

**NORTHERN IRELAND (ST ANDREWS AGREEMENT)  
ACT 2006\***

(2006 c.53)

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\*Annotations by Austen Morgan, Barrister-at-law, 3 Temple Gardens, London.

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An Act to make provision for preparations for the restoration of devolved government in Northern Ireland in accordance with the St Andrews Agreement; to make provision as to the consequences of compliance, or noncompliance, with the St Andrews Agreement timetable; to amend the Northern Ireland Act 1998; to make provision about district policing partnerships; to amend the Education (Northern Ireland) Orders 1997 and 2006; and for connected purposes. [22nd November 2006]

PROGRESS OF THE BILL

*Hansard*, HC Vol.453, col.144 (presentation and first reading) (November 16, 2006); Vol.453, cols 414-518 (second reading debate and bill read third time and passed) (November 21, 2006); Vol.453, col.656 (Royal Assent) (November 22, 2006).

HL Vol.687, col.334 (brought from Commons and first reading) (November 21, 2006); Vol.687, col.240 (Standing Order 47 (no two stages of a Bill to be taken on one day) be dispensed with) (November 21, 2006); Vol.687, cols 345-369 (second reading debate) (November 22, 2006); Vol.687, cols 369-420 (Lords Committee stage, Lords report stage, Lords third reading and Bill passed) (November 22, 2006).

INTRODUCTION AND GENERAL NOTE

*Summary*

The Northern Ireland (St Andrews Agreement) Act 2006 (c.53) (“the Act”), which was rushed through parliament on November 21 and 22, 2006, was designed to give effect to the non-binding St. Andrews agreement between the United Kingdom (“UK”) and Irish governments. This agreement envisaged the Democratic Unionist Party (“DUP”) and Sinn Féin running a devolved administration in Belfast from March 2007.

The Act needs to be read with the Northern Ireland Act 2006 (c.17) (“NIA 2006”), now repealed, which established an original negotiating deadline of November 24, 2006, and the North-

ern Ireland (Miscellaneous Provisions) Act 2006 (c.33) (“NIMPA 2006”), containing concessions to Sinn Féin, including the devolution of policing and justice.

This Act contains belated concessions to the DUP, on strands one, two and three of the devolved institutions, designed to get it to share power with republicans, but also further concessions to Irish nationalism, to encourage Sinn Féin to support the police.

#### *Relevant Documents and Reports*

This contemporary phase of the UK’s devolution to Northern Ireland policy has to be traced from the 1998 Belfast Agreement, through the comprehensive agreement of December 2004, to the St. Andrews agreement reached in October 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).

The Belfast Agreement contained provisions for review: Validation, Implementation and Review section, paras 5-8. It was not, therefore, fundamental (in the sense of irreformable), as suggested by the Social Democratic & Labour Party (“SDLP”). The Belfast Agreement contained little on policing and justice; these issues were pushed off to a commission on policing and a review of criminal justice: Policing and Justice section, Annexes A and B. However, Sinn Féin, which did not vote for the Belfast Agreement, came to espouse “a new beginning to policing in Northern Ireland”, neglecting the rest of the phrase: “with a police service capable of attracting and sustaining support from the community as a whole” (para.1). It still refuses to support the police, more than eight years after the Belfast Agreement.

##### *(ii) Devolution after the Belfast Agreement*

The main parties in 1998 were the Ulster Unionist Party (“UUP”), led by the Rt. Hon. David Trimble MP, and the SDLP, under Seamus Mallon MP (and later Mark Durkan MP). They secured devolution on December 2, 1999.

However, devolution was to be fraught with suspensions, there being more direct rule from London in the period from December 2, 1999: (1) from February 12 to May 29, 2000, due to the failure of the Irish Republican Army (“IRA”) to decommission; (2) on August 11 and September 22, 2001, two tactical suspensions to get round constitutional difficulties; (3) and from October 15, 2002 (continuing), following the discovery of an alleged IRA spy ring at Stormont.

The two centrist parties, on which were based the hopes of devolution, were eclipsed in the assembly elections of November 26, 2003: the UUP fell slightly from 28 to 27 (and later 24) seats; and the SDLP more precipitately from 24 to 18 (out of a total of 108 seats). David Trimble had had difficulty holding his 28 from 1998. But he had three defections in the new, second, assembly. The two extreme parties took over: the DUP, under Dr Ian Paisley MP, absorbing independent unionists, rose dramatically from 20 to 30 (and later 33) seats; and Sinn Féin, led by Gerry Adams MP, grew more modestly from 18 to 24 seats.

The DUP victory was continued at Westminster, on May 5, 2005. The UUP fell from five to one MP, David Trimble losing his seat. The DUP, which had had six MPs, came back with nine. Unionism was ten strong, to the nationalists’ eight seats (Sinn Féin - still abstaining - up from four to five, and the SDLP holding on to three).

##### *(iii) DUP Political Bargaining*

Dr Paisley had walked out of the political talks in July 1997. He opposed the Belfast Agreement of April 10, 1998. (The DUP maintains variously that it is replacing the Belfast Agreement, or reforming it fundamentally.) The extreme unionists opposed David Trimble, though two members became ministers in the involuntary coalition on December 2, 1999 - further weakening collective responsibility.

The DUP was unable and/or unwilling to participate in the following agreements: the Weston Park proposals of August 2001; and the Hillsborough joint declaration of May 2003. All that changed when David Trimble gave way to Ian Paisley as the leader of the majority community, in November 2003 and especially in May 2005.

(iv) *The Comprehensive Agreement, December 8, 2004*

The comprehensive agreement comprised: proposals from the UK and Irish governments (nine 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. It fell apart ostensibly over the IRA's refusal to have decommissioning photographed. Dr Paisley and his son, Ian Paisley junior, outmanoeuvred the modernizing wing of the DUP, led by Peter Robinson MP.

The year 2005 - seven years after the Belfast Agreement - may have seen a significant breakthrough: a IRA statement of July 28, 2005 formally ordered an end to the armed campaign (but not disbandment); on September 26, 2005, the independent international commission on decommissioning reported that the IRA had finally decommissioned (but not necessarily completely disarmed, as was subsequently indicated by the independent monitoring commission).

(v) *The St Andrews Agreement, Friday, October 13, 2006*

The UK Prime Minister, the Rt. Hon. Tony Blair MP, and the Irish Premier, Bertie Ahern TD, decided to hothouse the Northern Ireland parties in a hotel at St. Andrews (the apostrophe not being used) for three days, this Scottish coastal town being chosen to impress the DUP, which affirms Ulster-Scots culture in Northern Ireland.

As in 2001, 2003 and 2004, the parties did not agree, even with the two governments mediating. However, they were given until November 10, 2006, to endorse the St. Andrews agreement. The principal issues were: would the DUP support power-sharing including Sinn Féin?; and would Sinn Féin come out in support of the Police Service of Northern Ireland ("PSNI")?

The agreement comprises 13 paragraphs, and the following annexes: institutional changes (A); human rights etc. (B); financial package (C); timetable (D); national security (E).

The St. Andrews agreement is not legally binding in international law (something the UK government sought to avoid admitting in a parliamentary answer (*Hansard*, HL Vol.686, col.WA 149)). It therefore differs from the Belfast Agreement. It resembles, in derivation and status, the 2001 Weston Park proposals, the 2003 Hillsborough joint declaration and the 2004 comprehensive agreement; indeed, the St Andrews Agreement is the comprehensive agreement reheated.

The DUP secured its institutional changes (Annex A), but the nationalists also obtained concessions. There was very little on finance (Annex C). The extreme unionists effectively agreed in Annex D to: Ian Paisley and Martin McGuinness being nominated as First Minister and Deputy First Minister on November 24, 2006; and the assembly going live on March 26, 2007.

Sinn Féin, in contrast, surrendered little or nothing. It had to consult its executive "and other appropriate party bodies" by November 10, 2006 (but not expressly the special conference necessary to endorse the police). However, the devolution of policing and justice was scheduled, in the main text, for May 2008. Annex E also provided for MI5 accountability in Northern Ireland. The republicans also gained in the profuse Annex B: a bill of rights forum; an Irish language act; more powers for the human rights commission; and effectively the employment of Irish nationalists from the Republic of Ireland ("ROI") in the senior civil service (the DUP, in comparison, getting empty gestures on Ulster Scots, parading and reverse discrimination - the 50/50 rule - in police recruitment).

The secretary of state, the Rt. Hon. Peter Hain MP, told parliament on October 16, 2006 that the St Andrews agreement "may come to be seen as a pivotal moment in Irish history" (*Hansard*, HC Vol.450, col.587). More likely, it will come to be seen as another failure of UK policy in Northern Ireland, probably the last of the premierships of Tony Blair (in association with Bertie Ahern). Lord Smith of Clifton, for the liberal democrats, was uncharacteristically dyspeptic at second reading on November 22, 2006:

"This flawed Bill accurately reflects the character of the politics of Northern Ireland. It is but a fig leaf to camouflage the almost irreconcilable elements at work. Whether it will provide a foundation for an operating, representative and democratic system of devolved government - as all people of good will would wish - is extremely doubtful. This wretched Bill comprises the wish list of DUP demands and a corresponding Sinn Féin wish list. Where the two conflict, it is either silent or offers a fudge. The idea that the Bill is based on robust principles which, taken together, facilitate the creation of a power-sharing Executive, as it should

be, is far from the truth. Rather, it is a patchwork of cobbled-together partisan clamourings with a touch of half-baked Northern Ireland Office ingenuity.” (*Hansard*, HL Vol.687, col.352)

The house of commons library has published a useful research paper: *The Northern Ireland (St Andrews Agreement) Bill 2006-7*, research paper 06/56.

(vi) *After the St. Andrews Agreement*

Disagreement broke out immediately. The DUP over-spun the idea of Martin McGuinness taking an oath on November 24, 2006, supporting the police, the special branch and even MI5. Sinn Féin continued to do nothing, demanding effectively party control of the police and justice before it would even schedule a conference to abandon opposition to the rule of law.

On October 27, 2006, the DUP published a short, illustrated paper, *Your Verdict: what is it to be?* Formally a consultation for the November 10, 2006 decision, the document made four points: (1) negotiations were continuing; (2) the DUP's position was: no delivery (by Sinn Féin), no deal; (3) the St. Andrews agreement was immeasurably better than the Belfast Agreement; and (4) essentially, there was no alternative - saying “no” would let Sinn Féin off the hook on law and order.

(vii) *November 10, 2006*

According to the St Andrews agreement, the political parties had to accept it by November 10, 2006. The sanction was dissolution of the assembly (even though there was no such power in the NIA 2006).

There was no such acceptance, not even seemingly from the centrist parties. The DUP stated it did not have to move towards power-sharing (there was work in progress), until Sinn Féin had moved on policing; Gerry Adams affirmed the need to agree on the devolution of policing and justice first.

(viii) *November 24, 2006*

The next deadline - according to the St Andrews agreement - was November 24, 2006, when the “Assembly [would] meet[s] to nominate FM/DFM”, that is the First Minister and Deputy First Minister.

The problem was the pledge of office. On July 1, 1998, David Trimble and Seamus Mallon, following election as First Minister (designate) and Deputy First Minister (designate), had affirmed in a prescribed form (New Northern Ireland Assembly, *Official Report*, Vol.1, p.23). The DUP thought that the St Andrews agreement meant that: Martin McGuinness would have to sign up to the rule of law at an early stage. The UK government, therefore, sought to downgrade November 24, 2006, to spare the DUP from its miscalculation, but above all to protect Sinn Féin from having to affirm the rule of law.

First, the NIA 2006 (with the key deadline) was repealed - on November 22, 2006 - by s.22 of this Act. Second, a new transitional assembly was created, under s.1 and Sch.1; the nomination of First Minister and Deputy First Minister was detached, by para.3 of the latter, from the due date of November 24, 2006. Third, a new deadline of March 26, 2007 - after an election on March 7, 2007 - was created, under s.2 and Schs 2, 3 and 4.

The assembly was summoned to meet on Friday, November, 24, 2006, with the DUP and Sinn Féin required to indicate an intention to nominate at some point in the future. Commentators would describe the proceedings, which had to be adjourned to Monday, November, 27, 2006 (because of a paramilitary attack on Parliament Buildings by Michael Stone, a convicted loyalist, who had been released from prison under the Belfast Agreement), as resembling Alice in Wonderland.

First, Dr Paisley read out a statement, less a key sentence agreed with the UK Prime Minister. Second, Gerry Adams stated an intention to nominate Martin McGuinness, and the latter was even permitted to speak. Third, the speaker, reading from a text prepared by the Secretary of State, pronounced that the requisite intentions had been indicated. Fourth, the DUP showed the first signs of splitting, when a faction - dubbed the dirty dozen - put out a statement denying that Dr Paisley had done any such thing. Fifth, Dr Paisley, clearly under pressure from 10 Downing Street, added the sentence back in, in a personal press release later that day. He said it, but not in the assembly.

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### *The Queen's Speech, November 15, 2006*

This included the following sentence: “My Government will work towards the restoration of devolution in Northern Ireland, including by bringing forward legislation.” In a written statement of the same date, ministers told parliament there would be “an emergency measure early in the Session” (*Hansard*, HL Vol.687, col.WS2). There was - the following day!

### *The Bill*

The Bill (Bill 7) was introduced in the House of Commons, on November 16, 2006. There were also Explanatory Notes (“EN”). All remaining stages were taken there on November 21, 2006, in less than seven hours. The following day, the House of Lords disposed of the Bill (HL Bill 8) in a similar timescale. Royal Assent followed at 10.20pm. on November 22, 2006 (the government originally indicating that it might have to wait until the following morning).

