in an intervening year (defined), but the secretary of state may overrule him.

There was unified opposition articulated in the House of Commons to the secretary of state being empowered to overrule the CEO.

4. The relevant registration objectives

After section 10ZA of the 1983 Act insert-

10ZB “The relevant registration objectives (Northern Ireland)

- (1) The relevant registration objectives are to secure, so far as reasonably practicable-
 - (a) that every person who is entitled to be registered in a register is registered in it,
 - (b) that no person who is not entitled to be registered in a register is registered in it, and
 - (c) that none of the required information relating to any person registered in a register is false.
- (2) But, in applying subsection (1), the registrations of the persons mentioned in section 10(3) (registrations with which a canvass is not concerned) must be disregarded.
- (3) “Register” means a register maintained by the Chief Electoral Officer for Northern Ireland under section 9.
- (4) “The required information” means the following (as appearing in the register or other records of the Chief Electoral Officer)-
 - (a) the person’s name;
 - (b) the person’s qualifying address;
 - (c) the person’s date of birth;
 - (d) subject to subsections (5) and (6), the person’s signature;

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- (e) the person's national insurance number or a statement that he does not have one.
- (5) The required information does not include the person's signature if-
 - (a) the Chief Electoral Officer has dispensed with the requirement to provide a signature, or
 - (b) other evidence of identity is required (instead of a signature) under a CORE scheme.
- (6) If under a CORE scheme other evidence is required instead of a signature, the required information includes that evidence.
- (7) "False", in relation to a signature, means that the signature is not the usual signature of, or was written by a person other than, the person whose signature it purports to be.
- (8) "CORE scheme" has the same meaning as in Part 1 of the Electoral Administration Act 2006."

GENERAL NOTE

This adds a new section - 10ZB - to the RPA 1983. Registration objectives are not provided for in England and Wales or Scotland.

The objectives are stated in new subs.(1). They embrace universality but also protection against electoral fraud. False signature has had to be defined in new subs.(7). New subs.(4) re-enacts the existing registration requirements. New subs.(5), (6) and (8) refer to a CORE scheme. CORE stands for co-ordinated on-line record of electors. It is provided for in Pt 1 of the EAA 2006. The electoral commission is likely to be designated as the CORE keeper.

5. Publication and alteration of registers

- (1) In section 13 of the 1983 Act (publication of registers), for subsection (1) substitute-
 - "(1) Each registration officer must for each year publish a revised version of his registers-
 - (a) if there is a canvass in his area in that year, during the period starting with the end of the canvass in that year and ending with 1st December in that year or such later date as may be prescribed, or
 - (b) if (in Northern Ireland) there is no canvass in that year, on 1st December in that year or by such later date as may be prescribed."
- (2) In section 13A of the 1983 Act (alteration of registers), in subsection (3)(b), for "section 13(1)" substitute "section 13(1)(a)".

GENERAL NOTE

This section continues the theme of s.2: the separate treatment of Northern Ireland. It amends ss.13 and 13A of the RPA 1983. New subs.(1) envisages a register being published each year. The deadline is December 1 (or such later date as may be prescribed by regulations under the RPA 1983). The same provision applies in Northern Ireland.

*Alteration of registers: pending elections***6. Alteration of registers: pending elections**

- (1) In section 13B of the 1983 Act (alteration of registers: pending elections), in subsection (4)-
 - (a) at the end of paragraph (a), insert “in England, Wales or Scotland”,
 - (b) in paragraph (b), after “elections” insert “in England, Wales or Scotland”,
 - (c) at the end of paragraph (d), insert “and”, and
 - (d) omit paragraph (e).
- (2) After section 13B of the 1983 Act insert-

13BA “Alteration of registers in Northern Ireland: pending elections

- (1) An alteration in a published version of a register of electors which takes effect under section 13A(2) after the final nomination day in the case of an election to which this section applies is of no effect for the purposes of that election unless the alteration-
 - (a) is made in consequence of a decision or determination falling within section 13A(1)(c) or (d), and
 - (b) takes effect on or before the fifth day before the date of the poll.
- (2) Subsection (3) applies if-
 - (a) at any time before the appropriate publication date in the case of an election to which this section applies, section 13A applies to the Chief Electoral Officer for Northern Ireland (by virtue of section 13A(1)) in connection with a determination or requirement falling within section 13A(1)(a) or (b), and
 - (b) no alteration made in consequence of that determination or requirement-
 - (i) has already taken effect, or
 - (ii) is due to take effect,
 under section 13A(2) on or before the final nomination day.
- (3) If, no later than the prescribed date, the Chief Electoral Officer is supplied with such additional material supporting the alteration as is prescribed, he must, on the appropriate publication date, issue a notice specifying the appropriate alteration in the register.
- (4) But a person whose entitlement to vote at an election results from an alteration under subsection (3)-
 - (a) is not entitled as an elector to an absent vote at that election, and
 - (b) must not be shown in the absent voters list kept for that election under-
 - (i) section 7 of the Representation of the People Act 1985, or
 - (ii) regulation 9 of the European Parliamentary Elections (Northern Ireland) Regulations 2004.
- (5) Subsection (6) applies if-

- (a) at any time before the appropriate publication date in the case of an election to which this section applies, section 13A applies to the Chief Electoral Officer for Northern Ireland (by virtue of section 13A(1)) in connection with a decision or determination falling within section 13A(1)(c) or (d), and
 - (b) no alteration made in consequence of that decision or determination-
 - (i) has already taken effect, or
 - (ii) is due to take effect,under section 13A(2) on or before the fifth day before the date of the poll.
- (6) The Chief Electoral Officer must, on the appropriate publication date, issue a notice specifying the appropriate alteration in the register.
- (7) Subsection (9) applies if-
- (a) at any time on or after the appropriate publication date in the case of an election to which this section applies but before the prescribed time on the day of the poll, section 13A applies to the Chief Electoral Officer for Northern Ireland (by virtue of section 13A(1)), in connection with a notification mentioned in section 13A(1)(c), and
 - (b) in consequence of the notification-
 - (i) an entry relating to that person falls to be made in the register in respect of an address in the relevant election area, or
 - (ii) his entry in the register needs to be altered.
- (8) Subsection (9) also applies if-
- (a) at any time on or after the appropriate publication date in the case of an election to which this section applies but before the prescribed time on the day of the poll, section 13A applies to the Chief Electoral Officer for Northern Ireland (by virtue of section 13A(1)), in connection with a determination falling within section 13A(1)(d),
 - (b) the determination was made following a representation made by or on behalf of a person to the Chief Electoral Officer, and
 - (c) in consequence of the determination-
 - (i) an entry relating to that person falls to be made in the register in respect of an address in the relevant election area, or
 - (ii) his entry in the register needs to be altered.
- (9) The Chief Electoral Officer must, when-
- (a) he receives the notification referred to in subsection (7), or
 - (b) he makes the determination referred to in subsection (8),
- issue a notice specifying the appropriate alteration in the register.
- (10) In subsection (8)(b), “representation” means a representation made in accordance with prescribed requirements to the effect that the register contains a clerical error.
- (11) A notice under subsection (3), (6) or (9)-
- (a) is to be issued in the prescribed manner, and
 - (b) takes effect from the beginning of the day on which it is issued.
- (12) This section applies to-
- (a) parliamentary elections in Northern Ireland,

- (b) elections in Northern Ireland to the European Parliament, and
 - (c) elections to the Northern Ireland Assembly.
- (13) Subsections (5) and (6) of section 13B apply for the purposes of this section as they apply for the purposes of that section.”

GENERAL NOTE

This is the only section in the second sub-part: alteration of registers: pending elections. It continues the theme of ss.2 and 5: separate treatment for Northern Ireland. It amends s.13B of the RPA 1983, and adds a new s.13BA. These have the effect of permitting late registration, a shift from the close of nominations to - depending upon regulations to be made - eleven days before the poll.

Subsection (1)

This subsection separates Northern Ireland from the rest of the UK.

Subsections (2)

This adds the new s.13BA to the RPA 1983. New subs.(12) states to which elections the section applies. New subs.(1) states the rule: alteration of a published register is permitted after final nomination day if, one, there is a decision or determination and, two, on or before the fifth day before polling. The appropriate publication date in new subss.(2) and (3) is either the sixth or fifth day before the poll. This refers to alterations before the final nomination day (the prescribed date). New subs.(4) excludes absent, or postal, votes. New subss.(5) and (6) are in similar terms to new subss.(2) and (3), but dealing with fifth day before polling. New subss.(7)-(9) refer to changes of address. New subss.(8)(b) and (10) refer to clerical errors only.

Data collection

7. Data collection

- (1) Amend Schedule 2 to the 1983 Act (provisions which may be contained in regulations as to registration etc.) as follows.
- (2) For paragraph 1(4A) and (4B) substitute-
 - “(4A) Provision authorising or requiring any such authority or person, for the purpose mentioned in sub-paragraph (4B), to provide the Chief Electoral Officer for Northern Ireland, at such times or in such circumstances as may be prescribed, with information contained in such records.
 - (4B) The purpose is assisting the Chief Electoral Officer to meet the relevant registration objectives, and, in particular, assisting him-
 - (a) to ascertain to what extent the relevant registration objectives are being met;
 - (b) to determine what steps should be taken for meeting those objectives.”
- (3) After paragraph 1(5) insert-
 - “(6) But provision made under sub-paragraph (4A) may not permit information obtained under those provisions to be disclosed to a third party except-
 - (a) for the purpose mentioned in sub-paragraph (4B);
 - (b) for the purposes of any criminal or civil proceedings.
 - (7) In sub-paragraph (4B) “the relevant registration objectives” has the meaning given by section 10ZB.

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- (8) In sub-paragraph (6) “third party” means a person other than a person to whom the Chief Electoral Officer for Northern Ireland may delegate his functions.”
- (4) After paragraph 11A(1) insert-
“(1A) Sub-paragraph (1) is subject to paragraph 1(6).”
- (5) After paragraph 13(1) insert-
“(1ZA) Provisions making it an offence (punishable on summary conviction by a fine not exceeding level 5 on the standard scale) for a person to disclose information in contravention of paragraph 1(6).”

GENERAL NOTE

This is the only section in this sub-part: data collection.

It amends Sch.2 of the RPA 1983, regarding provisions that may be contained in regulations as to registration. New para.1(4B) refers back to s.4 above, as is clear from new para.1(7).

PART 2

THE CHIEF ELECTORAL OFFICER

8. Tenure

- (1) The Chief Electoral Officer-
 - (a) is appointed by the Secretary of State, and
 - (b) subject to what follows, holds office in accordance with the terms of his appointment (or re-appointment).
- (2) A person must not be appointed as Chief Electoral Officer for more than 5 years at a time.
- (3) The period for which a person holds office as Chief Electoral Officer must not exceed 10 years.
- (4) The Chief Electoral Officer may resign by notice in writing to the Secretary of State.
- (5) The Secretary of State may dismiss the Chief Electoral Officer if satisfied that-
 - (a) he has without reasonable excuse failed to discharge his functions for a continuous period of 3 months beginning not earlier than 6 months before the day of dismissal,
 - (b) he has been convicted of an offence,
 - (c) a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or granted a trust deed for, his creditors, or
 - (d) he is unable or unfit to carry out his functions.
- (6) This section applies in relation to the person who at commencement holds the office of Chief Electoral Officer as if-
 - (a) subsection (2) required his appointment to end no later than 5 years after commencement, and
 - (b) the total period which under subsection (3) must not be exceeded were 10 years plus the period of his appointment before commencement.
- (7) “Commencement” means the commencement of this section.
- (8) In this Part “Chief Electoral Officer” has the meaning given by section 14(1) of the Electoral Law Act (Northern Ireland) 1962 (c. 14 (N.I)).

GENERAL NOTE

This is the first of two sections in this part: the chief electoral officer. The CEO occupies an existing post, and is a statutory office holder: Electoral Law Act (Northern Ireland) 1962 (c.14). This part amends the statutory terms and conditions, to, according to the explanatory notes, bring them into line with the standard terms. It does not establish the office. In standing committee B on April 25, 2006, the minister, David Hanson MP, said: “The wording of the clause will preserve the current position; in essence, the chief electoral officer will still be a Crown appointment.” (*Hansard*, col.5)

Subsections (2) and (3)

These limit appointment to ten years, comprising at most two five years’ appointments.

Subsection (5)

These are increasingly standard provisions for public appointments: see for example, NIA 1998, Sch.7 para.2(4). The government insisted that “criminal” did not need to be added to “offence”, given the reference to “convicted”.

Subsections (6) and (7)

These apply the provisions of this section to the existing office holder. This section is to be commenced by order of the secretary of state. There is an interesting relationship between statute and, what may be called, deemed contract (referred to arguably in subs.(1)(b)). The existing office holder gets a maximum of ten years plus the period in office before commencement; similarly for the five years’ appointment. The existing officer holder is not having any of his deemed contractual terms shortened.

In fact, Denis Stanley had recently retired as chief electoral officer. A new one was being appointed. These subsections would only apply if the new CEO was appointed before Royal Assent. The explanatory notes indicate that all candidates for the post have been informed about the provisions in the Bill; this eliminates the possibility of legitimate expectation of appointment on the old terms.

9. Annual reports

- (1) The Chief Electoral Officer must each year-
 - (a) prepare a report on how he has discharged his functions in the year to which the report relates, and
 - (b) send a copy of the report to the Secretary of State by such date as the Secretary of State directs.
- (2) The report must include an assessment of the extent to which the relevant registration objectives in Northern Ireland have been met in the year to which the report relates.
- (3) “The relevant registration objectives” has the meaning given by section 10ZB of the Representation of the People Act 1983 (c. 2).
- (4) The Secretary of State must lay a copy of the report before each House of Parliament.

GENERAL NOTE

Again, this section further specifies the post of CEO. An annual report is increasingly a normal requirement: see for example, NIA 1998, Sch.7 para.5. However, this section refers back to the registration objectives provided for in s.4 above.

PART 3

DONATIONS FOR POLITICAL PURPOSES

10. Introduction

- (1) In this Part-
“the 2000 Act” means the Political Parties, Elections and Referendums Act 2000 (c. 41), and
“the 1983 Act” means the Representation of the People Act 1983.
- (2) In this Part-
 - (a) section 11 comes into force at the end of the period of two months beginning with the day on which this Act is passed,
 - (b) sections 12 to 14 and Schedule 1 come into force on 1st November 2007, and
 - (c) section 15 comes into force at the end of the period of two months beginning with the day on which this Act is passed.

GENERAL NOTE

This is the first of six sections in the third part: donations for political purposes. Four scenarios are envisaged: first, the status quo of no regulation in Northern Ireland, despite the PPERA 2000 applying in England and Wales and Scotland since 2000; second, a final disapplication period ending on October 31, 2007; third, special treatment for Northern Ireland for three years, ending on October 31, 2010; and fourth, the possible extension of the existing law to Northern Ireland after the latter date (but with continuing special provision for the ROI).

Part IV (ss.50-71) of the PPERA 2000 deals with the control of donations to registered parties and their members etc. There are five chapters. The first chapter deals with the definition of donations. The second chapter develops the concept of permissible donors. The third chapter is: reporting by political parties. The fourth chapter concerns Northern Ireland. And the fifth chapter deals with the control of donations to individual and member associations.

Section 70 (the whole of Ch.IV) empowered the secretary of state, by order, to disapply the PPERA 2000 as regards Northern Ireland parties. However, it also permitted the extension of the categories of permissible donors.

On February 16, 2001, the following order came into force: The Political Parties, Elections and Referendums Act 2000 (Disapplication of Part IV for Northern Ireland Parties, etc.) Order 2001 (SI 2001/446). It was due to run until February 16, 2005. On May 6, 2004, the minister (John Spellar MP), in a written ministerial statement, stated the government was minded to let the order expire; he continued: “However, the Government are fully aware of the special circumstances that exist in Northern Ireland both as regards the continuing fear of intimidation of donors and Ireland’s special role in Northern Ireland’s political life, as set out in the Belfast Agreement. Any new arrangements, therefore, will have to take these important issues into account.” (*Hansard*, Vol.420, col.84WS) On November 18, 2004, the same minister backtracked, agreeing to a further two years (and no longer!): “It is clear that concerns about intimidation remain across the community. And there is a range of complex technical issues that will need to be fully worked through with the Irish Government before we are in a position to legislate in a way that takes account of the particular role of the Irish Republic in the political life of the Northern Ireland. The Northern Ireland parties will also need some time to adjust to any new arrangements.” (*Hansard*, Vol.426, col.104WS) On February 16, 2005, the following order came into force: The Political Parties, Elections and Referendums Act 2000 (Disapplication of Part IV for Northern Ireland Parties, etc.) Order 2005 (SI 2005/299). It was due to run until February 16, 2007.

Subsection (2)

This subsection deals with commencement. These provisions could have been contained in s.31 (which governs this section). However, they are placed here to show the structure of Pt 3 of the Act. Sections 11 and 15 come into force on September 25, 2006. Sections 12-14 and Sch.1 come into force on November 1, 2007.

11. Part 4 of the 2000 Act: the final disapplication period

- (1) Sections 50 to 69 of, and Schedule 6 to, the 2000 Act (donations to political parties) do not apply in relation to any Northern Ireland party during the final disapplication period.
- (2) “The final disapplication period” means the period-
 - (a) starting with the day on which this section comes into force, and
 - (b) ending with 31st October 2007.
- (3) Paragraphs 2 to 15 of Schedule 7 to the 2000 Act (donations to individuals and members associations) do not apply during the final disapplication period in relation to any regulated donee who is-
 - (a) an individual ordinarily resident in Northern Ireland, or
 - (b) a members association wholly or mainly consisting of members of a Northern Ireland party.
- (4) Section 54(2)(c) of the 2000 Act has effect in relation to any donation received during the final disapplication period by-
 - (a) a Great Britain party, or
 - (b) a regulated donee who is resident or carries on activities in Great Britain,

as if it referred to a Great Britain party only.

- (5) References in Schedule 2A to the 1983 Act to a permissible donor falling within section 54(2) are to be read, in relation to any donation received during the final disapplication period by a candidate at an election in Great Britain, as not including a Northern Ireland party.
- (6) In this section-

“Great Britain party” means a party registered in the Great Britain register (as defined by section 23(2) of the 2000 Act),

“Northern Ireland party” means a party registered in the Northern Ireland register (as defined by that section), and

“regulated donee” and “members association” have the same meaning as in Schedule 7 to the 2000 Act.
- (7) The reference in subsection (4)(b) to Great Britain includes the combined region (as defined by section 160(1) of the 2000 Act).
- (8) The following provisions cease to have effect-
 - (a) in the 2000 Act-
 - (i) section 42(5),
 - (ii) Chapter 4 of Part 4,
 - (iii) section 156(4)(d),
 - (iv) in Schedule 7, paragraphs 1(10) and (11) and 16, and
 - (b) in Schedule 2A to the 1983 Act, paragraph 1(7).
- (9) In section 159A(a) of the 2000 Act (functions that are not exercisable by Lord Chancellor as well as by Secretary of State), for “, 18(2) and (4) and 70” substitute “and 18(2) and (4)”.

GENERAL NOTE

This section does what the 2001 and 2005 orders did: exempts Northern Ireland from Pt IV of the PPERA 2000. It may refer to a final disapplication period. However, a statute cannot preclude its own amendment. Nevertheless, Pt IV of the PPERA 2000 is to be repealed.

Subsection (2)

The final disapplication period is from a date to be determined by secretary of state order (probably February 16, 2007), under s.10(2), to October 31, 2007.

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Subsections (1) and (3)

These repeat provisions of the 2001 and 2005 orders.

Subsection (4)

Section 54(2)(c) of the PPERA 2000 refers to a registered party as a permissible donor. This subsection prevents Northern Ireland parties making donations to parties registered in Great Britain. This subsection replaces para.1(10) of Sch.7 of the PPERA 2000, to be repealed by subs.(8) below.

Subsection (5)

This has a similar effect to subs.(4). This subsection replaces para.1(11) of Sch.7 of the PPERA 2000, to be repealed by subs.(8) below.

Subsections (6) and (7)

These are definitional. Great Britain is not defined in s.160(1) of the PPERA 2000. There is, however, a definition of Great Britain register, referring back to s.23(2)(a).

Subsection (8)

This subsection repeals provisions of the PPERA 2000 when this section comes into force. Chapter IV of Pt IV is, of course, the Northern Ireland exemption. Paragraph 16 of Sch.7 of the PPERA 2000 falls away with s.70.

12. Extension of categories of permissible donors

In Part 4 of the 2000 Act, after Chapter 5 insert-

CHAPTER 6

“SPECIAL PROVISION IN CONNECTION WITH NORTHERN IRELAND

71A Introduction

- (1) The following provisions have effect for the interpretation of this Chapter.
- (2) “Northern Ireland recipient” means-
 - (a) a party registered in the Northern Ireland register, or
 - (b) a regulated donee who is-
 - (i) an individual ordinarily resident in Northern Ireland, or
 - (ii) a members association wholly or mainly consisting of members of a Northern Ireland party.
- (3) “Regulated donee” and “members association” have the same meaning as in Schedule 7.
- (4) “Prescribed” means prescribed by an order made by the Secretary of State after consulting the Commission.

71B Extension of categories of permissible donors in relation to Northern Ireland recipients

- (1) In relation to a donation to a Northern Ireland recipient, section 54(2) has effect as if the following were also permissible donors-
 - (a) an Irish citizen in relation to whom any prescribed conditions are met;
 - (b) a body which is of a prescribed description or category and in relation to which any prescribed conditions are met.
- (2) A description or category of body must not be prescribed for the purposes of subsection (1)(b) unless the Secretary of State is

- satisfied that a body of that description or category would be entitled under Irish law to donate to an Irish political party.
- (3) In relation to a donation in the form of a bequest subsection (1)(a) is to be read as referring to an individual-
- (a) who at any time within the period of five years ending with the date of his death was an Irish citizen, and
 - (b) in relation to whom, at the time of his death, any prescribed conditions were met.

71C Northern Ireland recipients not permissible donors in relation to Great Britain

- (1) In relation to a donation received by-
 - (a) a registered party which is registered in the Great Britain register, or
 - (b) a regulated donee resident or carrying on activities in Great Britain,
 section 54(2) has effect as if it did not include a party registered in the Northern Ireland register.
- (2) The reference in subsection (1)(b) to Great Britain includes the combined region.”

GENERAL NOTE

This section continues to treat Northern Ireland differently, albeit in a different way. Simple exemption in 2001 (February 16) to 2007 (October 31) gives way to the other option in the original s.70 of the PPERA 2000: extending the categories of permissible donors, albeit for such period as specified in an order. In the PPERA 2000, this provision was considered only temporary; here, it is effectively permanent.

Section 54 of the PPERA 2000 (permissible donors), which applies throughout the UK (s.163(8)-(10)), takes effect as follows: parties registered by the electoral commission, a UK body (with ss.22 and 23 distinguishing the Great Britain register and the Northern Ireland register); a UK-wide party having to separate its financial affairs (s.23); a finite list of permissible donors, beginning with “an individual registered in an electoral register” (meaning throughout the UK) and including also “a registered party”.

This section adds a new chapter - 6 - to Pt IV of the PPERA 2000 (Ch.4 of course being repealed by s.11(8) above) (and the roman numerals of the 2000 Act being replaced by the arabic numerals of this Act). This new Ch.6 comprises ss.71A to 71C.

New s.71A of the PPERA 2000 is definitional. Section 54 of that act deals with registered parties. But s.71, introducing Sch.7, extends donations to: individual members; associations of such members; and certain elected office holders (Sch.7 re-enacting the main provisions of Pt IV). Thus, the concepts of registered parties and regulated donees. New s.71A combines these two concepts as “Northern Ireland recipient[s]”.

New s.71B extends the permissible donors permitted regarding Northern Ireland (who comprise mainly registered UK electors): Irish citizens (throughout the rest of the world); and prescribed bodies (similar to those permitted by Irish law applying in the ROI). The explanatory notes state: “The power to prescribe conditions in relation to Irish donors will have a dual purpose; to allow the donations controls to keep pace with any changes to Irish law, without the need for primary legislation; and to ensure that criteria can be set that allow the Electoral Commission to check that donations from Irish donors are permissible” (Bill 131-EN para.64).

The principle of the PPERA 2000, enacted at Westminster, was to ban foreign donations. A donor has to be on the electoral register anywhere in the UK. When the government decided to treat Northern Ireland differently, for reasons that were never entirely clear, and permit donations from the ROI (a foreign state), it breached its own principle. Furthermore, it opened up the possibility of foreign donations, from many countries, through Irish citizens, as defined in Irish law, into the ROI and on to Northern Ireland, part of the UK. In standing committee B on April 25, 2006, the minister, David Hanson MP, said: “I would not expect there to be any situation whereby under Irish law and British law foreign individuals could subvert British Government legislation to secure donations to British political parties operating in Great Britain and/or Northern Ire-

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land ... money cannot be laundered through the Irish Government and Irish political parties or individuals to support British political parties or Northern Ireland political parties, because that would be illegal under United Kingdom legislation” (*Hansard*, cols.35 and 37) The minister had the power to secure the banning of foreign donations in UK law. But, when he deferred to the ROI, and its different law on political donations, he permitted the very subversion he was denying as a possibility. There was an implied admission by the minister in the House of Lords, Lord Rooker, who said in Grand Committee on June 22, 2006: “It is true that we probably all need something that I have not myself gone through - a seminar and a lesson on the rules in detail as they operate in the Irish Republic. Obviously, it is an independent sovereign state, and citizenship rules are different from ours. But a brass plate or shelf company ... could not be set up for channelling purposes through. On the other hand, there are a lot of Irish citizens around the world.” (*Hansard*, Vol.683, col.GC138) David Hanson MP had refused to admit the latter; Lord Rooker was being characteristically straightforward.