The Bill began with 28 clauses and nine schedules. No amendments were successful, though there was one division in the House of Commons on a DUP amendment, and three in the House of Lords. The DUP confined its amendments to one point. The centrist parties, the SDLP and UUP, did most of the drafting work. Sinn Féin, of course, abstains from Parliament; however, it attends the palace of Westminster, and receives MPs’ allowances. The official opposition acquiesced in the government getting its emergency legislation.

As is increasingly the case under new labour, the proceedings in the House of Commons were eclipsed by those in the House of Lords, where Lord Trimble, as the former First Minister, impressed the non-government parties with legal tales about UK policy in Northern Ireland.

### *The Structure of the Act*

The Act comprises four parts. Part 1 (ss.1-4) deals with devolution. Part 2, the biggest (ss.5-19) contains amendments to the Northern Ireland Act 1998 (c.47) (“NIA 1998”). Part 3 (ss.20 and 21) contains other amendments. And Part 4 (ss.22-28) is supplemental, including the repeal of the NIA 2006.

### COMMENCEMENT

Section 27 specifies the conditions for commencement of: ss.3(1), 5-19, and 21(2); and Schs 2-4. Sections 4, 20(1), 20(2) and Schs 8 and 9 are governed by orders. The remainder of the Act came into force on Royal Assent, November 22, 2006.

### ABBREVIATIONS

“the Act”:	Northern Ireland (St Andrews Agreement) Act 2006 (c.53)
“BIA”:	British-Irish Agreement (Belfast Agreement)
“BIC”:	British-Irish Council
“the Bill”:	Northern Ireland (St Andrews Agreement) Bill (Bill 7; HL Bill 8)
“DPPs”:	District Policing Partnerships
“DUP”:	Democratic Unionist Party
“Education Order”:	Education (Northern Ireland) Order 2006 (SI 2006/1915)
“EN”:	Explanatory Notes (for the Bill and the Act)
“IRA”:	Irish Republican Army
“MPA”:	Multi-party Agreement (Belfast Agreement)
“NIA 1998”:	Northern Ireland Act 1998 (c.47)
“NIA 2000”:	Northern Ireland Act 2000 (c.1)
“NIA 2006”:	Northern Ireland Act 2006 (c.17)
“NIMPA 2006”:	Northern Ireland (Miscellaneous Provisions) Act 2006 (c.33)
“NIO”:	Northern Ireland Office
“NSMC”:	North-South Ministerial Council
“PNIA”:	Police (Northern Ireland) Act 2000 (c.32)
“PNIA”:	Police (Northern Ireland) Act 2003 (c.6)
“PSNI”:	Police Service of Northern Ireland
“PUP”:	Progressive Unionist Party
“ROI”:	Republic of Ireland

“SDLP”:	Social Democratic & Labour Party
“UK”:	United Kingdom
“UUP”:	Ulster Unionist Party

## PART 1

PREPARATIONS FOR RESTORATION OF DEVOLVED  
GOVERNMENT**1. Preparations for restoration of devolved government**

- (1) There is to be an Assembly (referred to in this Act as “the Transitional Assembly”)-
  - (a) whose members at any time are to be the persons who are at that time members of the Northern Ireland Assembly, and
  - (b) whose purpose is to take part in preparations for the restoration of devolved government in Northern Ireland in accordance with the St Andrews Agreement.
- (2) Schedule 1 (provision about the Transitional Assembly) has effect.
- (3) Nothing in this Act affects the operation of section 1 of the 2000 Act (suspension of devolved government).
- (4) But subsection (3) is subject to-
  - (a) paragraph 3 of Schedule 1,
  - (b) paragraphs 2 and 4 of Schedule 2, and
  - (c) paragraphs 1 and 2 of Schedule 4.

## GENERAL NOTE

*How Many Assemblies?*

This section provides for a fourth assembly. First, there was the new Northern Ireland assembly, elected on June 25, 1998: Northern Ireland (Elections) Act 1998 (c.12), s.1(1). Second, this became the Northern Ireland assembly on December 2, 1999: NIA 1998, s.4(5). This is the assembly that was suspended in 2002, and re-elected in 2003. Third, there was what came to be called the Hain assembly, provided for by the NIA 2006: it met on twelve occasions between May 15 and October 3, 2006.

*This Section*

This section is the first of four in Pt 1: preparations for restoration of devolved government. Part 1 is necessitated by the repeal of the NIA 2006 by s.22 below. Indeed, Pt 1 may be seen as the amending, by repeal and enactment, of the NIA 2006. This section closely follows s.1 of the NIA 2006.

*Subsections (1) and (2)*

This fourth assembly is to be known as the Transitional Assembly, sitting between November 24, 2006 and January 30, 2007 (and again possibly after the March 7, 2006 election until March 26, 2007). Transitional Assembly is defined in s.25 below. The St Andrews Agreement is also defined there. Note, this agreement has not been published officially, as was the case with the Belfast Agreement: NIA 1998, s.98(1).

*Subsections (3) and (4)*

These provide for the continuation of suspension of the Northern Ireland Assembly. It was suspended from October 15, 2002, by the Northern Ireland Act 2000 (c.1) (“NIA 2000”). Subsection (4) refers to other references to the NIA 2000 in the schedules below. Query whether any of those references affect suspension since this section provides for the Transitional Assembly? The answer would appear to be: they also take effect in the Northern Ireland Assembly.

## 2. Compliance or non-compliance with St Andrews Agreement timetable

- (1) If at any time before 25 March 2007 the Secretary of State considers that (were Schedule 2 to come into force) there would be no reasonable prospect that each of the Ministerial offices would be filled in accordance with paragraph 2 of that Schedule, he may make an order bringing Schedule 3 into force on the day following the day on which the order is made.
- (2) If the Secretary of State does not make an order under subsection (1) before 25 March 2007-
  - (a) he must on that date make a restoration order providing for section 1 of the 2000 Act to cease to have effect on 26 March 2007, and
  - (b) Schedule 2 shall come into force on 26 March 2007.
- (3) Subsection (4) applies if-
  - (a) the Secretary of State makes a restoration order by virtue of subsection (2), but
  - (b) it appears to him that one or more of the Ministerial offices has not been filled in accordance with paragraph 2 of Schedule 2 by the end of 26 March 2007.
- (4) Where this subsection applies-
  - (a) the Secretary of State must on 27 March 2007 make an order under the 2000 Act revoking the restoration order,
  - (b) that order must state that it is made by virtue of subsection (3) and must come into force on 28 March 2007, and
  - (c) Schedule 3 shall come into force on 28 March 2007.
- (5) If the Secretary of State-
  - (a) makes a restoration order by virtue of subsection (2), and
  - (b) does not make an order by virtue of subsection (3) revoking the restoration order,Schedule 4 shall come into force on 28 March 2007.
- (6) An order under subsection (1) must be made by statutory instrument.
- (7) Section 7(4) to (7) of the 2000 Act (affirmative resolution etc procedure) does not apply in relation to an order made by virtue of subsection (2) or (3).
- (8) In this section “the Ministerial offices” means-
  - (a) the offices of First Minister and deputy First Minister, and
  - (b) the Ministerial offices to be held by Northern Ireland Ministers.

### GENERAL NOTE

#### *St Andrews Agreement*

The timetable in Annex D is: November 10, 2006 - response of political parties; November 24, 2006 - assembly meets to nominate First Minister and Deputy First Minister; March 14, 2007 - party leaders nominate members Northern Ireland executive; March 26, 2007 - “Power devolved and d’Hondt run”.

The DUP suggested only four amendments to the Bill, all to do with the March 26, 2007 deadline; they wanted the Secretary of State to have the power to make it later, by order. This proposal was defeated by 319 votes to 12.

#### *This Section*

This section closely follows ss.2 and 3 of the NIA 2006. Then, the deadline was November 24, 2006. Now, there is a timetable. This section seeks, as usual, to maximize the discretion of the

Secretary of State, through the use of Schs.2, 3 and 4: Sch.3 is failure; Schs.2 and 4 provide for success.

*Subsections (1) and (6)*

These permit the secretary of state to stop progress towards devolution, at any point from November 22, 2006 (Royal Assent) to Saturday, March 24, 2007. He did not do so on November 27, 2006, regarding nominations.

The test is: no reasonable prospect that ministerial offices would be filled. It is a matter entirely for the secretary of state. This is the scenario of failure. The secretary of state would appear able to make the Sch.3 order on March 25, 2007 (but for subs.(2)).

*Subsections (2)-(4)*

These provide for the second scenario: not failure but not success. Subsection (2) narrows the secretary of state's discretion: an order under subs.(1) by March 24, 2006 or an order under subs.(2) on March 25, 2006. The latter has the effect of restoring the Northern Ireland Assembly on March 26, 2007. Subsection (3) provides for failure on March 26, 2007. Again, it is a matter of secretary of state discretion: "appears to him". The end of March 26, 2007 is 24.00 (midnight). Subsection (4) requires the secretary of state to make an order on March 27, 2007, winding up the Northern Ireland Assembly on the following day.

*Subsections (5) and (7)*

These provide for success. There has been a restoration order of March 25, 2007. Schedule 2 has come into force. The secretary of state is satisfied with the proceedings on March 26, 2007. He does not make the order of March 27, 2007. So, the following day, the NIA 2000 - the suspension power - is repealed. Subsection (7) is important. Section 7(4)-(7) of the NIA 2000 provides for the positive resolution procedure, but with the secretary of state able to waive that requirement on the ground of expediency. Subsection (7) means a subs.(2) or (3) order only has to be by negative resolution. Reading subs.(6) and (7) together, it would appear that a subs.(1) order has to be in accord with the NIA 2000. There is no order by virtue of subs.(5).

### 3. Next Northern Ireland Assembly election to be in March 2007 etc

- (1) In section 31 of the 1998 Act (Northern Ireland Assembly: dates of elections and dissolutions), for subsection (2) substitute-
  - “(2) The date of the poll for the election of the Assembly next following the Assembly elected at the poll on 26 November 2003 shall be 7 March 2007; and the Assembly elected on 26 November 2003 shall be dissolved on 30 January 2007.”
- (2) Subsection (3) applies in respect of any vacancy in the membership of the Northern Ireland Assembly which exists at any time between the passing of this Act and the date of the next election of the Assembly (whether the vacancy occurred before or after the passing of this Act).
- (3) Article 7 of the Northern Ireland Assembly (Elections) Order 2001 (S.I. 2001/ 2599) does not apply in the case of such a vacancy.

#### GENERAL NOTE

*Northern Ireland Elections*

Section 31(1) of the NIA 1998 provided for an election every four years (on the first Thursday in May). However, given that the election on June 25, 1998 had not led to devolution until December 2, 1999, the next date was to be May 1, 2003: s.31(2).

Just as the first fixed term was altered, so ministers would revert to primary or secondary legislation to move election dates: Northern Ireland Assembly (Elections) Act 2003 (c.3), amending s.31(2) to read May 29, 2003; Northern Ireland Assembly (Elections and Periods of Suspension) Act 2003 (c.12), amending s.31(2) to provide for secretary of state order; Northern Ireland (Date

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of Next Assembly Poll) Order 2003 (SI 2003/2697), specifying November 26, 2003; NIA 2006 Sch.2 para.4, providing for the first Thursday in 2008, and Sch.3 para.2, specifying by order of the secretary of state.

### *This Section*

This section amends again s.31(2) of the NIA 1998. The election on the first Thursday in May 2008 is brought forward to March 7, 2007. The St Andrews Agreement left open whether there would be an assembly election or a referendum in March 2007: “Endorsement by the electorate of the St Andrews Agreement”.

### *Subsection (1)*

Clearly, the suspended assembly is to be dissolved on January 30, 2007. Under s.1(1) above, this will also have an effect on the Transitional Assembly: there will be no members to attend; however, the Transitional Assembly is not to be dissolved on January 30, 2007.

### *Subsections (2) and (3)*

The date of the Royal Assent was November 22, 2006. The date of the next election is March 7, 2007. Subsection (2) disapplies Art.7 of the Northern Ireland Assembly (Elections) Order 2001 (SI 2001/2599), which provides for by-elections in certain specified circumstances.

## 4. Remuneration of members of the Northern Ireland Assembly

- (1) Subsection (2) has effect in relation to-
  - (a) the dissolution of the Northern Ireland Assembly on 30 January 2007, and
  - (b) the Assembly election the poll for which is to be held on 7 March 2007 (“the next Assembly election”).
- (2) Section 47 of the 1998 Act (remuneration of members) is to have effect as if, for subsection (10) of that section, there were substituted-
  - “(10) For the purposes of this section, a person who is a member of the Assembly immediately before the Assembly is dissolved shall be treated-
    - (a) as if he were a member of the Assembly until the end of the day which is the latest day for the delivery of nomination papers for the next Assembly election; and
    - (b) if he is nominated as a candidate at the next Assembly election, as if he were a member of the Assembly until the end of the day of the poll for that election.”
- (3) Subsection (4) has effect in relation to persons returned as members of the Northern Ireland Assembly at the next Assembly election.
- (4) Section 47 of the 1998 Act is to have effect as if, for subsection (9)(a) of that section, there were substituted-
  - “(a) a person’s membership of the Assembly begins on the day on which he takes his seat (following the next Assembly election) in the Assembly established under section 1(1) of the Northern Ireland (St Andrews Agreement) Act 2006 in accordance with standing orders of that Assembly; and”.

### GENERAL NOTE

#### *Subsections (1) and (2)*

Subsection (1) follows from s.3(1) above. The assembly referred to in subs.(1)(b) is not the Transitional Assembly; it is the Northern Ireland Assembly. Section 47(10) of the NIA 1998 provided for assembly members’ continuing remuneration: for office holders, until ceasing to hold office; and for other existing members standing again, until the end of the day of poll. Subsection (2) does

not, of course, provide for office holders. As for other members, it distinguishes those retiring from those seeking re-election.

*Subsections (3) and (4)*

Section 47(9)(a) of the NIA 1998 provides that a member begins his membership when he takes his seat in accord with standing orders. Subsection (4) repeats this. However, it raises an interesting question: the member is being elected to the Northern Ireland Assembly; however, the Transitional Assembly legally survives, under s.1(1) of this Act. This presumably is to permit the secretary of state to try, and fail, to restore the Northern Ireland Assembly on March 26, 2007. The Transitional Assembly is only to be dissolved, under para.7 of Sch.2, on March 26, 2007.

## PART 2

### AMENDMENTS OF THE NORTHERN IRELAND ACT 1998 ETC

#### *Ministerial conduct*

#### **5. The Executive Committee and the Ministerial Code**

- (1) In section 20 of the 1998 Act (Executive Committee), after subsection (3) insert-
  - “(4) The Committee shall also have the function of discussing and agreeing upon-
    - (a) significant or controversial matters that are clearly outside the scope of the agreed programme referred to in paragraph 20 of Strand One of that Agreement;
    - (b) significant or controversial matters that the First Minister and deputy First Minister acting jointly have determined to be matters that should be considered by the Executive Committee.”
- (2) After section 28 of the 1998 Act insert-

#### *“Ministerial Code*

#### **28A Ministerial Code**

- (1) Without prejudice to the operation of section 24, a Minister or junior Minister shall act in accordance with the provisions of the Ministerial Code.
- (2) In this section “the Ministerial Code” means-
  - (a) the Ministerial Code that becomes the Ministerial Code for the purposes of this section by virtue of paragraph 4 of Schedule 1 to the Northern Ireland (St Andrews Agreement) Act 2006 (as from time to time amended in accordance with this section); or
  - (b) any replacement Ministerial Code prepared and approved in accordance with this section (as from time to time amended in accordance with this section).
- (3) If at any time the Executive Committee-
  - (a) prepares draft amendments to the Ministerial Code; or
  - (b) prepares a draft Ministerial Code to replace the Ministerial Code,

the First Minister and deputy First Minister acting jointly shall lay the draft amendments or the draft Code before the Assembly for approval.

- (4) A draft Ministerial Code or a draft amendment to the Code-
  - (a) shall not be approved by the Assembly without cross-community support; and
  - (b) shall not take effect until so approved.
- (5) The Ministerial Code must include provision for requiring Ministers or junior Ministers to bring to the attention of the Executive Committee any matter that ought, by virtue of section 20(3) or (4), to be considered by the Committee.
- (6) The Ministerial Code must include provision for a procedure to enable any Minister or junior Minister to ask the Executive Committee to determine whether any decision that he is proposing to take, or has taken, relates to a matter that ought, by virtue of section 20(3) or (4), to be considered by the Committee.
- (7) The Ministerial Code must also include provision as to the procedures of the Executive Committee with respect to-
  - (a) the taking of decisions; and
  - (b) consideration by the Committee of decision papers that are to be considered by the North-South Ministerial Council or the British-Irish Council.
- (8) The Ministerial Code must in particular provide-
  - (a) that it is the duty of the chairmen of the Executive Committee to seek to secure that decisions of the Executive Committee are reached by consensus wherever possible;
  - (b) that, if consensus cannot be reached, a vote may be taken; and
  - (c) that, if any three members of the Executive Committee require the vote on a particular matter which is to be voted on by the Executive Committee to require cross-community support, any vote on that matter in the Executive Committee shall require cross-community support in the Executive Committee.
- (9) The Ministerial Code may include such other provisions as the Executive Committee thinks fit.
- (10) Without prejudice to the operation of section 24, a Minister or junior Minister has no Ministerial authority to take any decision in contravention of a provision of the Ministerial Code made under subsection (5).”

#### GENERAL NOTE

##### *Part 2*

The main part of the Act is: amendments to the NIA 1998. These originated with the DUP, but the NIO also added concerns of principally Sinn Féin.

The following documents have already been mentioned: the comprehensive agreement of December 8, 2004; and the St Andrews Agreement of October 13, 2006 (before the latter, the secretary of state had circulated to party leaders, on October 5, 2006, for discussion, draft clauses on the strands one, two and three institutions). It is therefore possible to trace the NIA 1998 amendments through three texts.

*(1) The Comprehensive Agreement, December 2004*

The UK government, for strand one, and the two governments, for strands two and three, put forward the following proposals in Annex B: a statutory ministerial code; assembly referrals for executive review; amendments to the pledge of office; assembly approval of ministers in the executive; functions of office of First Minister and Deputy First Minister; committee of the centre; reviews; repeal of the NIA 2000; community designation; executive role in preparation for North-South Ministerial Council (“NSMC”) and British-Irish Council (“BIC”) meetings; attendance at NSMC and BIC; NSMC/BIC agendas; review; assembly/Oireachtas scrutiny of implementation bodies; north-south parliamentary forum; independent consultative forum; secretariat of BIC; and east-west interparliamentary framework.

*(2) The Draft Clauses, October 2006*

The following amendments to the NIA 1998 were proposed: First Minister and Deputy First Minister (ss.16A, 16B and 16C); review (s.29A); executive declaration (Sch.1); policing and justice (Sch.2); ministerial code (s.28A); duty of ministers (ss.24A and 28B); NSMC and BIC (ss.52A, 52B and 52C and Schedule).

*(3) The St Andrews Agreement, October 2006*

Annex A provided for (the Irish government now presumably on board for strand one): a statutory ministerial code; assembly referrals for executive review; amendments to the pledge of office; appointment of ministers in the executive; functions of office of First Minister and Deputy First Minister; committee of the centre; reviews; repeal of the NIA 2000; community designation; executive role in preparation for NSMC and BIC meetings; attendance at NSMC and BIC; review; assembly/Oireachtas scrutiny of implementation bodies; north-south parliamentary forum; independent consultative forum; secretariat of BIC; and east-west interparliamentary framework - virtually the same (less NSMC/BIC agendas) as the comprehensive agreement of nearly two years earlier.

*This Section*

This section must be read with the following two sections in the sub-part: ministerial conduct. The following sections of the NIA 1998 are amended or inserted: s.20, new s.28A, new s.28B and Sch.4.

*Subsection (1)*

This was not included in the draft clauses of October 5, 2006. Section 20 of the NIA 1998 is: executive committee. It cross-refers to paras.19 and 20 of strand one of the Belfast Agreement, embodying the principle of collective responsibility. (This is understood in Northern Ireland as: maximum autonomy for one’s own party or tribe; and minimum discretion for the other.)

This subsection adds a new subs.(4) to s.20. It clearly adds to the Belfast Agreement, though, arguably, if collective responsibility is in that agreement, these two instances are merely legislative detail. A new function is given to the executive committee. Both paragraphs refer to: “significant or controversial matters”. These are nowhere defined, though they first appeared in the comprehensive agreement. Significant may be an objective term; controversial obviously refers to an existing, or anticipated, dispute. Paragraph (a) may be taken to greatly widen the responsibility of the executive committee: if a measure were uncontroversial, it would be in the agreed programme; this paragraph purports to cover virtually everything else. Paragraph (b) is much less significant. A condition precedent is agreement by the First Minister and Deputy First Minister. That may be more, or less, than exists in the agreed programme of the executive committee.

*Subsection (2)*

New s.28A was included in the draft clauses of October 5, 2006. Then, there were 13 sub-clauses: now there are ten subsections.

New s.28A(1) and (10) refer to s.24: this defines the limits of the assembly’s legislative, and executive, competence. These subsections make the ministerial code an important constitutional document for the first time. In the Belfast Agreement, Annex A of strand one contained a pledge of office, with an attached ministerial code of conduct. This was given legislative force, by being reproduced as Sch.4 of the NIA 1998. Schedule 4 was referred to in: ss.16(4) and (10), 18(8) and 19(3). However, the emphasis was upon the pledge of office, and not upon the ministerial code of

conduct. During the period of devolution, the executive committee agreed its own ministerial code (which is referred to in Sch.1 para.4(7)).

New s.28A(2) defines the ministerial code as a statutory document. It is referred to, in draft form, in Sch.1 para.4 below.

New s.28A(3) and (4) indicates that the ministerial code is a devolved function. It is a matter for the executive committee and the assembly. Cross-community support is defined in s.4(5) of the NIA 1998.

New s.28A(5)-(9) refers to the content of the ministerial code. New s.28A(9) gives the executive committee a discretion. The remaining new subsections are mandatory. New s.28A(5) and (6) relates back to the Belfast Agreement, to the original paras 19 and 20 of strand one, but also now, by virtue of subs.(1) of this section, to the new function given the executive committee.

New s.28A(7) and (8) relates to executive committee procedures. This represents a tightening up of the Belfast Agreement. For the first time, there is specified: agreement by consensus; and cross-community voting.

New s.28A was included in the draft clauses of October 5, 2006. Then, there were 13 sub-clauses: now there are ten subsections.

## 6. Power to refer Ministerial decision to Executive Committee

After section 28A of the 1998 Act insert-

*“Power to refer Ministerial decision to Executive  
Committee*

### **28B Power to refer Ministerial decision to Executive Committee**

- (1) This section applies if 30 members petition the Assembly expressing concern that a decision taken by a Minister or junior Minister (“the Ministerial decision”)-
  - (a) may have been taken in contravention of section 28A(1); or
  - (b) relates to a matter of public importance.
- (2) But this section does not apply if the Ministerial decision has previously been the subject of a reference under this section.
- (3) If the Presiding Officer, after consulting the political parties whose members hold seats in the Assembly, certifies that the Ministerial decision relates to a matter of public importance, he shall refer the decision to the Executive Committee for its consideration.
- (4) Having considered the reference, the Executive Committee shall notify the Presiding Officer-
  - (a) whether or not the decision was, in its view, taken in contravention of section 28A(1);
  - (b) whether or not the decision relates, in its view, to a significant or controversial matter; and
  - (c) as to any action that the Executive Committee proposes to take, or has taken, in relation to the decision.
- (5) No reference may be made under this section after the end of the period of seven days beginning with-
  - (a) the day on which the Ministerial decision was taken; or
  - (b) if appropriate, the day on which the decision was notified to the Assembly.
- (6) Any consideration by the Executive Committee of a Ministerial decision under this section must be completed before the end of the period of seven days beginning with the day on which the reference is made.

- (7) Standing orders shall make provision with respect to the procedure to be followed-
  - (a) in petitioning the Assembly under subsection (1); and
  - (b) in making a reference under this section.
- (8) The periods mentioned in subsections (5) and (6) shall be computed by reference only to days on which the Assembly sits.”

#### GENERAL NOTE

This section adds a new s.28B to the NIA 1998. New s.28B was included in the draft clauses of October 5, 2006. Then, there were seven sub-clauses: now there are eight subsections.

New s.28B may be considered as complementing new s.28A(5) and (6), which refers to processes within the executive committee. New s.28B creates a role for the assembly, intervening between a minister and the executive committee. New s.28B(1) adds, to contravention of the ministerial code, a decision relating to a matter of public importance. The latter is nowhere defined. However, new s.28B requires the speaker to so certify. Interestingly, the concept is replaced, in new s.28B(4), by significant or controversial matter (from s.20(4) of the NIA 1998 - as inserted by s.5(1) of this Act). New s.28B(5), (6) and (8) relates to timing, though new s.28B(8) make the seven days' time limits less pressing.

## 7. Pledge of office

- (1) In the pledge of office set out in Schedule 4 to the 1998 Act, after paragraph (c) insert-
  - “(ca) to promote the interests of the whole community represented in the Northern Ireland Assembly towards the goal of a shared future;
  - (cb) to participate fully in the Executive Committee, the North-South Ministerial Council and the British-Irish Council;
  - (cc) to observe the joint nature of the offices of First Minister and deputy First Minister;
  - (cd) to uphold the rule of law based as it is on the fundamental principles of fairness, impartiality and democratic accountability, including support for policing and the courts as set out in paragraph 6 of the St Andrews Agreement;”.
- (2) At the end of the pledge of office set out in that Schedule insert-
  - “Paragraph 6 of the St Andrews Agreement says:
    - “We believe that the essential elements of support for law and order include endorsing fully the Police Service of Northern Ireland and the criminal justice system, actively encouraging everyone in the community to co-operate fully with the PSNI in tackling crime in all areas and actively supporting all the policing and criminal justice institutions, including the Policing Board.””

#### GENERAL NOTE

Reference has been made to the pledge of office in the note to s.5 above. This section effectively amends Annex A to strand one of the Belfast Agreement, but through Sch.4 of the NIA 1998. The pledge of office had seven specific pledges, (a)-(g) (the seventh being the ministerial code of conduct).

#### *Subsection (1)*

This subsection amends pledge (c): “to serve all the people of Northern Ireland equally, and to act in accordance with the general obligations on government to promote equality and prevent discrimination”.

The first new sub-pledge - (ca) - is a concession to the narrow centre ground, represented by the Alliance Party. It refers in particular to a report, *A Shared Future: policy and strategic framework for good relations in Northern Ireland*, issued by the office of the First Minister and Deputy First Minister on March 21, 2005.