No minister, MP or peer attempted to quote the Irish law. It is s.23(a)(2) of the Electoral Act, 1997 (number 25 of 1997), as inserted by s.49 of the Electoral (Amendment) Act, 2001 (number 38 of 2001). Permissible donors are: Irish citizens (anywhere in the world); and bodies corporate or unincorporated. Strangely, the Irish legislature enacted extra-territorially (because of the citizenship concept) referring to “the island of Ireland”.

Section 71B(2) of the EEPRA 2000 is problematic. Its extent is Northern Ireland. However, it refers to the secretary of state applying an Irish law test: “entitled under Irish law to donate to an Irish political party”. But that Irish law purports to provide for Northern Ireland, for Irish citizens there and also bodies corporate and unincorporated. Which law will the secretary of state effectively apply: Northern Ireland law or Irish law? And if the later, how much?

New s.71C prevents any spill over to Great Britain. Section 54 of the PPERA 2000 permitted a registered party (including in Northern Ireland) donating to a registered party in Great Britain or to an individual member, associations of members or certain elected office holders. New s.71C effectively amends s.54(2)(c) to exclude Northern Ireland registered parties.

13. Section 12: supplementary

- (1) In section 156(4) of the 2000 Act (orders and regulations-powers subject to affirmative procedure), after paragraph (c) insert-
“(ca) any provision of Chapter 6 of Part 4;”.
- (2) In section 159A(a) of the 2000 Act (functions that are not exercisable by Lord Chancellor as well as by Secretary of State), for “and 18(2) and (4)” substitute “, 18(2) and (4) and Chapter 6 of Part 4”.
- (3) In Schedule 2A to the 1983 Act (control of donations to candidates), after paragraph 1(6) insert-
“(6A) In relation to a donation received by a candidate at an election in Great Britain, references to a permissible donor falling within section 54(2) of the 2000 Act are to be read as if section 54(2) did not include a party registered in the Northern Ireland register maintained by the Commission under Part 2 of that Act.”

GENERAL NOTE

These are consequential amendments.

14. Modifications during prescribed period

- (1) During the prescribed period, the 2000 Act applies in relation to Northern Ireland subject to the modifications in Schedule 1.
- (2) “The prescribed period” means the period-
 - (a) starting with 1st November 2007, and

- (b) ending with 31st October 2010.
- (3) The Secretary of State may by order amend paragraph (b) of subsection (2) so as to extend the prescribed period.
- (4) The power to make an order under subsection (3) may be exercised on more than one occasion, but the prescribed period must not be extended for more than 2 years at a time.
- (5) The power to make an order under subsection (3) is exercisable by statutory instrument.
- (6) No order is to be made under subsection (3) unless a draft of the instrument containing the order has been laid before and approved by a resolution of each House of Parliament.

GENERAL NOTE

This section introduces Sch.1: modifications of 2000 Act (that is, the PPERA 2000). The prescribed period - provided for in ss.12 and 13 above - from November 1, 2007 (following the end of the final disapplication period provided for in s.11 above) is here limited to three years. This is the effect of subs.(2). However, subss.(3) and (4) permit the secretary of state to extend endlessly two years at a time. Lady Hermon MP sought unsuccessfully to remove subs.(3) in Standing Committee B on April 25, 2006.

15. Power to make provision in connection with permissible donors

- (1) The Secretary of State may, after consulting the Electoral Commission, by order make provision, in relation to any time occurring on or after 1st November 2007, in connection with the provision made by-
 - (a) sections 12 and 13, or
 - (b) section 14 and Schedule 1.
- (2) The provision that may be made under subsection (1) includes provision amending or modifying-
 - (a) any provision of the 2000 Act;
 - (b) Schedule 2A to the 1983 Act;
 - (c) any other enactment connected with permissible donors or donations for political purposes.
- (3) The provision that may be made under subsection (1) also includes provision amending-
 - (a) section 71C of the 2000 Act (as inserted by section 12), and
 - (b) paragraph 1(6A) of Schedule 2A to the 1983 Act (as inserted by section 13),
 so that they refer to a Northern Ireland recipient instead of referring to a party registered in the Northern Ireland register.
 - (4) The power to make an order under subsection (1) is exercisable by statutory instrument.
 - (5) No order is to be made under subsection (1) unless a draft of the instrument containing the order has been laid before and approved by a resolution of each House of Parliament.

GENERAL NOTE

This section empowers the secretary of state regarding the prescribed period of three years from November 1, 2007, extendable two years at a time. He may make provisions regarding permissible donors in connection with Northern Ireland. The powers are extremely widely drawn, and permit the secretary of state to extend the ban from registered parties in Northern Ireland to Northern Ireland recipients.

PART 4

DEVOLUTION OF POLICING AND JUSTICE ETC

16. Conditions for devolving policing and justice matters

- (1) Amend section 4 of the 1998 Act (transferred, excepted and reserved matters) as follows.
- (2) In subsection (2), for “subsection (3)” substitute “subsections (2A) and (3)”.
- (3) After subsection (2) insert-
 - “(2A) The Secretary of State shall not lay before Parliament under subsection (2) the draft of an Order amending Schedule 3 so that a devolved policing and justice matter ceases to be a reserved matter unless-
 - (a) a motion for a resolution praying that the matter should cease to be a reserved matter is tabled by the First Minister and the deputy First Minister acting jointly; and
 - (b) the resolution is passed by the Assembly with the support of a majority of the members voting on the motion, a majority of the designated Nationalists voting and a majority of the designated Unionists voting.”
- (4) In subsection (3), for “the draft of an Order before Parliament under subsection (2)” substitute “before Parliament under subsection (2) the draft of any other Order”.
- (5) After subsection (5) insert-
 - “(6) In this section “devolved policing and justice matter” means a matter falling within a description specified in-
 - (a) any of paragraphs 9 to 12, 14A to 15A and 17 of Schedule 3; or
 - (b) any other provision of that Schedule designated for this purpose by an order made by the Secretary of State.”
- (6) In this Part “the 1998 Act” means the Northern Ireland Act 1998 (c. 47).

GENERAL NOTE

This is the first of five sections in Pt 4: devolution of policing and justice etc. These are the most important sections of this Act. The point has been made above that this is only enabling legislation. This section was introduced by the government, as a new clause but with government amendments, at the consideration stage in the House of Commons on May 17, 2006: ministers claimed it provided for a triple lock.

This section amends s.4 of the NIA 1998: transferred, excepted and reserved matters. Excepted matters are listed in Sch.2. Reserved matters are listed in Sch.3. Excepted matters remain excepted. Transferred and reserved matters are interchangeable, meaning London may devolve powers or Belfast may give up powers. Listing or delisting in Sch.3 achieves this. The mechanism is an order in council laid by the secretary of state. A condition precedent, under s.4(3), is a resolution of the Northern Ireland assembly, with cross-community support.

Before this section, there were the following conditions: (1) a cross-community vote of the Northern Ireland assembly (NIA 1998, s.4(3)); (2) a decision of the secretary of state (s.4(2)); and (3) an order in council passed by parliament (s.4(2)). This section simply expands condition (1): a motion by the first minister and deputy first minister (which was surely implied); and only the option of a majority of unionists and a majority of nationalists - parallel consent.

The delegated powers committee (see above) advised that the power in s.16(5) should be positive and not negative. The secretary of state undertook to table an amendment. This was done.

Subsections (2)-(4)

These add a new subs.(2A) to s.4 of the NIA 1998. The effect is to add a new condition: the first minister and deputy first minister must table the resolution in the Northern Ireland assembly. This is more symbolic than real. The key condition remains the cross-community vote (which would not be achieved if the first minister and deputy first minister did not agree). New subs.(2A) is particular to policing and justice devolution. The phrase “devolved policing and justice matter ceases to be a reserved matter” is strange: the function is either reserved or transferred (there being no reference to devolution in s.4 of the NIA 1998). Most likely, this represents an intrusion of Sinn Féin rhetoric into legislation. The spelling out of cross-community vote is not superfluous, given that there are two definitions of cross-community support in s.4(5) of the NIA 1998. Section 4(2) of the NIA 1998, as amended, provides for all other transferred/reserved matters. This is clear from the amended s.4(3).

Subsection (5)

This defines the phrase “devolved policing and justice matter”. The matters in Sch.3 to be devolved are specified by paragraph, though the secretary of state may designate further by order.

The functions are discussed in the Devolution Discussion Paper as follows: criminal law and creation of offences & penalties (para.9(a) and (b)); prevention and detection of crime (para.9(c)); prosecutions (para.9(d)); treatment of offenders (para.9(e)); compensation (para.9(g)); community safety partnerships (para.9(h)); chief inspector of criminal justice (para.9A); public order (para.10); police and police accountability framework (para.11); firearms & explosives (para.12); the courts (paras 14A, 15 and 17); Northern Ireland law commission (para.15A). Missing from this list is para.9(f): the surrender of fugitive offenders between Northern Ireland and the ROI. The reason is given on p.45: this extradition was a reserved matter in 1998, because of the absence of an international agreement, but with the Extradition Act 2003 (c.41), as a result of the European arrest warrant, this relationship is now regulated generally: “The Government believes that it is appropriate to continue to retain a single legislative framework for extradition arrangements throughout the UK, and does not propose to devolve legislative competence in this area to the Assembly. However, there will be some specific administrative functions relating to extradition which could be exercised by Northern Ireland Ministers (for example, the designation of an appropriate judge to hear cases and issues associated with legal aid)” (p.45)

The reference to para.9 includes para.9(f). Extradition is provided for further in s.19 below.

17. Department with policing and justice functions

(1) After section 21 of the 1998 Act insert-

21A “Northern Ireland department with policing and justice functions

- (1) This section applies if an Act of the Assembly-
 - (a) establishes a new Northern Ireland department; and
 - (b) provides that the purpose of the department is to exercise functions consisting wholly or mainly of devolved policing and justice functions.
- (2) The Act of the Assembly may (but need not) make provision of the kind mentioned in subsection (3), (4) or (5).
- (3) The Act may provide for the department to be in the charge of a Northern Ireland Minister appointed by virtue of a nomination-
 - (a) made by the First Minister and the deputy First Minister acting jointly; and
 - (b) approved by a resolution of the Assembly passed with the support of a majority of the members voting on the motion for the resolution, a majority of the designated Nationalists voting and a majority of the designated Unionists voting.

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- (4) The Act may provide for the department to be in the charge of two Northern Ireland Ministers acting jointly.
 - (5) The Act may provide-
 - (a) for the department to be in the charge of a Northern Ireland Minister who is supported by a junior Minister; and
 - (b) for the persons holding those offices to rotate at intervals determined by or under the Act, so that the person who was the Minister in charge of the department becomes the junior Minister and the person who was the junior Minister becomes the Minister.
 - (6) There must not, at any time, be more than one department in relation to which provision of the kind mentioned in any of subsections (3), (4) and (5) is made by Act of the Assembly.
 - (7) Schedule 4A (provisions relating to a department with devolved policing and justice functions) shall have effect.
 - (8) In this section “devolved policing and justice function” means a function relating to a matter which-
 - (a) is a transferred matter by virtue of an Order under section 4; and
 - (b) immediately before the matter became a transferred matter, was a devolved policing and justice matter (within the meaning given by section 4(6)).”
- (2) After Schedule 4 to the 1998 Act insert the Schedule 4A set out in Schedule 2 to this Act.

GENERAL NOTE

This sections adds a new s.21A to the NIA 1998 and introduces Sch.2 (a new Sch.4A to the NIA 1998). Section 21 is: Northern Ireland departments. This empowered the assembly to create new departments or dissolve existing ones. It provided, according to the government, only for departments under single ministers.

Subsection (1)

This adds the new s.21A to the NIA 1998. It would appear to pre-judge the matter, opting for one department (and not two). However, as is clear from new subs.(1)(a), the assembly has the power under s.21 of the NIA 1998 to legislate for two departments. New subs.(2) provides further that it is a devolved matter. New subss.(3)-(5), providing for a single minister, two ministers or a senior and junior minister rotating, have the character of legislative recommendations. But new subs.(6) limits the legislative competence of the assembly to one department. Query whether this is only in the context of subss.(3)-(5)? New subs.(7) gives effect to new Sch.4A. New subs.(8), which uses the word function, refers back to the definition of devolved policing and justice matter in s.16(5) above (to become s.4(6) of the NIA 1998). This makes clear that there are three stages: a reserved matter; a devolved policing and justice matter (which has not in fact been devolved but only enabled); and a devolved matter.

Subsection (2)

Effect has been given already - in subs.(1) - to new Sch.4A (of the NIA 1998), but only when subs.(1) comes into force. This subsection inserts that Sch.4A in the NIA 1998.

18. Power of Assembly to call for witnesses and documents

In section 44 of the 1998 Act (power to call for witnesses and documents), after subsection (4) insert-

- “(4A) That power is not exercisable in relation to a person mentioned in subsection (4) in connection with the discharge, during a relevant period, of a function which relates to a

matter which is a transferred matter by virtue of an Order under section 4.

For this purpose “relevant period” means a period when the matter was not a transferred matter.

- (4B) That power is not exercisable in relation to a person mentioned in subsection (4) in connection with the discharge, during a relevant period, of a statutory function which-
- (a) is exercisable by a Minister or a Northern Ireland department; but
 - (b) was at any time exercisable by a Minister of the Crown.