Sub-pledge (cb) refers back to s.52(2) of the NIA 1998. This is a concession to nationalism. From 1999, the two DUP ministers boycotted the executive committee and the NSMC (and were not nominated in turn to the BIC).

Sub-pledge (cc) is also a concession to nationalism. It refers back to s.16 of the NIA 1998. The First Minister construed s.16 as not excluding either the First Minister or the Deputy First Minister having other functions (relying upon inter alia s.18(7)). The Deputy First Minister stressed the principle of two ministers but one office (institutionalised in the office of the First Minister and Deputy First Minister). This sub-pledge refers to the Office of First Minister and to the Office of Deputy First Minister, but also to their joint nature.

Sub-pledge (cd) is the most important one. There was no reference to the rule of law, as such, in the Belfast Agreement. However, it was affirmed in s.1 of the Constitutional Reform Act 2005 (c.4) - a UK-wide statute: "This Act does not adversely affect (a) the existing constitutional principle of the rule of law; or (b) the Lord Chancellor's existing constitutional role in relation to that principle."

Parliament felt no need to spell out the meaning of the rule of law. I submit that it is defined in this Act, to weaken the constitutional principle as applied in Northern Ireland, and to present it as something different.

Thus, sub-pledge (cd) begins with the rule of law. It is not strictly defined. However, its fundamental principles are defined. This has been related to the practice, in Northern Ireland, of republicans cherry-picking institutions and obligations. They support the police ombudsman; they do not support the police. "Including support for policing and the courts" is defined only as an instance of the rule of law.

#### *Subsection (2)*

This makes clear that the Northern Ireland definition of the rule of law originated in the St Andrews Agreement. However, while the section was headed "Policing and the rule of law", para.6 refers only to law and order. Paragraph 5 says very little about the rule of law, and para.7 reverts to the republican theme of the devolution of policing and justice.

Either the rule of law should have been left undefined, as in s.1 of the Constitutional Reform Act 2005. Or it should have been defined universally, and then applied to Northern Ireland, and not spun - as it was - first in the direction of Sinn Féin (fundamental principles of fairness, impartiality and democratic accountability) and then in the direction of the DUP (support for law and order).

### *Ministerial appointments*

## **8. First Minister, deputy First Minister and Northern Ireland Ministers**

- (1) For section 16 of the 1998 Act (First Minister and deputy First Minister) substitute-

### **16A "Appointment of First Minister, deputy First Minister and Northern Ireland Ministers following Assembly election**

- (1) This section applies where an Assembly is elected under section 31 or 32.
- (2) All Northern Ireland Ministers shall cease to hold office.
- (3) Within a period of seven days beginning with the first meeting of the Assembly-
  - (a) the offices of First Minister and deputy First Minister shall be filled by applying subsections (4) to (7); and

- (b) the Ministerial offices to be held by Northern Ireland Ministers shall be filled by applying section 18(2) to (6).
- (4) The nominating officer of the largest political party of the largest political designation shall nominate a member of the Assembly to be the First Minister.
- (5) The nominating officer of the largest political party of the second largest political designation shall nominate a member of the Assembly to be the deputy First Minister.
- (6) If the persons nominated do not take up office within a period specified in standing orders, further nominations shall be made under subsections (4) and (5).
- (7) Subsections (4) to (6) shall be applied as many times as may be necessary to secure that the offices of First Minister and deputy First Minister are filled.
- (8) But no person may take up office as First Minister, deputy First Minister or Northern Ireland Minister by virtue of this section after the end of the period mentioned in subsection (3) (see further section 32(3)).
- (9) The persons nominated under subsections (4) and (5) shall not take up office until each of them has affirmed the terms of the pledge of office.
- (10) Subject to the provisions of this Part, the First Minister and the deputy First Minister shall hold office until immediately before those offices are next filled by virtue of this section.
- (11) The holder of the office of First Minister or deputy First Minister may by notice in writing to the Presiding Officer designate a Northern Ireland Minister to exercise the functions of that office-
  - (a) during any absence or incapacity of the holder; or
  - (b) during any vacancy in that office arising otherwise than under section 16B(2),
 but a person shall not have power to act by virtue of paragraph (a) for a continuous period exceeding six weeks.
- (12) This section shall be construed in accordance with, and is subject to, section 16C.

#### **16B Vacancies in the office of First Minister or deputy First Minister**

- (1) The First Minister or the deputy First Minister-
  - (a) may at any time resign by notice in writing to the Presiding Officer; and
  - (b) shall cease to hold office if he ceases to be a member of the Assembly otherwise than by virtue of a dissolution.
- (2) If either the First Minister or the deputy First Minister ceases to hold office at any time, whether by resignation or otherwise, the other-
  - (a) shall also cease to hold office at that time; but
  - (b) may continue to exercise the functions of his office until immediately before those offices are filled in accordance with this section.
- (3) Where the offices of the First Minister and the deputy First Minister become vacant at any time, they shall be filled by applying subsections (4) to (7) within a period of seven days beginning with that time.

- (4) The nominating officer of the largest political party of the largest political designation shall nominate a member of the Assembly to be the First Minister.
- (5) The nominating officer of the largest political party of the second largest political designation shall nominate a member of the Assembly to be the deputy First Minister.
- (6) If the persons nominated do not take up office within a period specified in standing orders, further nominations shall be made under subsections (4) and (5).
- (7) Subsections (4) to (6) shall be applied as many times as may be necessary to secure that the offices of First Minister and deputy First Minister are filled.
- (8) But no person may take up office as First Minister or deputy First Minister under this section after the end of the period mentioned in subsection (3) (see further section 32(3)).
- (9) The persons nominated under subsections (4) and (5) shall not take up office until each of them has affirmed the terms of the pledge of office.
- (10) This section shall be construed in accordance with, and is subject to, section 16C.

**16C Sections 16A and 16B: supplementary**

- (1) In sections 16A and 16B and this section “nominating officer”, in relation to a party, means-
  - (a) the person registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 as the party’s nominating officer; or
  - (b) a member of the Assembly nominated by him for the purposes of this section.
- (2) For the purposes of sections 16A and 16B and this section-
  - (a) the size of a political party is to be determined by reference to the number of seats in the Assembly which were held by members of the party on the day on which the Assembly first met following its election; but
  - (b) if two or more parties are taken by virtue of paragraph (a) to be of the same size, the respective sizes of those parties is to be determined by reference to the number of first preference votes cast for the parties at the last general election of members of the Assembly;(this is subject to subsections (7) and (8)).
- (3) For the purposes of sections 16A and 16B and this section, a political party to which one or more members of the Assembly belong is to be taken-
  - (a) to be of the political designation “Nationalist” if, at the relevant time (see subsection (1)), more than half of the members of the Assembly who belonged to the party were designated Nationalists;
  - (b) to be of the political designation “Unionist” if, at the relevant time, more than half of the members of the Assembly who belonged to the party were designated Unionists;
  - (c) otherwise, to be of the political designation “Other”.
- (4) For the purposes of sections 16A and 16B and this section-

- (a) the size of the political designation “Nationalist” is to be taken to be equal to the number of members of the Assembly who, at the relevant time, were designated Nationalists;
  - (b) the size of the political designation “Unionist” is to be taken to be equal to the number of members of the Assembly who, at the relevant time, were designated Unionists;
  - (c) the size of the political designation “Other” is to be taken to be equal to the number of members of the Assembly who, at the relevant time, were neither designated Nationalists nor designated Unionists.
- (5) But if two or more political designations are taken by virtue of subsection (4) to be of the same size, the respective sizes of those designations is to be determined by reference to the aggregate number of first preference votes cast, at the last general election of members of the Assembly, for members of the Assembly who, at the relevant time, were-
- (a) designated Nationalists (in the case of the political designation “Nationalist”);
  - (b) designated Unionists (in the case of the political designation “Unionist”); or
  - (c) neither designated Nationalists nor designated Unionists (in the case of the political designation “Other”).
- (6) If at any time the party which is the largest political party of the largest political designation is not the largest political party-
- (a) any nomination to be made at that time under section 16A(4) or 16B(4) shall instead be made by the nominating officer of the largest political party; and
  - (b) any nomination to be made at that time under section 16A(5) or 16B(5) shall instead be made by the nominating officer of the largest political party of the largest political designation.
- (7) 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 (see subsection (12)) under that provision has not come to an end,
- subsection (2)(a) above shall have effect as if the number of seats in the Assembly which were held by members of the party on the day on which the Assembly first met following its election was nil.
- (8) 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,
- subsection (2)(a) above shall have effect as if the number of seats in the Assembly which were held by members of the party on the day on which the Assembly first met following its election was nil.
- (9) Where-
- (a) a person nominated by the nominating officer of a political party ceased to hold office as First Minister or deputy First Minister as a result of a resolution of the Assembly under section 30(2) or a direction of the Secretary of State under section 30A(5); and

- (b) the party's period of exclusion under section 30(2) or 30A(5) subsequently comes to an end otherwise than by virtue of the dissolution of the Assembly,

the First Minister and the deputy First Minister shall cease to hold office when the party's period of exclusion under that provision comes to an end (unless any period of exclusion of the party under the other provision has not come to an end).

- (10) But where a direction under section 30A(5) ceases to have effect under section 95A(6) or (7), its so ceasing to have effect shall for the purposes of subsection (9) be taken not to involve the coming to an end of a period of exclusion under section 30A(5).

- (11) In this section "the relevant time" means the end of the day on which the Assembly first met following its election.

- (12) In this section, 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.

- (13) Standing orders may make further provision in connection with the making of nominations under sections 16A and 16B.

- (14) In this Act "the pledge of office" means the pledge of office which, together with the code of conduct to which it refers, is set out in Schedule 4."

- (2) Schedule 5 (executive selection: consequential amendments) has effect.

#### GENERAL NOTE

This section needs to be read with the following section below in the sub-part: ministerial appointments.

#### *Subsection (1)*

This subsection removes (temporarily) s.16 of the NIA 1998, and replaces it with ss.16A, 16B and 16C - three long sections. New ss.16A, 16B and 16C were contained in the draft clauses of October 5, 2006 (but in a different form - executive declaration - which appears to have been doubted at St Andrews, but not replaced until Bill 7 appeared).

Section 16 is: First Minister and Deputy First Minister. The two offices had the following characteristics: (i) joint election by the assembly; (ii) the requirement of cross-community support; (iii) the affirmation of a pledge of office; (iv) either office holder able to designate a substitute; (v) the resignation of one leading to the other ceasing to hold office (though continuing to exercise functions).

New s.16A applies to the First Minister, the Deputy First Minister and the remaining ministers.

New s.16A(1)-(3) provides for the appointments within seven days of the assembly first meeting after an election. The rule in s.6(8) is not applied. The provision for other ministers remains unaltered: s.18(2)-(6).

New s.16A(4)-(7) undermines the two principles of: (i) joint election; and (ii) on a cross-community basis. It does this by introducing the concept of the largest political designation, which originated with executive declaration in the comprehensive agreement. Political designation originated in s.4(5), in the definition of cross-community support, as being based upon designated nationalists and designated unionists. It was only a short logical leap to the largest, and second largest, political designation (the third, and last, political designation being "other"). Instead of a joint slate, and cross-community vote, the largest party takes the largest designation, and similarly with the second largest.

New s.16A(8) and (9) relates to timing: the condition precedent of the affirmation of the terms of the pledge of office; and the cut off of seven days from the first meeting of the assembly.

New s.16B deals with vacancies. New s.16B(1)-(3) is in similar terms to the s.16 now repealed, with the difference that the time limit of six weeks has been reduced to seven days.

New s.16B(4)-(7) is in similar terms to new s.16A(4)-(7).

New s.16B(8) and (9) is in similar terms to new s.16A(8)-(9).

New s.16A(12) and new s.16B(10) both refer to new s.16C. It has been made necessary by the conceptual development of the concept of largest political designation.

New s.16(C) defines nominating officer. This was not defined in 1998. It became a requirement under s.24(1)(b) of the Political Parties, Elections and Referendums Act 2000 (c.41). The nominating officer for the purposes of ministers may be a different person.

New s.16C(2) deals with the same number of seats problem, in the usual way.

New s.16C(3)-(6) deals with the details of largest political designation, especially where the largest party of the largest designation is not the largest party in the assembly: then, the largest political party (in the second largest political designation) goes first, followed by the largest political party of the largest designation. The government added this very late in the day. The concept shifts the principle from the largest designation (unionist) to a possible largest party (namely Sinn Féin).

But why should the First Minister come from the second largest designation? The minister in the lords, Lord Rooker, with characteristic bravura, traced it back - unconvincingly - to the Belfast Agreement (as the government, following nationalists, frequently does): "The reason for the change is that, without it, on the current demographics, it would be impossible for there ever to be a nationalist First Minister" (*Hansard*, HL Vol.687, col.393). But a nationalist First Minister should only come about when nationalists are the largest political designation. This provision makes for even greater instability in the baroque constitution of Northern Ireland.

New s.16C(7)-(12) is a reworking of the exclusion principle in s.30, based upon para.25 of strand one of the Belfast Agreement.

#### *Subsection (2)*

This was contained in the draft clauses of October 5, 2006.

## **9. Department with policing and justice functions: nomination etc of Ministers**

Schedule 6 (department with policing and justice functions: nomination etc of Ministers) has effect.

#### GENERAL NOTE

This was a concession to Sinn Féin. It follows from Pt 4 of the NIMPA 2006. It was included in the draft clauses of October 5, 2006.

### *Committees*

## **10. Statutory committee for Office of First Minister and deputy First Minister**

(1) Section 29 of the 1998 Act (statutory committees) is amended as follows.