For this purpose “relevant period” means a period when the statutory function was exercisable by a Minister of the Crown.”

GENERAL NOTE

This section adds new subs.(4A) and (4B) to s.44 of the NIA 1998: power to call for witnesses and documents. Subsection (4) excludes former or existing ministers of the crown or officials in crown employment (defined), exercising functions prior to devolution on December 2, 1999. New subs.(4A) and (4B) provide similarly for devolved policing and justice matters (as defined), effectively a reserved matter which has been listed in s.16(5) above (to become s.4(6) of the NIA 1998). New subs.(4A) and (4B) distinguish functions and statutory functions, the former seemingly including common law functions (see s.22 of the NIA 1998).

19. Provision for transfer of functions relating to extradition etc

After section 86 of the 1998 Act insert-

86A “Provision for transfer of functions relating to extradition etc

- (1) Her Majesty may by Order in Council make provision amending-
 - (a) the Crime (International Co-operation) Act 2003; or
 - (b) the Extradition Act 2003,

for the purpose of transferring to a Minister or a Northern Ireland department, with effect from any date specified in the Order, any relevant function under the Act.

- (2) In subsection (1) “relevant function” means a function which, immediately before the date specified in the Order,-
 - (a) is exercisable by a Minister of the Crown; and
 - (b) is exercisable in relation to Northern Ireland.
- (3) An Order under subsection (1) may make provision, to such extent as may appear to Her Majesty to be necessary or expedient in consequence of, or for giving full effect to, the Order-
 - (a) for transferring or apportioning any property, rights or liabilities;
 - (b) for substituting any body or person for any other body or person in any charter, contract or other document or in any legal proceedings;
 - (c) for any other transitional or consequential matter.
- (4) No recommendation shall be made to Her Majesty to make an Order under this section unless a draft of it has been laid before and approved by resolution of each House of Parliament.”

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GENERAL NOTE

See the discussion under s.16 above.

This section, seemingly contrary to the Devolution Discussion Paper, transfers extradition from Great Britain to Northern Ireland. It adds a new s.86A to the NIA 1998. However, the phrase “functions relating to extradition etc.” in the title of this section does not necessarily imply all functions. The minister, David Hanson MP, made this clear in committee on April 20, 2006: “the Government’s intention is not to transfer and devolve extradition legislation and policy to the Northern Ireland Assembly. The clause deals with the devolution of certain administrative functions in the exercise of a UK-wide extradition legislation policy.” (*Hansard*, Vol.445, col.298)

The mechanism is again order in council.

The delegated powers committee (see above) advised that the power in new s.86A was not necessarily limited. The secretary of state admitted that the government could only give examples: it depended upon what other functions were being transferred.

20. Provision for entrenching enactments

After section 86A of the 1998 Act insert-

86B “Provision for entrenching enactments

- (1) Her Majesty may by Order in Council make provision amending section 7 so as to provide for-
 - (a) enactments to become entrenched; or
 - (b) enactments that are entrenched by virtue of an Order under paragraph (a) to cease to be entrenched.
- (2) For the purposes of this section an enactment is entrenched if section 7 prevents it from being modified by an Act of the Assembly or subordinate legislation made, confirmed or approved by a Minister or Northern Ireland department.
- (3) No recommendation shall be made to Her Majesty to make an Order under this section unless a draft of it has been laid before and approved by resolution of each House of Parliament.”

GENERAL NOTE

This section adds a new s.86B to the NIA 1998. It is consequential upon the new s.86A. Section 7 of the NIA 1998 is: entrenched enactments. Section 7 is not amended. The assembly is prevented from amending, by primary or secondary legislation, the amending power being given by s.5, a number of specified enactments: the European Communities Act 1972 (c.68), the Human Rights Act 1998 (c.42) and specified sections of the NIA 1998.

The mechanism is again order in council. New s.86B empowers the secretary of state to amend s.7 of the NIA 1998. New subs.(2) makes clear that entrenchment bites only on the devolved administration.

PART 5

MISCELLANEOUS

21. Arms decommissioning: extension of amnesty period

In section 2(3)(b) of the Northern Ireland Arms Decommissioning Act 1997 (c. 7) (date by which amnesty period must end), for “2007” substitute “2010”.

GENERAL NOTE

This is the first of eight sections in Pt 5: miscellaneous. These are a miscellany of issues.

Decommissioning was a goal of the UK and Irish governments from December 1993. Total disarmament of all paramilitary organizations was one of the six Mitchell principles of January

1996. The Northern Ireland Arms Decommissioning Act 1997 (c.7) (“NIADA 1997”) was enacted on February 27, 1997, providing for decommissioning schemes (the ROI also enacting the Decommissioning Act 1997). By agreement of August 26, 1997, the two states established the independent international commission on decommissioning (“IICD”) on September 24, 1997.

Section 2 of the NIADA 1997 limited decommissioning schemes, with the concept of an amnesty period: s.2(2) provided for one year, or such later date as the secretary of state might order; s.2(3) provided for a long stop for decommissioning - a date in legislation which would not be exceeded - of five years, that is, by February 27, 2002 (which was extended, by the Northern Ireland Arms Decommissioning (Amendment) Act 2002 (c.6), s.1(3), for a further five years, to February 27, 2007).

Few thought it would take so long. Most were over-optimistic. On April 10, 1998, the Belfast Agreement, in the section on decommissioning, set a deadline of two years from the May 22, 1998 referendums, that is May 22, 2000.

The one-year deadline had to be amended by the following orders (and act): to February 27, 1999 (SI 1998/893); February 24, 2000 (SI 1999/454); May 23, 2000 (SI 2000/452); May 20, 2001 (SI 2000/1409); February 27, 2002 (SI 2001/1622); February 26, 2003 (Northern Ireland Arms Decommissioning (Amendment) Act 2002 (c.6), s.1(2)); February 26, 2004 (SI 2003/426); February 25, 2005 (SI 2004/464); February 24, 2006 (SI 2005/418); and February 23, 2007 (SI 2006/480).

This section simply amends s.2(3)(b), which had been amended from February 27, 2002 to February 27, 2007, to February 27, 2010.

22. Loans to Consolidated Fund of Northern Ireland: increase of limits

- (1) Amend section 1 of the Northern Ireland (Loans) Act 1975 (c. 83) as follows.
- (2) In subsection (2) (limit on loans to the Consolidated Fund of Northern Ireland), for “£2,000 million” substitute “£3,000 million”.
- (3) In subsection (5) (power to increase the limit by order)-
 - (a) omit “, on not more than one occasion,”,
 - (b) for “the limit in subsection (2)” substitute “the limit for the time being specified in subsection (2)”, and
 - (c) for “£300 million” substitute “£500 million”.

GENERAL NOTE

This section amends s.1 of the Northern Ireland (Loans) Act 1975 (c.83) in two respects: raising the level of loans to £3,000 million; and permitting an increase by order of £500 million.

23. Single wholesale electricity market

- (1) Her Majesty may by Order in Council make provision for giving effect to any agreement or arrangement-
 - (a) which has been entered into between Her Majesty’s Government and the Government of Ireland,
 - (b) which relates to the establishment or operation of a single wholesale electricity market in Northern Ireland and Ireland, and
 - (c) a copy of which has been presented to Parliament by the Secretary of State by command of Her Majesty.
- (2) An Order in Council under this section may-
 - (a) amend, repeal or revoke any provision made by or under an Act of Parliament or Northern Ireland legislation (whenever passed or made);

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- (b) confer powers on bodies or persons specified in, or appointed under or by virtue of, the Order, including powers to make statutory rules (within the meaning of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)));
 - (c) create offences under the law of Northern Ireland;
 - (d) make provision which applies generally or only in specified cases or circumstances;
 - (e) make different provision for different cases or circumstances;
 - (f) make such consequential, incidental, supplementary or transitional provision as appears to Her Majesty to be necessary or expedient.
- (3) Where an Order in Council under this section creates an offence, it must make provision as to the mode of trial and punishment of offenders; but there is no power for the Order-
- (a) to impose a maximum term of imprisonment, on summary conviction, of more than three months;
 - (b) to impose a maximum fine, on summary conviction, of more than the statutory maximum; or
 - (c) to impose a maximum term of imprisonment, on conviction on indictment, of more than two years.
- (4) No recommendation is to be made to Her Majesty to make an Order under this section unless a draft of the Order has been laid before and approved by resolution of each House of Parliament.

GENERAL NOTE

North-south practical cooperation was an aspect of the Belfast Agreement: strand two. However, electricity was not included by the devolved administration, either as an implementation body or as an area for cooperation. In 2002, when the assembly was last suspended, the north-south bodies were put on a care and maintenance basis.

It is unknown from where the impetus for this section came. The Irish government, of course, seeks as much strand two activity as possible. It appears that the current wholesale trading arrangements in the ROI were in need of replacement. However, a regulatory impact assessment ("RIA") - signed by a minister, Angela Smith MP, on February 13, 2006 - refers to an official, responsible for north south energy policy, in the department of enterprise, trade and investment in Belfast. The RIA refers to work since 1999 on a single (wholesale) electricity market, with the acronym "SEM". And to an all-island energy market development framework of 2004, seemingly produced jointly by the regulators in Northern Ireland and in the ROI.

Four options were considered: (1) the status quo; (2) cooperation with a new wholesale market in the ROI; (3) a these islands trading system; and (4) a "move to a single all-island wholesale trading arrangement now." It would appear that officials in Northern Ireland did not properly consider options (1), (2) and especially (3), in the context of a EU internal market for electricity, and with the proposal for an undersea electricity interconnector linking these islands. The fourth option resonates with general NIO peace process concerns. The secretary of state told the House of Commons: "Compelling market-led arguments resulted in similar action in 2003 to enable the Scottish market to be integrated with the England-Wales wholesale electricity market. Now it is Northern Ireland's turn." (*Hansard*, Vol.443, col. 1177) So why not integration with the Great Britain market? And why not invite the ROI to avail of that benefit, en route to a European-wide market?

The RIA looked to "action by both Governments to provide parallel legislation in Northern Ireland and Ireland (sic). This will amend existing domestic regulatory provisions in both jurisdictions to enable the governance and management of the SEM by the two Regulators."

This section is enabling. The mechanism will, once again, be an order in council. However, reference is made also to an international agreement.

The delegated powers committee (see above) advised that, given limited purpose, the delegation was acceptable, with the reservation that the offences in s.23(2)(c) were not specified in any way. The secretary of state undertook to include maximum penalties. These are now included in s.23(3). An NIO memorandum (appendix 1 of the report) noted: "given the cross-border nature

of the purposes of the provisions contemplated, there is a doubt about the powers to legislate for these purposes under the Northern Ireland Act 2000.”

Subsection (1)

The language of “agreement or arrangement” comes from s.53(1) and (4) of the NIA 1998. There was no international agreement between London and Dublin when the Bill was passing through parliament. The UK government, according to the minister, David Hanson MP, in Standing Committee B on April 25, 2006, intends to revert to a memorandum of understanding and not a legally binding international agreement. The language of Northern Ireland and Ireland is discordant. The UK statutory name for the neighbouring state is the Republic of Ireland (and no longer Eire). Repeatedly, the NIO has sought to intrude the name Ireland into UK law since 1998. Its use here is inconsistent with the use of ROI in para.9(f) of sch.3 of the NIA 1998 (discussed under s.16 above).

Subsection (2)

This is enabling. The purpose of such legislation must be queried. Could the UK government not have produced a draft order in council with these powers after the international agreement, or memorandum of understanding, is made?

Subsection (3)

The reference to criminal offences in subs.(2) explains this section. This subsection sets limits to criminal sanctions.

24. Financial assistance for energy purposes

For Article 61 of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) substitute-

Financial assistance for energy purposes

- “61.—(1) The Department may give financial assistance to any person if, in the opinion of the Department-
- (a) the form and amount of the assistance is reasonable having regard to all the circumstances; and
 - (b) the giving of the assistance is likely to achieve one or more of the purposes set out in paragraph (2).
- (2) Those purposes are-
- (a) to secure a diverse and viable long-term energy supply;
 - (b) to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland;
 - (c) to promote efficiency and economy on the part of persons engaged in the generation, production, transmission, distribution or supply of energy;
 - (d) to promote the efficient use of energy;
 - (e) to promote the development or the bringing into use of-
 - (i) energy from renewable sources, or
 - (ii) technologies for the production of energy from such sources;
 - (f) to promote research and development in relation to other matters connected with energy supply;
 - (g) to promote the generation, production, transmission, distribution or supply of energy from renewable sources;
 - (h) to promote the production, distribution or use of renewable transport fuels;

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- (i) to limit or reduce emissions of greenhouse gases, or other effects on the environment, resulting from the generation, production, transmission, distribution, supply or use of energy;
 - (j) to conduct research, or to raise awareness, about matters referred to in sub-paragraph (i);
 - (k) any other purpose prescribed by regulations made by the Department with the approval of the Department of Finance and Personnel.
- (3) Financial assistance under this Article may be given-
- (a) in respect of particular activities carried on or supported by the recipient; or
 - (b) generally in respect of all or some part of the activities carried on or supported by the recipient.
- (4) Financial assistance under this Article shall be given-
- (a) in such form, and
 - (b) subject to such conditions,
- as the Department considers appropriate.
- (5) Without prejudice to the generality of paragraph (4), financial assistance under this Article may be given in one or more of the following forms-
- (a) by making grants (whether or not repayable) or loans;
 - (b) by giving indemnities;
 - (c) by making investments in bodies corporate;
 - (d) by incurring expenditure for the benefit of a person;
 - (e) by providing services, staff or equipment for the benefit of a person.
- (6) Without prejudice to the generality of paragraph (4), financial assistance under this Article may be given subject to conditions-
- (a) as to repayment;
 - (b) requiring payments to be made to the Department (which need not be limited by reference to the value of the assistance given).
- (7) In this Article-
- “greenhouse gases” has the meaning given by section 82(9) of the Energy Act 2004;
 - “renewable sources” means sources of energy other than fossil fuel, peat or nuclear fuel, and includes waste (and for this purpose, “fossil fuel” and “peat” have the meaning given by Article 52(7));
 - “renewable transport fuel” means-
 - (a) liquid or gaseous fuel that is produced wholly or mainly from biomass; or
 - (b) any other description of fuel specified in an order made by the Department;and for this purpose “biomass” means the biodegradable portion of a specified product, waste or residue.”

GENERAL NOTE

This section substitutes a new Art.61 of the Energy (Northern Ireland) Order 2003 (SI 2003/419) (“ENIO”).

The ENIO 2003 established the Northern Ireland authority for energy regulation. Article 12 (the principal objective and general duties of the department and the authority in relation to elec-

tricity) is interesting: “(1) The principal objective of the Department and the Authority in carrying out their respective electricity functions is to protect the interests of consumers of electricity supplied by authorised suppliers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission or supply of electricity.”

Article 61 (grants for energy purposes) is in the miscellaneous sub-part of Pt VIII: miscellaneous and supplementary. However, it only has four paragraphs.

This section, it may be surmised, is a redrafting of article 61, to make it more comprehensive. The new para.(2) lists purposes to be achieved. New para.(5) widens the range of financial assistance from grants.

25. Sustainable development

- (1) A public authority must, in exercising its functions, act in the way it considers best calculated to contribute to the achievement of sustainable development in Northern Ireland, except to the extent that it considers that any such action is not reasonably practicable in all the circumstances of the case.
- (2) For this purpose-
 - (a) a public authority must have regard to any strategy or guidance relating to sustainable development issued by the Department of the Environment, and
 - (b) a public authority other than a Northern Ireland department must have regard to any guidance relating to sustainable development issued by a Northern Ireland department other than the Department of the Environment.
- (3) In this section “public authority” means-
 - (a) a Northern Ireland department,
 - (b) a district council in Northern Ireland, and
 - (c) any other person designated for the purposes of this section by order made by the Office of the First Minister and deputy First Minister.
- (4) The power to make an order under subsection (3)(c) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I.12)).
- (5) Such an order may not be made unless a draft of the order has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

GENERAL NOTE

Sustainable development is a growing concept It was included in the Welsh devolution legislation. However, there is no reference to it in the NIA 1998. The government introduced this section at consideration in the House of Commons on May 17, 2006. It followed the launch, on May 9, 2006, of a sustainable development strategy by the secretary of state.

The minister, David Hanson MP, said: “We want to ensure that we encourage local authorities and other public bodies to act in a sustainable way. That will include looking at recycling, energy conservation and a range of issues to help to build a sustainable Northern Ireland. I accept fully that there may in due course be cost implications. In due course, duties may be placed. It is my intention and that of colleagues ... to look at the issue of guidance and what the provision means in practice, and to issue that for consultation with local authorities as part of examining the matter in more detail.” (*Hansard*, Vol.446, col.1015)

Subsections (1) and (2)

This imposes a duty on public authorities exercising their functions. They must consider how to contribute to the objective. However, there is an important qualification: “except to the extent

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that it considers that any such action is not reasonably practicable in all the circumstances of the case.” A key role is assigned the department of the environment.

Subsection (3)

This is definitional.

26. Extension to Northern Ireland of provisions of SOCAP 2005

- (1) Sections 60 to 67, 69 and 70 of the Serious Organised Crime and Police Act 2005 (c. 15) (investigatory powers of DPP etc.) extend to Northern Ireland.
- (2) Schedule 3 contains amendments of that Act in connection with subsection (1).

GENERAL NOTE

The Serious Organised Crime and Police Act 2005 (c.15) (“SOCPA 2005”) received the Royal Assent on April 7, 2005. It provided for the Serious Organised Crime Agency (“SOCA”). Its extent was principally England and Wales: s.179(2). However, sections extended to Scotland and Northern Ireland. SOCA is a UK-wide agency.

The following sections also extended to Northern Ireland: ss.1-54, 57 and 58; ss.68, 71-75, 79-106, 107(1), (2) and (4) and 108; s.123(1); ss.128, 131 and 144; ss.150(1), 151, 163(1) and (2), 164, 165, 166(2) and 167; ss.172, 173, 176-178 and 179; Schs 1, 3 and 5 (s.179(5)). And the following sections extended only to Northern Ireland: ss.55(2), 78 and 130(2); Pt 2 of Sch.10 (s.179(6)).

This section, strangely, does not amend the SOCPA 2005. It simply specifies, in subs.(1), that ss.60-67, 69 and 70, dealing with the investigatory powers of the director of public prosecutions, extend to Northern Ireland. Subsection (2) introduces Sch.3, which does contain amendments to SOCPA 2005. The above sections are added by para.9 of Sch.3 to s.179(5)(b) of SOCPA 2005.

27. Responsibilities in relation to the health and safety etc. of police

- (1) In Article 47A of the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9)) (application of Part II of that Order to police) after paragraph (2) insert-
 - “(2A) For the purposes of this Part, the relevant officer, as defined by paragraph (2)(a) or (c), shall be treated as a corporation sole.
 - (2B) Where, in a case in which the relevant officer, as so defined, is guilty of an offence by virtue of this Article, it is proved-
 - (a) that the officer-holder personally consented to the commission of the offence,
 - (b) that he personally connived in its commission, or
 - (c) that the commission of the offence was attributable to personal neglect on his part,the office-holder (as well as the corporation sole) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
 - (2C) In paragraph (2B) “the office-holder”, in relation to the relevant officer, means an individual who, at the time of the consent, connivance or neglect-
 - (a) held the office or other position mentioned in paragraph (2) as the office or position of that officer; or
 - (b) was for the time being responsible for exercising and performing the powers and duties of that office or position.

- (2D) The provisions mentioned in paragraph (2E) (which impose the same liability for unlawful conduct of constables on persons having their direction or control as would arise if the constables were employees of those persons) do not apply to any liability by virtue of this Part.
- (2E) Those provisions are-
- (a) paragraph 7(1) of Schedule 8 to the Police Act 1997;
 - (b) section 27(8) of the Police (Northern Ireland) Act 1998;
 - (c) section 29(1) of that Act;
 - (d) section 28 of the Serious Organised Crime and Police Act 2005.”
- (2) For paragraph (2) of each of the following Articles of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16))-
- (a) Article 72A (right of police officers not to suffer detriment in relation to health and safety issues), and
 - (b) Article 169A (right of police officers not to be unfairly dismissed in relation to health and safety issues),
- substitute the paragraph set out in subsection (3).
- (3) The paragraph to be substituted is-
- “(2) In this Article “the relevant officer”, in relation to a person holding the office of constable, means the person who under Article 47A of the Health and Safety at Work (Northern Ireland) Order 1978 is to be treated as his employer for the purposes of Part II of that Order.”
- (4) The amendments made by subsections (1) to (3) have effect for the purposes of any proceedings in or before a court or tribunal that are commenced on or after the day on which this Act is passed as if the amendments had come into force on 1st July 1998.
- (5) For the purposes of proceedings commenced against a person in his capacity by virtue of this section as a corporation sole, anything done by or in relation to that person before the passing of this Act shall be deemed to have been done by or in relation to that person in that capacity.
- (6) No person shall be liable by virtue of Article 47A(2B) of the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9)) in respect of anything occurring before the passing of this Act.

GENERAL NOTE

This section amends art.47A of the Health and Safety at Work (Northern Ireland) Order 1978 (SI 1978/1039) (application of Pt II to the police) and amends arts.72A and 169A of the Employment Rights (Northern Ireland) Order 1996 (SI 1996/1919).

Subsection (1)

This adds paras (2A)-(2E) to Art.47A of the Health and Safety at Work (Northern Ireland) Order 1978 (SI 1978/1039). These provide for the criminal liability of a relevant officer, who shall be treated as a corporation sole (all other chief constables in Great Britain having been granted this status). Lady Hermon MP, the wife of a former chief constable, first requested this given that seemingly chief constables had to answer personally as defendants in negligence and other actions. The office-holder and the corporation sole may be separately found guilty on criminal charges and punished.

Subsections (2) and (3)

These are consequential upon the amendment in subs.(1)

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Subsection (4)

This is partly retrospective. Liability is dated from July 1, 1998. However, the section does not apply to civil or criminal proceedings commenced before the commencement of this section (at Royal Assent).

Subsection (5)

This is entirely retrospective.

Subsection (6)

This is an exemption to subs.(4).

28. Duty to fill judicial vacancies

- (1) In section 12 of the Judicature (Northern Ireland) Act 1978 (c. 23) (before its substitution by section 4 of the Justice (Northern Ireland) Act 2002 (c. 26)) (appointment of Lord Chief Justice, Lords Justices of Appeal and judges of High Court), after subsection (2) insert-
 - “(3) The appointment by Her Majesty of a person to-
 - (a) the office of Lord Chief Justice, or
 - (b) the office of Lord Justice of Appeal,shall be made on the recommendation of the Prime Minister.
 - (4) The Prime Minister must make a recommendation to fill any vacancy in the office of Lord Chief Justice.
 - (5) The Prime Minister must make a recommendation to fill any vacancy in the office of Lord Justice of Appeal.
 - (6) Subsection (5) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.
 - (7) The appointment by Her Majesty of a person to the office of a judge of the High Court shall be made on the recommendation of the Lord Chancellor.”
- (2) In section 12 of the Judicature (Northern Ireland) Act 1978 (as substituted by section 4 of the Justice (Northern Ireland) Act 2002) (appointment of Lord Chief Justice and Lords Justices of Appeal), after subsection (2) insert-
 - “(2A) The Prime Minister must make a recommendation to fill any vacancy in the office of Lord Chief Justice.
 - (2B) The Prime Minister must make a recommendation to fill any vacancy in the office of Lord Justice of Appeal.
 - (2C) Subsection (2B) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.”
- (3) In section 5 of the Justice (Northern Ireland) Act 2002 (appointment to listed judicial offices), after subsection (1) insert-
 - “(1A) The Lord Chancellor must make an appointment, or a recommendation for an appointment, to fill any vacancy in a listed judicial office.
 - (1B) Subsection (1A) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.”

GENERAL NOTE

This section amends the Judicature (Northern Ireland) Act 1978 (c.23) (“JNIA 1978”) and the Justice (Northern Ireland) Act 2002 (c.26) (“JNIA 2002”), following the Constitutional Reform Act 2005 (c.4).

Section 12 of the JNIA 1978 is: appointment of (senior) judges. As originally drafted, it referred only to Her Majesty appointing high court and court of appeal judges in Belfast.

Section 4 of the JNIA 2002 is: appointment to most senior judicial offices. It substitutes a new s.12 in the JNIA 1978 and adds a new s.12A. It provides for roles for the prime minister, the lord chancellor and the first minister and deputy first minister. Section 4 has not yet come into force.

Subsection (1)

This subsection inserts five new subsections in s.12 of the JNIA 1978. It specifies the role of the prime minister: he recommends the lord chief justice and lords justices of appeal; the former office may not be left vacant; the lord chief justice may agree to leaving one of the latter vacant. When it comes to high court judges, the Lord Chancellor plays the advisory role.

Subsection (2)

This amends s.12 of the JNIA 1978, after it has been substituted by s.4 of the JNIA 2002. It is to the same effect as the amendments in subs.(1).

Subsection (3)

This amends s.5 of the JNIA 2002: appointment to listed judicial offices. These include the office of high court judge. It concerns the lord chancellor, either making an appointment or recommendation. It is to similar effect as subss.(1) and (2).

PART 6

SUPPLEMENTARY

29. Financial provisions

- (1) There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable by virtue of any other Act out of money provided by Parliament.
- (2) There shall be paid out of the Consolidated Fund any increase attributable to this Act in the sums payable by virtue of any other Act out of that Fund.

GENERAL NOTE

This is the first of five sections in Pt 6: supplementary.

A money resolution, as normal, was passed after second reading in the House of Commons on March 13, 2006 (*Hansard*, Vol.443, col.1247). It also provided for payment out of the national loans fund.