(2) In subsection (1)(a), after "committees")

“insert-

“(i) to advise and assist the First Minister and the deputy First Minister in the formulation of policy with respect to matters within their responsibilities as Ministers jointly in charge of the Office of the First Minister and deputy First Minister, and

(ii) ”.

- (3) In subsection (6), for the words from “it is established” to the end of the subsection substitute-
- “(a) it is established to advise and assist the First Minister and the deputy First Minister and either of those Ministers is a member of his party; or
  - (b) it is established to advise and assist a Northern Ireland Minister and that Minister is a member of his party.”

GENERAL NOTE

Section 29 of the NIA 1998, following paras 8 and 9 of strand one of the Belfast Agreement, provided for departmental, or statutory, committees. Whether this included the office of the First Minister and Deputy First Minister, depends upon whether the First Minister and deputy First Minister are included in the definition of minister in this context: s.7(3). This section resolves the issue by expressly including the First Minister and Deputy First Minister.

The Northern Ireland Assembly did establish, what was called, a committee of the centre. This section puts it on a statutory basis.

**11. Committee to review functioning of Assembly and Executive Committee**

- (1) After section 29 of the 1998 Act insert-

**29A “Committee to review functioning of Assembly and Executive Committee**

- (1) Standing orders shall make provision-
  - (a) for establishing a committee to examine such matters relating to the functioning of the Assembly and the Executive Committee as may be specified in the standing orders;
  - (b) in relation to the membership of the committee; and
  - (c) for regulating proceedings of the committee.
- (2) Standing orders shall provide for the committee to make reports-
  - (a) to the Assembly; and
  - (b) to the Executive Committee.
- (3) The committee shall, by no later than 1 May 2015, make a report on the operation of the provisions of Parts 3 and 4 of this Act-
  - (a) to the Secretary of State;
  - (b) to the Assembly; and
  - (c) to the Executive Committee.

**29B Review of operation of sections 16A to 16C**

- (1) Standing orders shall require the committee established by virtue of section 29A to consider-
  - (a) the operation of sections 16A to 16C; and
  - (b) in particular, whether to recommend that the Secretary of State should make an order amending this Act and any other enactment so far as may be necessary to secure that they have effect, as from the date of the election of the 2011 Assembly, as if the executive selection amendments had not been made.
- (2) In subsection (1)-

“the 2011 Assembly” means the Assembly due to be elected under section 31 in 2011;

“the executive selection amendments” means the amendments made by section 8 of, and paragraphs 1, 2(1) and (2) and 3 to 14 of Schedule 5 to, the Northern Ireland (St Andrews Agreement) Act 2006.”

(2) If, by no later than 1 February 2011-

(a) the committee established by virtue of section 29A of the 1998 Act makes the recommendation set out in section 29B(1)(b) of that Act, and

(b) the committee’s recommendation is approved by the Northern Ireland Assembly with cross-community support (within the meaning of that Act),

the Secretary of State must by order made by statutory instrument amend that Act and any other enactment so far as may be necessary to secure that they have effect, as from the date of the election of the 2011 Assembly, as if the executive selection amendments had not been made.

(3) In subsection (2)-

“the 2011 Assembly” means the Northern Ireland Assembly due to be elected under section 31 of the 1998 Act in 2011;

“the executive selection amendments” means the amendments made by section 8 of, and paragraphs 1, 2(1) and (2) and 3 to 14 of Schedule 5 to, this Act.

(4) An order under this section may contain supplementary, incidental, consequential, transitional or saving provision.

(5) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### GENERAL NOTE

Unfortunately, the first printing of the Act is confusing, due to the change from page 11 to 12. The section is laid out as follows: subs.(1), containing new s.29A of the NIA 1998, plus new s.29B (which has two subsections); followed by subs.(2) to (5) of this Act.

The Belfast Agreement had included, in the Validation, Implementation and Review section, paras 5-8 on reviews, including a review of the Belfast Agreement in, as it turned out, 2003. The two governments reverted to the device of review at moments of breakdown.

The comprehensive agreement had included: a standing institutional review committee in the assembly; and an efficiency review panel. This represented a considerable watering down of the DUP’s proposals. Both ideas were repeated in the St Andrews Agreement.

This section puts two reviews, one a new one, on a statutory basis for the first time.

#### *Subsection (1)*

This subsection inserts the new ss.29A and 29B in the NIA 1998.

New s.29A provides for a review committee, to be established through standing orders. Its remit is subject to political agreement. The date of May 1, 2015 is extraordinary; clearly as far away as possible. Parts 3 and 4 of the NIA 1998 are: executive authorities; and Northern Ireland assembly.

New s.29B deals with ss.16A-16C of the NIA 1998, inserted by s.8 above of this Act: the election of the First Minister and Deputy First Minister separately. A review provision suggests a degree of unease, either with the principle or its implementation. This is not so much a second review, as an additional function for the committee provided for in new s.29A.

#### *Subsections (2) and (3)*

These subsections belong to this Act. They take new s.29B of the NIA 1998 further. Subsection (2) states that, if there is cross-community support for reverting to the 1998 position on election

of a First Minister and Deputy First Minister, then the secretary of state has to amend, by order, the NIA 1998, removing ss.16A, 16B and 16C, inserted by s.8 above of this Act.

*Subsections (4) and (5)*

This is the negative resolution procedure.

Lord Trimble intervened on a liberal democratic amendment to also comment on community designation in the assembly. He counter-posed pragmatism to liberal principle, but also with his hope for the future:

“...the point is that effectively, as a matter of practical politics, it was necessary to do that [community designations] to get an agreement... Having an agreement between nationalism and unionism has been hugely important and has had a huge effect... My close colleagues and I therefore recognised that we would have to have this arrangement if it was not possible to gain agreement on comfortable terms... my hope, is that in the not-too-distant future when, through the experience of operating devolution over time... it might become possible for those that wanted this safeguard in 1998 to see that it was no longer necessary and that we could move beyond this situation” (*Hansard*, HLVol.687, col.403).

*NSMC and BIC*

**12. North-South Ministerial Council and British-Irish Council**

For section 52 of the 1998 Act substitute-

**52A “North-South Ministerial Council and British-Irish Council**

- (1) The First Minister and the deputy First Minister acting jointly shall, as far in advance of each meeting of the North-South Ministerial Council or the British-Irish Council as is reasonably practicable, give to the Executive Committee and to the Assembly the following information in relation to the meeting-
  - (a) the date;
  - (b) the agenda; and
  - (c) (once determined under this section) the names of the Ministers or junior Ministers who are to attend the meeting.
- (2) Each Minister or junior Minister who has responsibility (whether or not with another Minister or junior Minister) in relation to any matter included in the agenda for a meeting of either Council (“appropriate Minister”) shall be entitled-
  - (a) to attend the meeting; and
  - (b) to participate (see section 52C) in the meeting so far as it relates to that matter.
- (3) An appropriate Minister may nominate another Minister or junior Minister-
  - (a) to attend the meeting in place of the appropriate Minister; and
  - (b) to participate in the meeting so far as it relates to matters for which the appropriate Minister has responsibility,but a person may not be nominated under this subsection without his consent.
- (4) Each appropriate Minister shall notify the First Minister and the deputy First Minister, as soon as reasonably practicable and in any event no later than 10 days before the date of the meeting, that-
  - (a) he intends to attend the meeting;

- (b) he does not intend to attend the meeting but has nominated another person under subsection (3) to attend in his place; or
  - (c) he does not intend to attend the meeting and he does not intend, or has not been able, to make such a nomination,
- and a notification under paragraph (b) shall include the name of the person nominated.
- (5) If the appropriate Minister gives a notification under subsection (4)(c) (or if the First Minister and the deputy First Minister receive no notification from him under subsection (4)), the First Minister and the deputy First Minister acting jointly shall nominate a Minister or junior Minister-
    - (a) to attend the meeting in place of the appropriate Minister; and
    - (b) to participate in the meeting so far as it relates to matters for which the appropriate Minister has responsibility.
  - (6) In relation to a matter for which the First Minister and the deputy First Minister are the appropriate Ministers-
    - (a) the notification to be made by each of them under subsection (4) shall be made to the other; and
    - (b) if either of them (“A”) gives a notification under subsection (4)(c) (or if the other (“B”) receives no notification from A under subsection (4)), B (acting alone) shall make the nomination under subsection (5) in relation to A.
  - (7) The First Minister and the deputy First Minister acting jointly shall make such nominations (or further nominations) of Ministers and junior Ministers (including where appropriate alternative nominations) as they consider necessary to ensure such cross-community participation in either Council as is required by the Belfast Agreement.
  - (8) Subsection (9) applies in relation to any matter included in the agenda for a meeting of either Council if-
    - (a) the First Minister and the deputy First Minister are not the appropriate Ministers in relation to the matter; but
    - (b) the matter is one that ought, by virtue of section 20(3) or (4), to be considered by the Executive Committee.
  - (9) The First Minister and the deputy First Minister acting jointly shall also be entitled-
    - (a) to attend the meeting; and
    - (b) to participate in the meeting so far as it relates to that matter.
  - (10) In this section “day” does not include a Saturday, a Sunday, Christmas Day, Good Friday and any day which is a bank holiday in Northern Ireland.

#### **52B Section 52A: duty to attend Council meetings etc**

- (1) It shall be a Ministerial responsibility of-
  - (a) each appropriate Minister; or
  - (b) if a Minister or junior Minister is nominated under section 52A(3) or (5) to attend a meeting of the North-South Ministerial Council or the British-Irish Council in place of an appropriate Minister, that Minister or junior Minister,
 to participate in the meeting so far as it relates to matters for which the appropriate Minister has responsibility.
- (2) It shall be a Ministerial responsibility of a Minister or junior Minister nominated to attend a meeting of either Council under

section 52A(7) to participate in the meeting so far as specified in the nomination.

- (3) Each appropriate Minister shall give to-
  - (a) a person nominated under section 52A(3) or (5) to attend a meeting of either Council in his place; or
  - (b) a person nominated under section 52A(7) to participate in a meeting of either Council so far as specified in the nomination,

such information as may be necessary to enable the person's full participation in the meeting.

- (4) But if the appropriate Minister does not give sufficient information under subsection (3) to enable the person's full participation in the meeting-
  - (a) the First Minister and the deputy First Minister acting jointly may request the necessary information; and
  - (b) if they do so, the appropriate Minister must give that information to the person nominated.
- (5) A person nominated under section 52A(3) or (5) may enter into agreements or arrangements in respect of matters for which the appropriate Minister is (or the appropriate Ministers are) responsible.
- (6) Without prejudice to the operation of section 24, a Minister or junior Minister attending a meeting of either Council by virtue of any provision of section 52A or this section shall act in accordance with any decisions of the Assembly or the Executive Committee (by virtue of section 20) which are relevant to his participation in the Council concerned.
- (7) In this section "appropriate Minister", in relation to a meeting of the North-South Ministerial Council or the British-Irish Council, has the same meaning as in section 52A.

#### **52C Sections 52A and 52B: supplementary**

- (1) If any question arises under section 52A or 52B as to which Minister or junior Minister has responsibility for any matter, the First Minister and the deputy First Minister acting jointly shall determine that question.
- (2) A Minister or junior Minister who participates in a meeting of either the North-South Ministerial Council or the British-Irish Council by virtue of any provision of section 52A or 52B shall, as soon as reasonably practicable after the meeting, make a report-
  - (a) to the Executive Committee; and
  - (b) to the Assembly.
- (3) A report under subsection (2)(b) shall be made orally unless standing orders authorise it to be made in writing.
- (4) The Northern Ireland contributions towards the expenses of the Councils shall be defrayed as expenses of the Office of the First Minister and deputy First Minister.
- (5) In sections 52A and 52B and this section "participate" shall be construed-
  - (a) in relation to the North-South Ministerial Council, in accordance with paragraphs 5 and 6 of Strand Two of the Belfast Agreement;

- (b) in relation to the British-Irish Council, in accordance with the first paragraph 5 of Strand Three of that Agreement.”

#### GENERAL NOTE

This section replaces s.52 of the NIA 1998 (North-South Ministerial Council and British-Irish Council) with new ss.52A, 52B and 52C. As in s.11 above, substitution implies a possible future repeal. Section 52 comprised nine subsections; these three new sections contain a total of 23 subsections.

Parliamentary counsel, by treating the NSMC and BIC in one section originally in 1998, introduced a rare element of mutuality between nationalists and unionists in the legislation. This was followed in administrative practice. And is continued in this section. However, this section is a concession to nationalists, the problem having been the refusal of DUP ministers to participate in the NSMC.

New s.52A is based upon the replaced s.52. New s.52A(1) is similar to s.52(5). However, nominations has been replaced by names. New s.52A(2) is a new principle. It strengthens the idea of autonomous ministers, by virtue of d'Hondt and the selection of a department. New s.52A(3) is also new, the idea of delegation also weakening collective responsibility. New s.52A(4) makes clear that appropriate minister flows from new s.52A(2), and is no longer the First Minister and Deputy First Minister. New s.52A(5) provides for a residual power for the First Minister and Deputy First Minister. New s.52A(6) provides for disagreement in the joint head of the executive. New s.52A(7) derives from s.52(1); however, it relates only to ensuring cross-community participation. New s.52A(8) and (9) is a new power for the First Minister and Deputy First Minister, permitting them to attend meetings, along side other ministers, where significant or controversial matters are involved.