30. Minor and consequential amendments etc

- (1) Schedule 4 contains minor and consequential amendments.
- (2) Schedule 5 contains repeals and revocations.
- (3) The Secretary of State may by order made by statutory instrument make supplementary, incidental, consequential, transitional or saving provision for the purposes of, in consequence of, or for giving full effect to, any provision of Part 1.
- (4) An order under subsection (3) may, in particular-
 - (a) provide for a provision of Part 1 which comes into force before another provision of Part 1 or of the Electoral Administration Act 2006 (c. 22) has come into force to have effect, until the other provision has come into force, with specified modifications;

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- (b) amend, repeal or revoke any enactment passed or made on or before the last day of the session in which this Act is passed.
- (5) “Enactment” includes any provision of Northern Ireland legislation or subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)) and any provision of Part 1 of Schedule 4.
- (6) No order is to be made under subsection (3) unless a draft of the instrument containing the order has been laid before and approved by a resolution of each House of Parliament.

GENERAL NOTE

Subsections (1) and (2)

These introduce respectively Schs 4 and 5.

Subsections (3)-(6)

These subsections refer only to Pt 1: registration of electors. The issue would appear to be s.l: anonymous registration. The Electoral Administration Act 2006 (c.22) received the Royal Assent on July 11, 2006.

31. Commencement

- (1) The following come into force on the day on which this Act is passed-
 - (a) section 1;
 - (b) section 10;
 - (c) section 22;
 - (d) section 23;
 - (e) section 24;
 - (f) section 27;
 - (g) section 28;
 - (h) section 29;
 - (i) section 30(3) to (6);
 - (j) this section;
 - (k) section 32;
 - (l) section 33.
- (2) Part 3 (apart from section 10, but including Schedule 1) comes into force as mentioned in section 10(2).
- (3) Subject to subsection (4), the other provisions of this Act come into force on such day as the Secretary of State may appoint by order made by statutory instrument.
- (4) Any repeals or revocations in Schedule 5 come into force in the same way as any provision of this Act to which they relate.
- (5) Different days may be appointed under subsection (3) for different purposes.
- (6) The Secretary of State may by order made by statutory instrument make transitory or transitional provision or savings in connection with the coming into force of any provision of this Act.

GENERAL NOTE

Subsection (1)

These sections came into force at Royal Assent on July 25, 2006.

Subsection (2)

Part 3 is: donations for political purposes. This subsection refers back to the commencement provisions in s.10(2).

32. Extent

- (1) The extent of any amendment or repeal made by this Act is the same as that of the enactment amended or repealed.
- (2) But the amendments and repeals made by Schedule 3 (and Schedule 5 so far as relating to that Schedule) extend to England and Wales and Northern Ireland only.
- (3) Section 25 extends to Northern Ireland only.

33. Short title

This Act may be cited as the Northern Ireland (Miscellaneous Provisions) Act 2006.

SCHEDULES

SCHEDULE 1

Section 14

MODIFICATIONS OF 2000 ACT

1. After section 71C of the 2000 Act (as inserted by section 12) insert-

71D “Duty to verify donation reports

The Commission must take such steps as are prescribed for the purpose of verifying the information given in Northern Ireland reports.

- (1)–(2) “Northern Ireland report” means a report to the Commission which-
- (a) is prepared by a Northern Ireland recipient, and
 - (b) contains, or purports to contain, information required to be given by Schedule 6 or 7.

71E Duty not to disclose contents of donation reports

A person who is or has been a member or employee of the Commission must not disclose any information which-

- (1) (a) relates to a donation received by a Northern Ireland recipient, and
- (b) has been obtained by the Commission in the exercise of their functions under this Part,

except in the following cases.

- (2) Such information may be disclosed, for the purpose of verifying information given in a Northern Ireland report,-
 - (a) to a member or employee of the Commission, or
 - (b) to such bodies as may be prescribed.
- (3) Such information may be disclosed for the purposes of any criminal or civil proceedings.
- (4) Such information may be disclosed in accordance with any prescribed requirements if it relates to a donation which the Commission believe, on reasonable grounds, was a donation required to be dealt with in accordance with section 56(2) (donations from impermissible and unidentifiable donors).
- (5) A person who contravenes subsection (1) is guilty of an offence.”

2. In Schedule 20 to the 2000 Act (penalties), after the entry relating to section 68(5) insert-

“Section 71E(5) (disclosing Northern Ireland donation reports)

On summary conviction in England and Wales: statutory maximum or 51 weeks

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On summary conviction elsewhere:
statutory maximum or 6 months”

3. In section 149 of the 2000 Act (inspection of Commission’s registers etc.), after subsection (7) insert-
- “(8) Subsections (2) to (4) do not apply to so much of the register maintained under section 69 as concerns donations to a Northern Ireland recipient.
 - (9) “Northern Ireland recipient” has the same meaning as in Chapter 6 of Part 4.”

GENERAL NOTE

This schedule is introduced by s.14(1). During the prescribed period (that is, between November 1, 2007 and October 31, 2010 as defined in s.14(2)), the EEPRA 2000 applies in Northern Ireland subject to the amendments in this schedule. Section 12 added ss.71A-71C (a new Ch.6) to the EEPRA 2000.

Paragraph 1 of this schedule adds new ss.71D and 71E. Query why they were not added by s.12? New ss.71D and 71E provide for a unique role for the electoral commission regarding Northern Ireland.

Paragraph 2 is consequential.

Paragraph 3 is also consequential.

SCHEDULE 2

Section 17

DEPARTMENT WITH POLICING AND JUSTICE FUNCTIONS

The Schedule inserted after Schedule 4 to the 1998 Act is as follows-

SCHEDULE 4A

“DEPARTMENT WITH POLICING AND JUSTICE FUNCTIONS

Section 21A

PART I

DEPARTMENT IN THE CHARGE OF MINISTER APPROVED BY
RESOLUTION OF ASSEMBLY

Introduction

1. (1) This Part of this Schedule has effect in relation to a Northern Ireland department-
- (a) the functions of which consist wholly or mainly of devolved policing and justice functions; and
 - (b) in relation to which an Act of the Assembly provides, by virtue of section 21A(3), for it to be in the charge of a Northern Ireland Minister (the “relevant Minister”) appointed by virtue of a nomination-
 - (i) made by the First Minister and the deputy First Minister acting jointly; and
 - (ii) approved by a resolution of the Assembly passed with the support of a majority of the members voting on the motion for the resolution, a majority of the designated Nationalists voting and a majority of the designated Unionists voting.
- (2) In this paragraph “devolved policing and justice function” has the same meaning as in section 21A (see subsection (8) of that section).

Section 18 not to apply to relevant Minister

2. (1) Section 18 (Northern Ireland Ministers) shall not apply in relation to-
- (a) the relevant Minister; or

(b) the Ministerial office held by the relevant Minister (the “relevant Ministerial office”),
and paragraph 3 shall apply instead.

(2) But the references to Ministerial offices in-

(a) subsection (1)(c) and (d) of section 18; and

(b) subsection (5) of that section (in the definition of M),

shall be taken to include the relevant Ministerial office.

Provisions relating to relevant Minister

3. (1) Where any of the conditions in paragraphs (a) to (e) of section 18(1) is satisfied-
- (a) the relevant Minister shall (if holding office at the time) cease to hold office; and
 - (b) the relevant Ministerial office shall be filled by applying sub-paragraphs (3) to (6) within a period specified in standing orders.
- (2) The relevant Ministerial office shall be filled by applying sub-paragraphs (3) to (6) before section 18(2) to (6) is applied in relation to the other Ministerial offices.
- (3) The First Minister and the deputy First Minister acting jointly shall nominate a member of the Assembly to hold the relevant Ministerial office.
- (4) The nomination shall not take effect unless it is approved by a resolution of the Assembly passed with the support of-
- (a) a majority of the members voting on the motion for the resolution;
 - (b) a majority of the designated Nationalists voting; and
 - (c) a majority of the designated Unionists voting.
- (5) If-
- (a) the nomination does not take effect within a period specified in standing orders; or
 - (b) the nominated person does not take up the office for which he has been nominated within that period,
- a further nomination of a member of the Assembly shall be made under sub-paragraph (3).
- (6) Sub-paragraphs (3) to (5) shall be applied as many times as may be necessary to secure that the relevant Ministerial office is filled.
- (7) The holding of office as First Minister or deputy First Minister shall not prevent a person being nominated to hold the relevant Ministerial office.
- (8) The relevant Minister shall not take up office until he has affirmed the terms of the pledge of office.
- (9) The relevant Minister shall cease to hold office if-
- (a) he resigns by notice in writing to the First Minister and the deputy First Minister;
 - (b) he ceases to be a member of the Assembly otherwise than by virtue of a dissolution; or
 - (c) he is dismissed by the First Minister and the deputy First Minister acting jointly and the Presiding Officer is notified of his dismissal.
- (10) If the relevant Minister ceases to hold office at any time, otherwise than by virtue of sub-paragraph (1), the relevant Ministerial office shall be filled by applying sub-paragraphs (3) to (6) within a period specified in standing orders.
- (11) Where-
- (a) the Assembly has resolved under section 30(2) that a political party does not enjoy its confidence; and
 - (b) the party's period of exclusion under that provision has not come to an end,
- no member of that party may be nominated under sub-paragraph (3).
- (12) Where-
- (a) the Secretary of State has given a direction under section 30A(5) in respect of a political party; and
 - (b) the party's period of exclusion under that provision has not come to an end,
- no member of that party may be nominated under sub-paragraph (3).
- (13) In this paragraph, a reference to a period of exclusion under any provision is, in the case of a period of exclusion under that provision which has been extended, a reference to that period as extended.

PART 2

4. DEPARTMENT IN THE CHARGE OF TWO MINISTERS

Introduction

4. (1) This Part of this Schedule has effect in relation to a Northern Ireland department-
- (a) the functions of which consist wholly or mainly of devolved policing and justice functions; and
 - (b) in relation to which an Act of the Assembly provides, by virtue of section 21A(4), for it to be in the charge of two Northern Ireland Ministers acting jointly (the “relevant Ministers”).
- (2) In this paragraph “devolved policing and justice function” has the same meaning as in section 21A (see subsection (8) of that section).

Modifications of section 17

5. (1) Section 17 (Ministerial offices) has effect subject to the following modifications.
- (2) Subsection (3) has effect subject to the provision of the Act of the Assembly referred to in paragraph 4(1)(b).
 - (3) The Ministerial offices held by the relevant Ministers (the “relevant Ministerial offices”) are to count as a single Ministerial office for the purposes of subsection (4).

Section 18 not to apply to relevant Ministers

6. (1) Section 18 (Northern Ireland Ministers) shall not apply in relation to-
- (a) the relevant Ministers; or
 - (b) the relevant Ministerial offices,
- and paragraph 7 shall apply instead.
- (2) But the references to Ministerial offices in-
- (a) subsection (1)(c) and (d) of section 18; and
 - (b) subsection (5) of that section (in the definition of M),
- shall be taken to include the relevant Ministerial offices.

Provisions relating to relevant Ministers

7. (1) Where any of the conditions in paragraphs (a) to (e) of section 18(1) is satisfied-
- (a) the relevant Ministers shall (if holding office at the time) cease to hold office; and
 - (b) the relevant Ministerial offices shall be filled by applying sub-paragraphs (3) to (6) within a period specified in standing orders.
- (2) The relevant Ministerial offices shall be filled by applying sub-paragraphs (3) to (6) before section 18(2) to (6) is applied in relation to the other Ministerial offices.
- (3) The First Minister and the deputy First Minister acting jointly shall nominate two members of the Assembly to hold the relevant Ministerial offices.
- (4) The nomination shall not take effect unless it is approved by a resolution of the Assembly passed with the support of-
- (a) a majority of the members voting on the motion for the resolution;
 - (b) a majority of the designated Nationalists voting; and
 - (c) a majority of the designated Unionists voting.
- (5) If-
- (a) the nomination does not take effect within a period specified in standing orders; or
 - (b) the nominated persons do not take up the offices for which they have been nominated within that period,
- a further nomination of two members of the Assembly shall be made under sub-paragraph (3).
- (6) Sub-paragraphs (3) to (5) shall be applied as many times as may be necessary to secure that the relevant Ministerial offices are filled.
- (7) The holding of office as First Minister or deputy First Minister shall not prevent a person being nominated to hold a relevant Ministerial office.
- (8) The relevant Ministers-

- (a) shall not take up office until each of them has affirmed the terms of the pledge of office; and
- (b) must take up office at the same time as each other.
- (9) A relevant Minister shall cease to hold office if-
 - (a) he resigns by notice in writing to the First Minister and the deputy First Minister;
 - (b) he ceases to be a member of the Assembly otherwise than by virtue of a dissolution; or
 - (c) he is dismissed by the First Minister and the deputy First Minister acting jointly and the Presiding Officer is notified of his dismissal.
- (10) If either of the relevant Ministers ceases to hold office at any time, otherwise than by virtue of sub-paragraph (1)-
 - (a) the other shall also cease to hold office at that time; and
 - (b) the relevant Ministerial offices shall be filled by applying sub-paragraphs (3) to (6) within a period specified in standing orders.
- (11) Where-
 - (a) the Assembly has resolved under section 30(2) that a political party does not enjoy its confidence; and
 - (b) the party's period of exclusion under that provision has not come to an end
 no member of that party may be nominated under sub-paragraph (3).
- (12) Where-
 - (a) the Secretary of State has given a direction under section 30A(5) in respect of a political party; and
 - (b) the party's period of exclusion under that provision has not come to an end,
 no member of that party may be nominated under sub-paragraph (3).
- (13) In this paragraph, a reference to a period of exclusion under any provision is, in the case of a period of exclusion under that provision which has been extended, a reference to that period as extended.

PART 3

DEPARTMENT WITH ROTATION BETWEEN MINISTER AND
JUNIOR MINISTER*Introduction*

- 8. (1) This Part of this Schedule has effect in relation to a Northern Ireland department-
 - (a) the functions of which consist wholly or mainly of devolved policing and justice functions; and
 - (b) in relation to which an Act of the Assembly provides, by virtue of section 21A(5)-
 - (i) for it to be in the charge of a Northern Ireland Minister (the "relevant Minister") who is supported by a junior Minister (the "relevant junior Minister"); and
 - (ii) for the persons holding those offices to rotate at intervals determined by or under the Act.
- (2) In this paragraph "devolved policing and justice function" has the same meaning as in section 21A (see subsection (8) of that section).

Section 18 not to apply to relevant Minister

- 9. (1) Section 18 (Northern Ireland Ministers) shall not apply in relation to-
 - (a) the relevant Minister; or
 - (b) the Ministerial office held by the relevant Minister (the "relevant Ministerial office"),
 and paragraph 11 shall apply instead.
- (2) But the references to Ministerial offices in-
 - (a) subsection (1)(c) and (d) of section 18; and
 - (b) subsection (5) of that section (in the definition of M),
 shall be taken to include the relevant Ministerial office.
- (3) And the junior Ministerial office held by the relevant junior Minister (the "relevant junior Ministerial office") shall be taken to be a Ministerial office for the purposes of subsection (5) of that section.

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Certain provisions of section 19 not to apply to relevant junior Minister

10. (1) The provisions of section 19 (junior Ministers) specified in sub-paragraph (2) shall not apply in relation to-
- (a) the relevant junior Minister; or
 - (b) the relevant junior Ministerial office,
- and paragraph 11 shall apply instead.
- (2) Those provisions are-
- (a) so much of subsection (1)(a) as relates to the procedures for the appointment of persons as junior Ministers;
 - (b) subsection (2) (so that, in particular, the relevant junior Ministerial office shall not count for the purposes of any formulae or other rules mentioned in that subsection);
 - (c) subsection (3); and
 - (d) subsection (5).

Provisions relating to relevant Minister and relevant junior Minister

11. (1) Where any of the conditions in paragraphs (a) to (e) of section 18(1) is satisfied-
- (a) the relevant Minister and the relevant junior Minister shall (if holding office at the time) cease to hold office; and
 - (b) the relevant Ministerial office and the relevant junior Ministerial office shall be filled by applying sub-paragraphs (3) to (6) within a period specified in standing orders.
- (2) The relevant Ministerial office and the relevant junior Ministerial office shall be filled by applying sub-paragraphs (3) to (6)-
- (a) before section 18(2) to (6) is applied in relation to the other Ministerial offices; and
 - (b) before the procedures specified in any determination under section 19 are applied in relation to the other junior Ministerial offices.
- (3) The First Minister and the deputy First Minister acting jointly shall nominate-
- (a) a member of the Assembly to hold the relevant Ministerial office; and
 - (b) a member of the Assembly to hold the relevant junior Ministerial office.
- (4) The nomination shall not take effect unless it is approved by a resolution of the Assembly passed with the support of-
- (a) a majority of the members voting on the motion for the resolution;
 - (b) a majority of the designated Nationalists voting; and
 - (c) a majority of the designated Unionists voting.
- (5) If-
- (a) the nomination does not take effect within a period specified in standing orders; or
 - (b) the nominated persons do not take up the offices for which they have been nominated within that period,
- a further nomination of two members of the Assembly shall be made under sub-paragraph (3).
- (6) Sub-paragraphs (3) to (5) shall be applied as many times as may be necessary to secure that the relevant Ministerial office and the relevant junior Ministerial office are filled.
- (7) The holding of office as First Minister or deputy First Minister shall not prevent a person being nominated to hold-
- (a) the relevant Ministerial office; or
 - (b) the relevant junior Ministerial office.
- (8) The relevant Minister and the relevant junior Minister-
- (a) shall not take up office until each of them has affirmed the terms of the pledge of office; and
 - (b) must take up office at the same time as each other.
- (9) The relevant Minister or the relevant junior Minister shall cease to hold office if-
- (a) he resigns by notice in writing to the First Minister and the deputy First Minister;
 - (b) he ceases to be a member of the Assembly otherwise than by virtue of a dissolution; or
 - (c) he is dismissed by the First Minister and the deputy First Minister acting jointly and the Presiding Officer is notified of his dismissal.
- (10) Sub-paragraph (11) applies if the relevant Minister or the relevant junior Minister ceases to hold office at any time, otherwise than-
- (a) by virtue of sub-paragraph (1); or

- (b) by virtue of the rotation of the persons holding those offices in accordance with provision referred to in paragraph 8(1)(b)(ii).
- (11) Where this sub-paragraph applies-
- (a) the other shall also cease to hold office at that time; and
 - (b) the relevant Ministerial office and the relevant junior Ministerial office shall be filled by applying sub-paragraphs (3) to (6) within a period specified in standing orders.
- (12) Where-
- (a) the Assembly has resolved under section 30(2) that a political party does not enjoy its confidence; and
 - (b) the party's period of exclusion under that provision has not come to an end,
- no member of that party may be nominated under sub-paragraph (3).
- (13) Where-
- (a) the Secretary of State has given a direction under section 30A(5) in respect of a political party; and
 - (b) the party's period of exclusion under that provision has not come to an end,
- no member of that party may be nominated under sub-paragraph (3).
- (14) In this paragraph, a reference to a period of exclusion under any provision is, in the case of a period of exclusion under that provision which has been extended, a reference to that period as extended.

PART 4

POWER TO MAKE FURTHER MODIFICATIONS

- 12.**
- (1) Her Majesty may by Order in Council make such further modifications of any enactment (whenever passed or made) as appear to Her Majesty to be necessary or expedient-
- (a) in consequence of, or
 - (b) for giving full effect to,
- an Act of the Assembly which makes provision of the kind mentioned in section 21A(3), (4) or (5).
- (2) No recommendation shall be made to Her Majesty to make an Order under this paragraph unless a draft of it has been laid before and approved by resolution of each House of Parliament."

GENERAL NOTE

This schedule is introduced by s.17(2). This is a new Sch.4A to the NIA 1998. It provides further for the three options in s.17 of a single minister, two ministers or a senior and junior minister rotating. Parts 1-3 apply, or disapply, the NIA 1998 in either of these three scenarios, Pt 4 providing for amendment by order in council. Paragraph 2 disapplies s.18 of the NIA 1998: Northern Ireland ministers (in other words, the d'Hondt provision). Paragraph 3 provides for the selection of the single minister: nomination by the first minister and deputy first minister; approval (or not) by a cross-community vote of the assembly. Paragraph 7 provides for two ministers: this is in similar terms. And para.11 applies to the rotating senior and junior minister: again, the provisions are similar; however, the rotation amounts to a fresh nomination.

SCHEDULE 3

Section 26

EXTENSION TO NORTHERN IRELAND OF PROVISIONS OF SO-CAP 2005

Introduction

1. Amend the Serious Organised Crime and Police Act 2005 (c. 15) as follows.

Director of Public Prosecutions for Northern Ireland to be an Investigating Authority

2. (1) Amend section 60 (investigatory powers of DPP etc.) as follows.

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- (2) In subsection (1), at the end of paragraph (c) insert
“and
(d) the Director of Public Prosecutions for Northern Ireland.”
- (3) After subsection (4) insert-
“(4A) The Director of Public Prosecutions for Northern Ireland may, to such extent as he may determine, delegate the exercise of his powers under this Chapter to a Public Prosecutor.”
- (4) In subsection (5), at the end of paragraph (c) insert
“, or
(d) the Director of Public Prosecutions for Northern Ireland.”
- (5) In subsection (6), for “or (4)” substitute “, (4) or (4A)”.

Offences to which Chapter 1 of Part 2 applies to include certain Northern Ireland offences

3. (1) Amend section 61 (offences to which Chapter 1 of Part 2 applies) as follows.
 - (2) In subsection (1), after paragraph (b) insert-
“(ba) any offence listed in Schedule 5 to that Act (lifestyle offences: Northern Ireland);”.
 - (3) In subsection (1)(e), after “1968 (c. 60)” insert “or section 17 of the Theft Act (Northern Ireland) 1969”.
 - (4) In subsection (1)(f), after “1981 (c. 47)” insert “or Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983”.
 - (5) In subsection (1)(g), after “1977 (c. 45)” insert “or Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983”.
 - (6) In subsection (2)(b), after “1968 (c. 60)” insert “or section 17 of the Theft Act (Northern Ireland) 1969”.
 - (7) In subsection (4), after “Wales” (in both places) insert “or Northern Ireland”.

Member of staff of SOCA not to be “appropriate person” in application of Chapter to Northern Ireland

4. In section 62 (disclosure notices), in subsection (2), at the end insert-
“But in the application of this Chapter to Northern Ireland, this subsection has effect as if paragraph (b) were omitted.”

Restrictions on requiring information etc.: modification for Northern Ireland

5. In section 64 (restrictions on requiring information etc.), in subsection (5), after “1984 (c. 60)” insert “or, in relation to Northern Ireland, Article 13 of the Police and Criminal Evidence (Northern Ireland) Order 1989”.

Restrictions on use of statements: modification for Northern Ireland

6. In section 65 (restrictions on use of statements), in subsection (2), at the end of paragraph (c) insert
“, or
(d) for an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (false statements made otherwise than on oath).”

Power to enter and seize documents: applications for warrants in Northern Ireland

7. In section 66 (power to enter and seize documents), after subsection (10) insert-
“(11) In the application of this section to Northern Ireland-
 - (a) subsection (1) has effect as if, for the words from the beginning to “laid”, there were substituted “A lay magistrate may issue a warrant under this section if, on complaint on oath made”; and
 - (b) subsections (1)(a) and (3)(b) have effect as if, for “in the information”, there were substituted “in the complaint”.

Offences in connection with disclosure notices etc.: modification of penalties

8. In section 67 (offences in connection with disclosure notices or search warrants), after subsection (6) insert-
“(7) In the application of this section to Northern Ireland-
 - (a) the reference to 51 weeks in subsection (4)(a) is to be read as a reference to 6 months; and

- (b) the reference to 12 months in subsection (5)(b) is to be read as a reference to 6 months.”

Extension to Northern Ireland of sections 60 to 67, 69 and 70 of SOCAP 2005

9. In section 179 (short title and extent), in subsection (5)(b), for “68, 71” substitute “60”.

GENERAL NOTE

This schedule has been discussed above in s.26.

SCHEDULE 4

Section 30(1)

MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

REGISTRATION OF ELECTORS

1. (1) Amend Schedule 5 (local elections rules) as follows.
- (2) In rule 26 (equipment of polling stations), after paragraph (3) insert-
 - “(3ZA) The reference in paragraph (3)(c) to the copies of the register of electors includes a reference to copies of any notices issued in respect of alterations to the register under section 13BA(9) of the 1983 Act.
 - (3ZB) In this Schedule “section 13BA(9) of the 1983 Act” means section 13BA(9) of the Representation of the People Act 1983 (as applied by Schedule 1 to the Elected Authorities (Northern Ireland) Act 1989).”
- (3) In rule 34 (voting procedure), after paragraph (1) insert-
 - “(1A) In the case of an elector who is added to the register in pursuance of a notice issued under section 13BA(9) of the 1983 Act, paragraph (1) is modified as follows-
 - (a) in sub-paragraph (b), for “copy of the register of electors” substitute “copy of the notice issued under section 13BA(9) of the 1983 Act”;
 - (b) in sub-paragraph (d), for “in the register of electors” substitute “on the copy of the notice issued under section 13BA(9) of the 1983 Act”.”
- (4) In rule 35 (votes marked by presiding officer), after paragraph (6) insert-
 - “(7) In the case of a person in respect of whom a notice has been issued under section 13BA(9) of the 1983 Act, paragraph (3) applies as if for “on the register of electors of every voter” there were substituted “relating to every voter in respect of whom a notice has been issued under section 13BA(9) of the 1983 Act”.”
- (5) In rule 36 (voting by persons with disabilities), after paragraph (4) insert-
 - “(4A) In the case of a person in respect of whom a notice has been issued under section 13BA(9) of the 1983 Act, paragraph (4) applies as if for “in the register of electors of every voter” there were substituted “relating to every voter in respect of whom a notice has been issued under section 13BA(9) of the 1983 Act”.”
- (6) In rule 37 (tendered ballot papers), after paragraph (4) insert-
 - “(4A) This rule applies in the case of a person in respect of whom a notice has been issued under section 13BA(9) of the 1983 Act as if-
 - (a) in paragraphs (1)(a), (1A)(a) and (1D)(a), for “named on the register” there were substituted “in respect of whom a notice under section 13BA(9) of the 1983 Act has been issued”;
 - (b) in paragraph (5)(b), for “his number in the register of electors” there were substituted “the number relating to him on a notice issued under section 13BA(9) of the 1983 Act”;
 - (c) in paragraph (6), for “his number on the register of electors” there were substituted “the number relating to him on a notice issued under section 13BA(9) of the 1983 Act”.”
- (7) After rule 39 (spoilt ballot papers) insert-