New s.52B strengthens ministerial duty to attend, this biting on unionists with regard to the NSMC (nationalists never having boycotted the BIC). Ministerial duty was provided for originally in s.52(2) and (3): the duty only arose after a First Minister and Deputy First Minister nomination. New s.52B(1) contains the term appropriate minister (defined in new s.52B(7)), also used in new s.52A(3)-(6). Again, the term ministerial responsibility is used, in new s.52B(1) and (2). New s.52B(3) and (4) contains an important test: “such information as may be necessary to enable the person’s full participation in the meeting”. There is also a new power for the First Minister and Deputy First Minister, extracting information from an autonomous minister’s department. New s.52B(5) is a clarification regarding s.53. New s.52B(6) refers to s.24: legislative and executive competence. New s.52B(6) is similar to s.52(3).

New s.52C(1) passes any problem to the First Minister and Deputy First Minister, who have been stripped of powers by new ss.52A and 52B. New s.52C(2) and (3) is similar to s.52(6) and (7). New s.52C(4) is similar to s.52(8). New s.52C(5) is similar to s.52(9).

#### *Miscellaneous*

### 13. Community designation

In section 4 of the 1998 Act (transferred, excepted and reserved matters), after subsection (5) insert-

- “(5A) Standing orders of the Assembly shall provide that a member of the Assembly designated in accordance with the standing orders as a Nationalist, as a Unionist or as Other may change his designation only if-
- (a) (being a member of a political party) he becomes a member of a different political party or he ceases to be a member of any political party;
  - (b) (not being a member of any political party) he becomes a member of a political party.”

#### GENERAL NOTE

Community designation, perhaps the principle feature of strand one of the Belfast Agreement (para.6), was provided for (almost surreptitiously) in s.4(5) of the NIA 1998. This section adds a

new subsection (5A) to that section, restricting the change in designation to a change in political party. It does not restrict the number of changes of designation.

The comprehensive agreement had envisaged such a proposal. This was repeated in the St Andrews Agreement.

The DUP was particularly keen on this reform because of the David Ervine affair. David Ervine was, and remains, a member of the Progressive Unionist Party (“PUP”), and is the only protestant paramilitary representative in the assembly. He fell seriously ill on January 7, 2007.

On May 15 2006, when the Hain assembly first met, because the DUP had 32 seats and the UUP 24, the running of d’Hondt would have meant the following executive: three DUP ministers; three Sinn Féin; two UUP; and two SDLP (five unionists and five nationalists). However, one extra UUP member would have changed the executive to: three DUP; two Sinn Féin; three UUP; and two SDLP (six unionists and four nationalists).

It was in the interests of unionists generally that David Ervine should become part of the UUP bloc (independent unionists having weakened the larger tribal bloc in the 1998 assembly). On May 15, 2006, he signed the roll of membership with the UUP assembly group. He did not join the UUP. The DUP objected, because they did not want the UUP to have the same number of ministers (three each).

The speaker was encouraged to seek legal advice. After a number of false dawns, the speaker, Eileen Bell, whom the secretary of state had nominated, ruled, on September 11, 2006 (nearly four months later), that the UUP assembly group was not a political party, under the Political Parties, Elections and Referendums Act 2000 (c.41), and therefore, the UUP assembly group was not a party for the purposes of standing orders (this relating to ministerial nominations and not the roll of membership). The ruling was unchallengeable; however, it is unclear whether counsel advised that the meaning of party in the standing orders had to be the same as that in the Political Parties, Elections and Referendums Act 2000 or whether the speaker should simply bear the statute in mind when determining compliance, with a standing order. The rule of statutory, and other, interpretation, is that words, which are not defined, bear a natural and ordinary meaning, and that this depends upon the context of the measure or instrument in which they are used.

#### **14. Power of Executive Committee to call for witnesses and documents**

After section 28B of the 1998 Act insert-

*“Executive Committee: further provisions*

##### **28C Power of Executive Committee to call for witnesses and documents**

Section 44 applies to the Executive Committee as it applies to the Assembly, but as if-

- (a) in subsection (1), for “any person” there were substituted “a senior officer of a Northern Ireland department (within the meaning given by Article 2(3) of the Departments (Northern Ireland) Order 1999)”;
- (b) at the end of that subsection there were inserted “but only in so far as they are matters in relation to which the Executive Committee’s functions under section 20(3) or (4) are exercisable”;
- (c) subsection (6) were omitted; and
- (d) in subsection (7), for “The Presiding Officer” there were substituted “The First Minister and the deputy First Minister acting jointly”.

#### **GENERAL NOTE**

This section inserts a new s.28C in the NIA 1998, after new ss.28A and 28B, inserted by ss.5 and 6 above of this Act.

This power of the executive to call for witnesses and documents was not listed in the comprehensive review, the St Andrews Agreement or the draft clauses of October 5, 2006.

However, ss.44-46 of the NIA 1998 did provide for the assembly calling for witnesses and documents, for new criminal offences and for the administering of an oath.

New s.28C extends the assembly's s.44 power to the executive, with amendments. The problem would appear to have been senior officials refusing to communicate with the executive. This is unsurprising, given the failure of the assembly to exercise its power under s.22. Parliament provided the remedy; it remains unclear why the assembly never sought to address the problem of official domination.

## **15. Strategies relating to Irish language and Ulster Scots language etc**

After section 28C of the 1998 Act insert-

### **28D “Strategies relating to Irish language and Ulster Scots language etc**

- (1) The Executive Committee shall adopt a strategy setting out how it proposes to enhance and protect the development of the Irish language.
- (2) The Executive Committee shall adopt a strategy setting out how it proposes to enhance and develop the Ulster Scots language, heritage and culture.
- (3) The Executive Committee-
  - (a) must keep under review each of the strategies; and
  - (b) may from time to time adopt a new strategy or revise a strategy.”

#### **GENERAL NOTE**

It is unclear why this section was included in the Act. There was no reference to such a NIA 1998 amendment in the comprehensive agreement; nor in the St Andrews Agreement.

However, Annex B of the latter had included:

“The Government will introduce an Irish Language Act reflecting on the experience of Wales and Ireland and work with the incoming Executive to enhance and protect the development of the Irish language. The Government firmly believes in the need to enhance and develop the Ulster Scots language, heritage and culture and will support the incoming Executive in taking this forward.”

It was transparent to all that this amounted to: legislation for Irish; and virtually nothing for Ulster Scots. It may therefore be inferred that this section is part of the DUP's post-St Andrews Agreement work in progress.

New s.28D imposes little in the way of a duty on the executive committee. The two strategies do not have to be equivalent or equitable.

## **16. Strategy relating to poverty, social exclusion etc**

After section 28D of the 1998 Act insert-

### **28E “Strategy relating to poverty, social exclusion etc**

- (1) The Executive Committee shall adopt a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need.
- (2) The Executive Committee-
  - (a) must keep under review the strategy; and
  - (b) may from time to time adopt a new strategy or revise the strategy.”

GENERAL NOTE

It is unclear why this section was included in the Act. There was no reference to such a NIA 1998 amendment in the comprehensive agreement; nor in the St Andrews Agreement. However, Annex B of the latter refers to the government publishing such a strategy in November 2006.

New s.28E imposes little in the way of a duty on the executive committee.

**17. Vacancy in the Assembly**

In Schedule 6 to the 1998 Act (which makes certain provision about standing orders), after paragraph 4 insert-

*Votes in vacancy*

“5. The standing orders may include provision enabling a right to vote in the Assembly which could have been exercised but for a vacancy in the membership of the Assembly to be exercisable in such manner as is so provided.”

GENERAL NOTE

This section is clearly dealing with an afterthought. Schedule 6 of the NIA 1998 is: standing orders: further provision. Section 41(3) is the enabling provision.

This section inserts a new para.5 in Sch.6 of the NIA 1998. On its face, it is a truly astounding provision, enabling someone who is no longer a member of the assembly to effectively continue to vote. The EN explain:

“The standing orders [in para.9(6) of Sch.1] could, for example, provide for voting in the Transitional Assembly to take account of any seats won by a party, but subsequently vacated and not filled as a result of section 3(2) and (3).”

The reason for this seems to have been the death of a Sinn Féin member, Michael Ferguson, on September 25, 2006. He had been elected to the assembly in November 2003. None of his substitutes was able or willing to take his seat. The question was: would Sinn Féin have 24 seats, as at the date of election, or 23, as at the date of running d'Hondt? If the latter, the executive would be: three DUP; three UUP; two Sinn Féin; and two SDLP (six unionists and four nationalists). This could be dubbed: the dead member's vote provision. This is believed to be constitutionally unprecedented.

**18. Report on progress towards devolution of policing and justice matters**

- (1) The Northern Ireland Assembly must make a report to the Secretary of State before 27 March 2008-
  - (a) as to the preparations that the Assembly has made, and intends to make, having regard to paragraph 7 of the St Andrews Agreement, for or in connection with policing and justice matters ceasing to be reserved matters;
  - (b) as to which matters are likely to be the subject of any request under section 4(2A) of the 1998 Act that policing and justice matters should cease to be reserved matters;
  - (c) containing an assessment of whether the Assembly is likely to make such a request before 1 May 2008.
- (2) The Secretary of State must lay a copy of the report before each House of Parliament.
- (3) Paragraph 7 of the St Andrews Agreement says:

“Discussions on the devolution of policing and justice have progressed well in the Preparation for Government Committee. The Governments have requested the parties to continue these discussions

so as to agree the necessary administrative arrangements to create a new policing and justice department. It is our view that implementation of the agreement published today should be sufficient to build the community confidence necessary for the Assembly to request the devolution of criminal justice and policing from the British Government by May 2008.”

- (4) In this section “policing and justice matter” has the meaning given by section 4(6) of the 1998 Act (as inserted by section 16(5) of the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33)) and “reserved matter” has the meaning given by section 4(1) of the 1998 Act.
- (5) In section 16(3) of the Northern Ireland (Miscellaneous Provisions) Act 2006, in the inserted section 4(2A) of the 1998 Act, for “devolved policing and justice matter” substitute “policing and justice matter”.
- (6) In section 16(5) of the Northern Ireland (Miscellaneous Provisions) Act 2006, in the inserted section 4(6) of the 1998 Act, for ““devolved policing and justice matter”” substitute ““policing and justice matter””.
- (7) In section 17(1) of the Northern Ireland (Miscellaneous Provisions) Act 2006, in the inserted section 21A(8)(b) of the 1998 Act, for “devolved policing and justice matter” substitute “policing and justice matter”.
- (8) The subject-matter of subsections (1) and (2) is to be treated as a reserved matter for the purposes of the 1998 Act.

#### GENERAL NOTE

This is a completely new provision, designed by ministers to help Sinn Féin achieve the devolution of policing and justice.

#### *Subsection (1)-(3)*

This imposes on the assembly a duty to report to the secretary of state, who must then report to parliament. The significance of March 27, 2008 is: one year after the date when the executive is re-established; and in advance of the St Andrews Agreement deadline of May 2008.

It is clear from subs.(3) that the deadline was simply agreed by the two governments: the DUP subsequently stressed confidence, and some members even stated: no devolution of policing and justice in their political lifetimes; Sinn Féin, in contrast, said it would not even arrange a meeting, in the absence of agreement to devolve, to discuss whether republicans would come out in favour of the rule of law.

#### *Subsection (8)*

This means that the assembly cannot vote unilaterally to repeal subss.(1) and (2).

#### *Subsection (4)*

This is definitional.

#### *Subsections (5)-(7)*

The NIMPA 2006, it is important to note, did very little in Pt 4: devolution of policing and justice etc. (ss.16-20). The NIA 1998 s.4 and Sch.3 stated what functions were reserved, and how they could be devolved. This included policing and justice. Paragraph 7 of the Policing and Justice section of the Belfast Agreement stated the policy, such as it is. The NIMPA 2006 is simply enabling legislation.

The Current Law Statutes annotations to s.16 of the NIMPA 2006 criticized the phrase “devolved policing and justice matter”: “Most likely, this represents an intrusion of Sinn Féin rhetoric into legislation.” These subsections belatedly correct that elementary legal mistake.

## 19. Minor and consequential amendments

Schedule 7 (minor and consequential amendments relating to Part 2) has effect.

### PART 3

#### OTHER AMENDMENTS

##### *Policing*

## 20. District policing partnerships

- (1) Schedule 8 (reconstitution of district policing partnerships) has effect.
- (2) Schedule 9 (district policing partnerships: Belfast sub-groups) has effect.

##### *Education*

## 21. Amendment of Education (Northern Ireland) Order 2006 etc

- (1) In Article 1 of the Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), in paragraph (6), for sub-paragraphs (a) and (b) substitute—
  - “(a) if Schedule 4 to the Northern Ireland (St Andrews Agreement) Act 2006 comes into force, on such date as the Department may by order appoint;
  - (b) if Schedule 3 to that Act comes into force, on the date on which that Schedule comes into force;”.
- (2) In Article 16 of the Education (Northern Ireland) Order 1997 (S.I. 1997/866 (N.I. 5)) (as substituted by Article 28(1) of the 2006 Order), in paragraph (5), in the opening words, after “a secondary school” insert “or of a secondary school of a specified description”.
- (3) The amendment made by subsection (2) shall come into force if (and only if) Schedule 4 comes into force.
- (4) If the amendment comes into force in accordance with subsection (3), it shall come into force on 28 March 2007.
- (5) If Schedule 3 comes into force, subsections (2) to (4) shall be repealed on the date on which that Schedule comes into force.

#### GENERAL NOTE

##### *Education Reform*

The assembly, when it was not suspended, passed very few Acts in 1999-2002. Ministers made very few decisions. The difficulty was obtaining political agreement, when there was a four-party involuntary, or mandatory, coalition.

However, one minister - Martin McGuinness of Sinn Féin, in charge of primary and secondary education - made a historic decision, to abolish Northern Ireland's eleven plus examination. He announced this policy in a press release on October 11, 2002, as the assembly was about to be dissolved.

Thereafter, the NIO, without this being part of the programme for government agreed by the executive committee, and with the Blair government embarrassed by the legacy of comprehensive education in England and Wales, drove through abolition: department of education officials in Belfast did London's bidding.

No other Northern Ireland minister was so honoured; the NIO maintains that it acted only to improve education in the province. The lobby against abolition was stronger than any seen in Northern Ireland on any comparable subject.

On July 19, 2006, the following order in council was made: Education (Northern Ireland) Order 2006 (SI 2006/1915) (“Education Order”). Articles 27-30 deal with admissions to schools, by amending the Education (Northern Ireland) Order 1997 (SI 1997/866). Article 27 abolishes selection. Article 28(2) includes the following new provision: “The criteria drawn up by the Board of Governors of a secondary school... shall not include the academic ability or aptitude of the child (whether assessed by reference to his performance in any test or examination or by any other means whatsoever).”

#### *Coming into Operation*

Under Art.1(5) of the Education Order, Arts.27, 28(1), 29 and 30 did not come into operation until October 1, 2006, and would not apply to admissions before July 31, 2010. Article 28(2) was related, by art.1(6), to the NIA 2006 (which had received the Royal Assent on May 8, 2006). It - the criteria provision in the Education Order - would come into operation on November 25, 2006, if the secretary of state decided to continue with suspension; otherwise, it would be a matter for the department by order (and therefore a minister in the assembly).

The Secretary of State made no restoration order under s.2(1) of the NIA 2006. Why did art.28(2) of the Education Order not come into operation on November 25, 2006? The answer is: the NIA 2006 was repealed, on Royal Assent on November 22, 2006 (see s.22 below). And this section (less subs.(2)) was enacted, under s.27, also on November 22, 2006.

#### *This Section*

This section simply relates the abolition of selection, again, to the restoration of devolution.

#### *Subsection (1)*

This subsection re-enacts Art.1(6) of the Education Order, replacing the date of November 25, 2006 (in the NIA 2006) with March 28, 2007 - when Sch.3 of this Act is due to come into force, if there is non-compliance with the St Andrews Agreement timetable.

#### *Subsections (2)-(4)*

Article 28(1) of the Education Order came into operation on October 1, 2006. It provides by amendment, inter alia for regulations governing admissions. The amendment in subs.(2) of this section - “or of a secondary school of a specified description” - keeps alive selection by grammar schools. This, under subs.(3) and (4), will only come into operation on March 28, 2007, if there is devolution.

#### *Subsection (5)*

Schedule 3 is: non-compliance with St Andrews Agreement timetable. If there is no devolution, the amendment in subs.(2) will not come into operation.

## PART 4

### SUPPLEMENTAL

#### **22. Repeal of the 2006 Act**

The 2006 Act is repealed.

#### GENERAL NOTE

This is the first of seven sections in Pt 4, the last part: supplementary.

Query why the NIA 2006 was not repealed above, in ss.1 or 2? The draft clauses of October 5, 2006 assumed, in draft Sch.1, the amendment of the NIA 2006. The decision to repeal was taken at some point between October 5, 2006 and Bill 7 after November 16, 2006. It is highly unusual for parliamentary counsel to simply repeal a statute. This amounted, of course, to the tearing up

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of the government's deadline of November 24, 2006. Hiding repeal in the supplementary part of this Act may have had its attractions.

**23. Power to make consequential provision etc**

- (1) The Secretary of State may by order made by statutory instrument make-
  - (a) any supplementary, incidental or consequential provision, and
  - (b) any transitional or saving provision,that he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under this section may in particular-
  - (a) make different provision for different cases or purposes;
  - (b) amend, repeal or revoke any enactment passed or made on or before 28 March 2007.
- (3) In this section "enactment" includes-
  - (a) any of sub-paragraphs (1) to (8) of paragraph 2 of Schedule 4,
  - (b) any provision of, or of any instrument made under, Northern Ireland legislation, and
  - (c) any provision of subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).

**GENERAL NOTE**

This is a standard section. It has to be read with s.24 below. Nevertheless, it delegates wide legislative powers to the Secretary of State. This is in similar terms to s.3 of the NIA 2006. Note the deadline of March 28, 2007.

**24. Parliamentary procedure for orders under section 23**

- (1) Subsections (3) to (7) have effect in the case of a statutory instrument which contains (alone or with other provisions) an order under section 23 which amends or repeals any provision of-
  - (a) an Act, or
  - (b) Northern Ireland legislation.
- (2) Any other statutory instrument containing an order under that section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A statutory instrument of a description mentioned in subsection (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (4) But subsection (3) does not apply if the order declares that the Secretary of State considers it expedient for the order to be made without that approval.
- (5) An order containing a declaration under subsection (4)-
  - (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect if it is not approved by a resolution of each House of Parliament before the end of the period of 40 days beginning with the date on which it is made.
- (6) Subsection (5)(b) does not prejudice-
  - (a) anything done as a result of the order before it ceased to have effect, or
  - (b) the making of a new order.

- (7) In calculating the period of 40 days mentioned in subsection (5)(b), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

**GENERAL NOTE**

This section has to be read with s.23 above. It is similar to s.4 of the NIA 2006. Subsection (2) of this section refers to the negative resolution procedure. Any amendment of a statute or Northern Ireland legislation, under subs.(1), has to follow the affirmative resolution procedure in subs.(3)-(7). However, the secretary of state may declare an order expedient, in which case he has 40 days as defined.

**25. Interpretation**

In this Act-

- “the 1998 Act” means the Northern Ireland Act 1998 (c. 47);
- “the 2000 Act” means the Northern Ireland Act 2000 (c. 1);
- “the 2006 Act” means the Northern Ireland Act 2006 (c. 17);
- “First Minister”, “deputy First Minister” and “Northern Ireland Minister” have the same meaning as in the 1998 Act;
- “restoration order” means a restoration order under section 2(2) of the 2000 Act (order restoring devolved government);
- “the St Andrews Agreement” means the agreement reached on 13 October 2006 at multi-party talks on Northern Ireland held at St Andrews;
- “the Transitional Assembly” has the meaning given by section 1(1) of this Act.

**26. Extent**

- (1) The following provisions of this Act extend to Northern Ireland only-
  - (a) section 20 and Schedules 8 and 9;
  - (b) section 21.
- (2) Subject to that, this Act extends to England and Wales, Scotland and Northern Ireland.

**GENERAL NOTE**

Subsection (2) contains a rare statement of the presumption about legislation: if the Westminster parliament enacts, it does so for the UK - unless it specifies otherwise. Sections 20 and 21 deal with policing and education in Northern Ireland. It is interesting that parliamentary counsel considers the prime minister's involvement in Northern Ireland to be a UK-wide activity.

**27. Commencement**

- (1) Schedules 2 to 4 shall only come into force in the circumstances specified in, and in accordance with, section 2.
- (2) Subject to paragraph 3(1)(b) of Schedule 3, section 3(1) shall come into force on 26 January 2007.
- (3) The following provisions shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed for different purposes-
  - (a) section 4;
  - (b) section 20(1) and Schedule 8.

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- (4) Part 2 (including Schedules 5 to 7) shall come into force if (and only if) the Secretary of State makes a restoration order by virtue of section 2(2).
- (5) If that Part comes into force in accordance with subsection (4), it shall come into force on 26 March 2007.
- (6) Section 20(2) and Schedule 9 shall come into force in accordance with provision made by an order under section 19(2) of the Police (Northern Ireland) Act 2003 (c. 6).
- (7) Section 21(2) shall only come into force in the circumstances specified in, and in accordance with, subsections (3) and (4) of that section.
- (8) Subject to that, this Act shall come into force on the day on which it is passed.

GENERAL NOTE

This section contains three types of commencement: (1) at Royal Assent, in subs.(8); (2) by secretary of state order, in subss.(3), (4) and (6); and (3) in certain specified scenarios, in subss.(1), (2), (5) and (7).

**28. Short title**

This Act may be cited as the Northern Ireland (St Andrews Agreement) Act 2006.

SCHEDULES

SCHEDULE 1

Section 1

THE TRANSITIONAL ASSEMBLY

*Meetings*

1. (1) Meetings are to be held at such times and places as the presiding officer or any deputy presiding officer of the Transitional Assembly may notify to the members; and a meeting of the Transitional Assembly must be held on 24 November 2006.
- (2) But the Secretary of State may at any time direct that meetings are instead to be held at such times and places as may be specified in the direction.

*Proceedings*

2. (1) Proceedings are to be conducted in accordance with standing orders (see paragraph 9).
- (2) But the Secretary of State may at any time direct that proceedings are instead to be conducted in accordance with the direction.

*Nominations for First Minister and deputy First Minister*

3. (1) The proceedings to be conducted by the Transitional Assembly shall include the making of nominations from among its members of persons to hold office as First Minister and deputy First Minister on the restoration of devolved government in Northern Ireland.
- (2) Such nominations may be made notwithstanding section 1(4) of, and paragraph 5 of the Schedule to, the 2000 Act.

*Draft Ministerial Code*

4. (1) The proceedings to be conducted by the Transitional Assembly shall include the preparation and consideration of a draft Ministerial Code.
- (2) If the Transitional Assembly approves the draft Ministerial Code (with or without amendments) before 24 March 2007, the approved draft Ministerial Code shall become the Ministerial Code for the purposes of section 28A of the 1998 Act on 26 March 2007.
- (3) Any approval under sub-paragraph (2) requires cross-community support (see paragraph 11).

- (4) The draft Ministerial Code approved under sub-paragraph (2)-
  - (a) must comply with the requirements of subsections (5) to (8) of section 28A of the 1998 Act (to be inserted in that Act by section 5 of this Act), and
  - (b) may include other provisions.
- (5) But if the Transitional Assembly has not approved the draft Ministerial Code (with or without amendments) before 24 March 2007-
  - (a) the Secretary of State must prepare a draft Ministerial Code in accordance with sub-paragraph (6), and
  - (b) that draft Ministerial Code shall become the Ministerial Code for the purposes of section 28A of the 1998 Act on 26 March 2007.
- (6) The draft Ministerial Code referred to in sub-paragraph (5) must, so far as practicable, be-
  - (a) in the form of any parts of the draft Ministerial Code that have been approved by the Transitional Assembly under sub-paragraph (2) (with or without amendments) before 24 March 2007;
  - (b) otherwise, in the form of the former Ministerial Code,
 and must comply with the requirements of subsections (5) to (8) of section 28A of the 1998 Act.
- (7) In this paragraph “the former Ministerial Code” means the Ministerial Code which-
  - (a) was approved by the Executive Committee of the Northern Ireland Assembly, and
  - (b) applied to members of the Executive Committee immediately before the most recent suspension of that Assembly by virtue of section 1 of the 2000 Act.

#### *Draft standing orders for Northern Ireland Assembly*

- 5. (1) The proceedings to be conducted by the Transitional Assembly shall include the preparation and consideration of draft standing orders for the Northern Ireland Assembly.
- (2) If the Transitional Assembly approves the draft standing orders (with or without amendments) before 24 March 2007, the approved draft standing orders shall become the standing orders of the Northern Ireland Assembly on 26 March 2007.
- (3) Any approval under sub-paragraph (2) requires cross-community support.
- (4) But if the Transitional Assembly has not approved the draft standing orders (with or without amendments) before 24 March 2007-
  - (a) the Secretary of State must prepare draft standing orders in accordance with sub-paragraph (5), and
  - (b) those draft standing orders shall become the standing orders of the Northern Ireland Assembly on 26 March 2007.
- (5) Subject to sub-paragraph (7), the draft standing orders referred to in sub-paragraph (4) must, so far as practicable, be-
  - (a) in the form of any parts of the draft standing orders that have been approved by the Transitional Assembly under sub-paragraph (2) (with or without amendments) before 24 March 2007;
  - (b) otherwise, in the form of the former standing orders.
- (6) In this paragraph “the former standing orders” means the standing orders of the Northern Ireland Assembly as they had effect immediately before the most recent suspension of that Assembly by virtue of section 1 of the 2000 Act.
- (7) The draft standing orders approved under sub-paragraph (2) or the draft standing orders prepared in accordance with sub-paragraph (5)-
  - (a) must comply with the requirements of the 1998 Act (as it is to have effect on and after 26 March 2007), and
  - (b) may include other provisions.

#### *Presiding officer*

- 6. (1) The Transitional Assembly shall have-
  - (a) a presiding officer, and
  - (b) no more than three deputy presiding officers.
- (2) The person who is the presiding officer of the Assembly (see sub-paragraph (8)) immediately before the time at which this Schedule comes into force shall become the presiding officer of the Transitional Assembly at that time.
- (3) Each person who is a deputy presiding officer of the Assembly immediately before that time shall become a deputy presiding officer of the Transitional Assembly at that time.
- (4) Subject to sub-paragraphs (5) to (7), the Transitional Assembly may elect a person-
  - (a) to fill any vacancy in the office of presiding officer or deputy presiding officer, or
  - (b) to replace a presiding officer or deputy presiding officer who appears to members of the Transitional Assembly to be unable, unfit or unwilling to perform his functions (whether because of illness or otherwise).