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Correction of errors on day of poll

- “39A The presiding officer shall keep a list of persons to whom ballot papers are delivered in consequence of an alteration to the register made by virtue of section 13BA(9) of the 1983 Act which takes effect on the day of the poll.”
- (8) In rule 41 (procedure on close of poll)-
 - (a) in paragraph (1)(d), after “electors” insert “(including any marked copy notices issued under section 13BA(9) of the 1983 Act)”, and
 - (b) in paragraph (1)(f), after ““unable to read””, insert “the list maintained under rule 39A.”.
 - (9) In rule 57 (sealing up of ballot papers), in paragraph (2), after “marked copies of the register of electors” insert “(including any marked copy notices issued under section 13BA(9) of the 1983 Act)”.
 - (10) In rule 58 (forwarding of documents)-
 - (a) in paragraph (1)(c), after “and the related statements,” insert “the lists maintained under rule 39A.”, and
 - (b) in paragraph (1)(e), after “registers” insert “(including any marked copy notices issued under section 13BA(9) of the 1983 Act)”.
2. In section 10, in subsection (4) (form may be either a prescribed form or a form to the same effect), at the end insert “except that, in Northern Ireland, a form prescribed for those purposes shall be used”.
 3. In section 13 (publication of registers), in subsection (5)(b), for “or 13B” substitute “, 13B or 13BA”.
 4. (1) Amend section 13A (alteration of registers) as follows.
 - (2) In subsection (1)(c), after “56” insert “or 58”.
 - (3) In subsection (2)(b), for “section 13B(1)” substitute “sections 13B(1) and 13BA(1)”.
 - (4) In subsection (4), before “below” insert “or 13BA(3), (6) or (9)”.
 - (5) In subsection (5), after “13B” insert “or 13BA”.
 5. For section 58 substitute-

58. “Registration appeals: Northern Ireland

An appeal lies to the county court-

- (1) (a) from any decision under this Act of the Chief Electoral Officer for Northern Ireland on any application for registration or objection to a person’s registration made to and considered by him;
 - (b) from any decision under this Act of the Chief Electoral Officer (other than on an application for registration or objection to a person’s registration) that a person registered in respect of any address was not entitled to be registered in respect of that address or that he has ceased to be resident at that address or has otherwise ceased to satisfy the conditions for registration set out in section 4;
 - (c) from any decision under this Act of the Chief Electoral Officer disallowing a person’s application to vote by proxy or by post as elector or to vote by post as proxy, in any case where the application is not made for a particular election only.
- (2) But an appeal does not lie where the person desiring to appeal-
 - (a) has not availed himself of a prescribed right to be heard by or make representations to the Chief Electoral Officer on the matter which is the subject of the appeal, or
 - (b) has not given the prescribed notice of appeal within the prescribed time.
- (3) An appeal to the county court or Court of Appeal by virtue of this section which is pending when notice of an election is given does not prejudice the operation as respects the election of the decision appealed against, and anything done in pursuance of the decision-
 - (a) is as good as if no such appeal had been brought, and
 - (b) is not affected by the decision of the appeal.
- (4) The Chief Electoral Officer must, in accordance with sections 13A and 13BA, make such alterations in the register as may be required to give effect to the decision.
- (5) Where, as a result of the decision on an appeal, an alteration in the register made in pursuance of subsection (4) takes effect under section 13(5), 13A(2) or 13BA(6) or (9) on or before the date of the poll, subsection (3) does not apply to that appeal as respects that election.

- (6) The Chief Electoral Officer-
- (a) must undertake such duties in connection with appeals brought by virtue of this section as may be prescribed, and
 - (b) on any appeal is deemed to be a party to the proceedings;
- and the registration expenses payable to him include any expenses properly incurred by virtue of this subsection.
- (7) Section 21(1) of the Interpretation Act (Northern Ireland) 1954 (rules regulating procedure of courts etc.) applies as if the jurisdiction conferred by subsection (1) were conferred by any enactment within the meaning of that Act.”
6. (1) Amend Schedule 1 (parliamentary elections rules) as follows.
- (2) In rule 29 (equipment of polling stations), after paragraph (6), insert-

“(7) The reference in paragraph (3)(c) to the copies of the register of electors includes a reference to copies of any notices issued under section 13BA(9) in respect of alterations to the register.”
 - (3) In rule 35 (questions to be put to voters), after paragraph (2) insert-

“(2A) In the case of an elector in respect of whom a notice has been issued under section 13BA(9), the reference in the question at entry 1(a) to reading from the register must be taken as a reference to reading from the notice issued under section 13BA(9).”
 - (4) In rule 37 (voting procedure), after paragraph (1) insert-

“(1ZA) In the case of an elector who is added to the register in pursuance of a notice issued under section 13BA(9), paragraph (1) is modified as follows-

 - (a) in sub-paragraph (b), for “copy of the register of electors” substitute “copy of the notice issued under section 13BA(9)”;
 - (b) in sub-paragraph (d), for “in the register of electors” substitute “on the copy of the notice issued under section 13BA(9).”
 - (5) In rule 38 (votes marked by presiding officer), after paragraph (3) insert-

“(4) In the case of a person in respect of whom a notice has been issued under section 13BA(9), paragraph (2) applies as if for “on the register of electors of every voter” there were substituted “relating to every voter in respect of whom a notice has been issued under section 13BA(9).”
 - (6) In rule 39 (voting by person with disabilities), after paragraph (4A) insert-

“(4B) In the case of a person in respect of whom a notice has been issued under section 13BA(9), paragraph (4) applies as if for “in the register of electors of every voter” there were substituted “relating to every voter in respect of whom a notice has been issued under section 13BA(9).”
 - (7) In rule 40 (tendered ballot papers), after paragraph (4B) insert-

“(4C) This rule applies in the case of a person in respect of whom a notice has been issued under section 13BA(9) as if-

 - (a) in paragraphs (1)(a), (1ZA)(a) and (1ZD)(a) for “named on the register” there were substituted “in respect of whom a notice under section 13BA(9) has been issued”;
 - (b) in paragraph (2)(b) for “his number in the register of electors” there were substituted “the number relating to him on a notice issued under section 13BA(9)”;
 - (c) in paragraph (3) for “his number on the register of electors” there were substituted “the number relating to him on a notice issued under section 13BA(9).”
 - (8) After rule 41A insert-

Correction of errors on day of poll: Northern Ireland

- “**41B** The presiding officer shall keep a list of persons to whom ballot papers are delivered in consequence of an alteration to the register made by virtue of section 13BA(9) which takes effect on the day of the poll.”
- (9) In rule 43 (procedure on close of poll), after paragraph (3) insert-

“(4) This rule applies in relation to Northern Ireland as if-

 - (a) the reference in paragraph (1)(d) to the marked copies of the register of electors included any marked copy notices issued under section 13BA(9), and
 - (b) paragraph (1)(f) referred to the list maintained under rule 41B.”
 - (10) In rule 54 (sealing up of ballot papers), after paragraph (2) insert-

“(3) This rule applies in relation to Northern Ireland as if the reference in paragraph (2)(d) to section 13B(3B) or (3D) were a reference to section 13BA(9).”
 - (11) In rule 55 (delivery of documents to Clerk of the Crown for Northern Ireland), after paragraph (4) insert-

“(5) This rule applies in relation to Northern Ireland as if-

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- (a) paragraph (1)(c) included a reference to the lists maintained under rule 41B, and
 - (b) the reference in paragraph (1B)(a) to marked copies of the registers included any marked copy notices issued under section 13BA(9).”
7. (1) Amend Schedule 1 (application, with modifications, of provisions of the Representation of the People Act 1983 to local elections) as follows.
- (2) In Part 1 (provisions applied), in the entry relating to sections 9, 10, 10A, 13 to 13B and 13D-
- (a) after “10,” insert “10ZA, 10ZB,” and
 - (b) for “to 13B” substitute “, 13A, 13BA”.
- (3) In that Part, for the entries relating to sections 56(1) and (3) to (5) and 58(2) substitute-
“Section 58 (registration appeals: Northern Ireland).”
- (4) In Part 2 (modifications), after paragraph 8 insert-
- “8A In section 13BA (alteration of registers in Northern Ireland: pending elections), in subsection (4)(b), at the end of sub-paragraph (ii) insert
“or
(iii) Part 1 of Schedule 2 to the Local Elections (Northern Ireland) Order 1985.”
- (5) In that Part, for paragraph 16 substitute-
- “16. In section 58, omit subsection (1)(c) and after subsection (2) insert-
“(2A) No appeal lies from the decision of the Court of Appeal on appeal from a decision of the county court under this section.””
8. In section 2 (use of CORE information), in subsection (10)(b), for “an annual canvass under section 10 of the 1983 Act” substitute “a canvass under section 10(1) or (1A) of the 1983 Act”.

PART 2

THE CHIEF ELECTORAL OFFICER

9. In section 14 (appointment of Chief Electoral Officer for Northern Ireland)-
- (a) in subsection (2), for the words from “by the Governor” to the end of the subsection substitute “in accordance with section 8 of the Northern Ireland (Miscellaneous Provisions) Act 2006”, and
 - (b) in subsection (4), omit the words following paragraph (d).

PART 3

DEVOLUTION OF POLICING AND JUSTICE FUNCTIONS ETC

10. In section 7(1)(c) (entrenched enactments), for “86” substitute “86B”.
11. In section 96(2) (orders and regulations), after “section” insert “4(6),”.
12. In Schedule 2 (excepted matters), in paragraph 3 (international relations etc.)-
- (a) after “international organisations” insert “and extradition”;
 - (b) omit sub-paragraph (a);
 - (c) after sub-paragraph (a) insert-
 - “(aa) co-operation between the Police Service of Northern Ireland and the Garda Síochána with respect to any of the following matters-
 - (i) transfers, secondments, exchanges or training of officers;
 - (ii) communications (including liaison and information technology);
 - (iii) joint investigations;
 - (iv) disaster planning;”.
13. (1) Amend Schedule 3 (reserved matters) as follows.
- (2) In paragraph 9 (criminal justice), omit sub-paragraph (f).
- (3) After paragraph 11 insert-
- ““11A Co-operation between the Police Service of Northern Ireland and the Garda Síochána with respect to any of the following matters-

- (a) transfers, secondments, exchanges or training of officers;
- (b) communications (including liaison and information technology);
- (c) joint investigations;
- (d) disaster planning.”

14. In section 30 (Northern Ireland inquiries), in subsection (6), for “subsection (3), (4) or (5)” substitute “any of subsections (3) to (5)”.

PART 4

FINANCIAL ASSISTANCE FOR ENERGY PURPOSES

15. In Article 66 (regulations, orders and directions), in paragraph (1), after “59(1)” insert “, 61(7)”.

SCHEDULE 5

Section 30(2)

REPEALS AND REVOCATIONS

REGISTRATION OF ELECTORS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Representation of the People Act 1983 (c. 2)	Section 13B(4)(e).
Electoral Administration Act 2006 (c. 22)	In Schedule 1, paragraph 110.

THE CHIEF ELECTORAL OFFICER

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Electoral Law Act (Northern Ireland) 1962 (c. 14 (N. I.))	In section 14(4), the words following paragraph (d).

DONATIONS FOR POLITICAL PURPOSES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Representation of the People Act 1983 (c. 2)	In Schedule 2A, paragraph 1(7).
Political Parties, Elections and Referendums Act 2000 (c. 41)	Section 42(5). Chapter 4 of Part 4. Section 156(4)(d). In Schedule 7, paragraphs 1(10) and (11) and 16.
Electoral Administration Act 2006 (c. 22)	Section 60.

DEVOLUTION OF POLICING AND JUSTICE FUNCTIONS ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Northern Ireland Act 1998 (c. 47)	In Schedule 2, paragraph 3(a). In Schedule 3, paragraph 9(f).

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LOANS

<i>Short title and number</i>	<i>Extent of repeal or revocation</i>
Northern Ireland (Loans) Act 1975 (c. 83)	In section 1(5), “, on not more than one occasion,”.
Northern Ireland (Loans) Act 1985 (c. 76)	The whole Act.
Northern Ireland (Loans) (Increase of Limit) Order 1995 (S.I. 1995/675)	The whole Order.

EXTENSION TO NORTHERN IRELAND OF PROVISIONS OF SOCAP 2005

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Serious Organised Crime and Police Act 2005 (c.15)	In section 60- (a) in subsection (1), “and” at the end of paragraph (b); (b) in subsection (5), “or” at the end of paragraph (b).

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