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- (5) A person shall not be elected under sub-paragraph (4) without cross-community support.
- (6) If it appears to the Secretary of State that—
  - (a) a vacancy has arisen in the office of presiding officer or deputy presiding officer of the Transitional Assembly, and
  - (b) the vacancy has not been filled within a period of two weeks beginning with the day on which the vacancy arose,the Secretary of State may appoint a person to fill the vacancy.
- (7) If it appears to the Secretary of State that—
  - (a) a presiding officer or deputy presiding officer of the Transitional Assembly has become unable, unfit or unwilling to perform his functions (whether because of illness or otherwise), and
  - (b) the officer has not been replaced within a period of two weeks beginning with the day on which the officer became unable, unfit or unwilling to perform his functions,the Secretary of State may appoint a person to replace the officer.
- (8) In this paragraph “the Assembly” means the Assembly established under paragraph 1 of Schedule 1 to the 2006 Act.

*Staff etc*

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

*Privilege*

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

*Standing orders*

- 9. (1) In this Schedule (other than in paragraph 5) “standing orders” means standing orders of the Transitional Assembly.
- (2) The initial standing orders shall be determined by the Secretary of State and notified to the presiding officer or any deputy presiding officer of the Transitional Assembly.
- (3) The initial standing orders may be added to or amended by the Secretary of State by notification to the presiding officer or any deputy presiding officer of the Transitional Assembly; but no addition or amendment may be made under this sub-paragraph to the extent that it is inconsistent with anything done by the Transitional Assembly under sub-paragraph (4).
- (4) The initial standing orders may be amended or replaced by the Transitional Assembly, but standing orders shall not be made, amended or repealed by the Transitional Assembly without cross-community support.
- (5) The provision that may be made by standing orders includes provision which corresponds, or is similar, to—
  - (a) any provision of standing orders made (or treated as made) under section 41 of the 1998 Act, or
  - (b) any provision of directions made by the Secretary of State under paragraph 4 of Schedule 1 to the 2006 Act.
- (6) The provision that may be made by standing orders also includes provision that may be made under paragraph 5 of Schedule 6 to the 1998 Act (to be inserted in that Act by section 17 of this Act).
- (7) The provision that may be made by standing orders for the purposes of the nominations referred to in paragraph 3 above includes provision which corresponds, or is similar, to any provision of sections 16A to 16C of the 1998 Act (to be inserted in that Act by section 8 of this Act).
- (8) The standing orders may provide for further nominations to be made if any nomination made by virtue of paragraph 3 above ceases to have effect, by virtue of the standing orders, at any time before 26 March 2007.

*Members to be deemed to have signed roll of membership etc*

- 10. (1) Each person who was a member of the Assembly (see sub-paragraph (3)) immediately before the time at which this Schedule comes into force shall be deemed to have signed the roll of membership of the Transitional Assembly at that time in accordance with standing orders.

- (2) Each such person shall be deemed to have designated himself at that time in accordance with standing orders-
  - (a) as a Nationalist (if, immediately before that time, he was designated as a Nationalist for the purposes of the Assembly);
  - (b) as a Unionist (if, immediately before that time, he was designated as a Unionist for the purposes of the Assembly);
  - (c) otherwise, as Other.
- (3) In this paragraph “the Assembly” means the Assembly established under paragraph 1 of Schedule 1 to the 2006 Act.

*Meaning of “cross-community support”*

- 11. (1) In this Schedule “cross-community support”, in relation to a vote on any matter, means-
  - (a) the support of a majority of the members voting, a majority of the designated Nationalists voting and a majority of the designated Unionists voting, or
  - (b) the support of 60% of the members voting, 40% of the designated Nationalists voting and 40% of the designated Unionists voting.
- (2) In sub-paragraph (1)-
  - “designated Nationalist” means a member designated as a Nationalist in accordance with standing orders, and
  - “designated Unionist” is to be construed accordingly.

GENERAL NOTE

This schedule is introduced by s.1: preparations for restoration of devolved government. It is a longer version of Sch.1 to the NIA 2006, which only had six paragraphs. Paragraphs 1 and 2 of that schedule made clear that it was the secretary of state’s assembly. Paragraph 1 here puts it differently: after November 24, 2006, the presiding officer may arrange meetings, but the secretary of state has the power to rearrange, including cancel, them. Paragraph 3, as noted, detached the nomination of First Minister and Deputy First Minister from November 24, 2006, as specified in the NIA 2006 and the St Andrews Agreement. Nominations may take place up to and including January 30, 2007, but also, because the Transitional Assembly is not dissolved, when it may meet again after the election on March 7, 2007, and up until March 25 and even 26, 2007 (see paras 2(6), 5(2), 6(2), and 7 of Sch.2). Query why para.11 repeats the definition of cross-community support in s.4(5) of the NIA 1998? The answer seems to be: the varying definition of cross-community support.

SCHEDULE 2

Section 2(2)

RESTORATION OF DEVOLVED GOVERNMENT ON 26 MARCH  
2007

- 1. In this Schedule “the restoration order” means the restoration order made by virtue of section 2(2).
- 2. (1) Subsections (2) to (7) of section 3 of the 2000 Act do not apply in relation to the restoration order (and, accordingly, no person who immediately before the most recent suspension held an office mentioned in any of those subsections shall resume that office on 26 March 2007).
- (2) On 26 March 2007-
  - (a) the First Minister designate shall, subject to sub-paragraph (4), become the First Minister, and
  - (b) the deputy First Minister designate shall, subject to sub-paragraph (4), become the deputy First Minister,
 (and section 16A of the 1998 Act does not apply).
- (3) In sub-paragraph (2)-
  - “the First Minister designate” means the person whose nomination by virtue of paragraph 3 of Schedule 1 to this Act to hold office as First Minister has effect immediately before 26 March 2007;

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- “the deputy First Minister designate” means the person whose nomination by virtue of that paragraph to hold office as deputy First Minister has effect immediately before that date.
- (4) But the persons whose nominations so have effect shall not take up office until each of them has affirmed the terms of the pledge of office (within the meaning given by section 16C(14) of the 1998 Act).
  - (5) On 26 March 2007, the Ministerial offices to be held by Northern Ireland Ministers shall be filled by applying section 18(2) to (6) of the 1998 Act (and section 16A of the 1998 Act does not apply).
  - (6) But for that purpose, section 18 of that Act shall have effect as if the reference, in the definition of “S” in subsection (5) of that section, to the day on which the Assembly first met following its election were a reference to the first day on which the Transitional Assembly met after 7 March 2007.
  - (7) In this paragraph “the most recent suspension” means the most recent suspension of the Northern Ireland Assembly by virtue of section 1 of the 2000 Act.
3. (1) The person who is presiding officer of the Transitional Assembly immediately before 26 March 2007 shall be deemed to have been elected as Presiding Officer of the Northern Ireland Assembly under section 39(1) of the 1998 Act on that date (and, accordingly, any person who is a deputy Presiding Officer of the Northern Ireland Assembly immediately before that date shall cease to hold office under section 39(2) of that Act on that date).
  - (2) Each person who is a deputy presiding officer of the Transitional Assembly immediately before 26 March 2007 shall be deemed to have been elected as a deputy Presiding Officer of the Northern Ireland Assembly under section 39(1) of the 1998 Act on that date.
4. (1) The provision that may be made by the restoration order by virtue of section 7(2) of the 2000 Act includes provision-
    - (a) for treating things done (or treated as done) under or by virtue of this Act as having been done under or by virtue of the 1998 Act;
    - (b) for treating things done (or treated as done) by or in relation to the Transitional Assembly (or members of that Assembly) as having been done by or in relation to the Northern Ireland Assembly (or members of that Assembly).
  - (2) Section 2(3) of the 2000 Act (taking account of review under Validation, Implementation and Review section of Belfast Agreement) does not apply in relation to the restoration order.
5. (1) This paragraph applies in relation to the first occasion on or after 26 March 2007 on which the offices of chairmen and deputy chairmen of the statutory committees are to be filled in accordance with standing orders made under section 29 of the 1998 Act.
  - (2) That section (and those standing orders) shall have effect as if the reference, in the definition of “S” in subsection (3) of that section (and in those standing orders), to the day on which the Assembly first met following its election were a reference to the first day on which the Transitional Assembly met after 7 March 2007.
6. (1) This paragraph applies in relation to the first occasion on or after 26 March 2007 on which the political members of the Northern Ireland Policing Board are to be nominated in accordance with paragraph 7 of Schedule 1 to the Police (Northern Ireland) Act 2000 (c. 32).
  - (2) That paragraph shall have effect as if the reference, in the definition of “S” in subparagraph (7) of that paragraph, to the day on which the Assembly first met following its election were a reference to the first day on which the Transitional Assembly met after 7 March 2007.
7. The following provisions of this Act are repealed-
    - (a) section 1(1) and (2), and
    - (b) Schedule 1.

GENERAL NOTE

This schedule is introduced by s.2(2): if the secretary of state does not make a Sch.3 order dissolving the assembly before March 25, 2006, he must make an order on that date restoring it on the following day. Paragraph 2 requires there to be a First Minister designate and a Deputy First Minister designate on March 26, 2007 (though they may be nominated up until March 25, 2007). Paragraph 4(2) waives the review provision for restoration.

## NON-COMPLIANCE WITH ST ANDREWS AGREEMENT TIMETA- BLE

### *Dissolution of Northern Ireland Assembly*

1. If this Schedule comes into force before 30 January 2007 or after 7 March 2007, the Northern Ireland Assembly shall be dissolved on the date on which it comes into force.

### *Postponement of next Northern Ireland Assembly election*

2. (1) In section 31 of the 1998 Act (Northern Ireland Assembly: dates of elections and dissolutions), for subsection (2) substitute—
  - “(2) The date of the poll for the election of the Assembly next following the current Assembly shall be a date to be specified in an order made by the Secretary of State.In this subsection “the current Assembly” means—
  - (a) if Schedule 3 to the Northern Ireland (St Andrews Agreement) Act 2006 comes into force on or before 7 March 2007, the Assembly elected at the poll on 26 November 2003;
  - (b) otherwise, the Assembly elected at the poll on 7 March 2007.(2A) An order under subsection (2) may not specify a date falling on or before the date on which the poll would (apart from that subsection) fall to be held under subsection (1).  
(2B) An order under subsection (2) may include provision making such modifications of—
  - (a) any enactment (other than one contained in this Act), or
  - (b) any provision of subordinate legislation,as appear to the Secretary of State to be necessary or expedient for the purposes of, or in consequence of or in connection with, the order.  
(2C) An order under subsection (2) may, in particular, make provision modifying any duty of the Chief Electoral Officer for Northern Ireland whereby (apart from the order) he must perform any function or discharge any duty on or by reference to a particular date.  
(2D) An order under subsection (2) may also make such supplementary, incidental or consequential provision as the Secretary of State considers necessary or expedient.”
- (2) In subsection (1) of that section, for “subsection (2)” substitute “subsections (2) to (3)”.

### *Repeal of certain provisions of this Act etc*

3. (1) The following provisions of this Act are repealed—
  - (a) section 1(1) and (2),
  - (b) section 3,
  - (c) Schedule 1,
  - (d) Schedule 2,
  - (e) Schedule 4, and
  - (f) Part 2 (including Schedules 5 to 7).
- (2) If this Schedule comes into force on 28 March 2007, the enactments amended by Part 2 (including Schedules 5 to 7) shall be deemed to have effect, as from that date, as if the amendments made by that Part had not been made.

### GENERAL NOTE

This schedule is introduced by s.2(1) or (4): s.2(1) is when the secretary of state decides, before March 25, 2007, that there is no purpose in restoring the Northern Ireland Assembly (in which case Sch.2 does not come into force, and the Transitional Assembly is not dissolved under para.7); s.2(4) is when the restoration on March 26, 2007 does not succeed, in which case the secretary of state has to revoke restoration, and bring Sch.3 into force on March 28, 2007. Paragraph 1 refers to the Northern Ireland Assembly, and not to the Transitional Assembly. Paragraph 2 is yet another amendment of s.31 of the NIA 1998: back to secretary of state order. Paragraph 3(1) contains repeals of this Act: the Transitional Assembly would be dissolved. Paragraph 3(2) relates to

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s.2(4) and the revoking of restoration. The NIA 1998 amendments in Pt 2 are deemed not to have effect from March 28, 2007.

SCHEDULE 4

Section 2(5)

REPEAL OF THE NORTHERN IRELAND ACT 2000 ON 28  
MARCH 2007

*Repeal of the 2000 Act on 28 March 2007*

1. The 2000 Act is repealed.

*Repeal of the 2000 Act: supplementary provisions*

2. (1) The Northern Ireland Assembly may not make a determination under section 47 of the 1998 Act in respect of any period of suspension.  
(2) No instrument made during any period of suspension shall be liable to annulment or capable of being revoked in pursuance of a resolution, motion or address of the Northern Ireland Assembly.  
(3) Neither a restoration order nor the repeal of paragraph 1(1) of the Schedule to the 2000 Act shall affect the operation of any Order in Council made before 28 March 2007 under paragraph 1(1) of that Schedule.  
(4) References to Acts of the Northern Ireland Assembly in any enactment or instrument (whether passed or made before or after the coming into force of section 1 of the 2000 Act) are to be read, so far as the context permits, as including references to Orders in Council made under paragraph 1(1) of the Schedule to that Act.  
(5) The repeal of section 6 of the 2000 Act by virtue of paragraph 1 above shall not affect the operation of any order previously made under that section.  
(6) The repeal of section 7 of the 2000 Act by virtue of paragraph 1 above shall not affect the operation of any provision of a restoration order previously made by virtue of subsection (2) of that section.  
(7) The repeal of paragraph 9 of the Schedule to the 2000 Act by virtue of paragraph 1 above shall not affect the operation of any determination or provision previously made by virtue of that paragraph.  
(8) Subsection (4) of section 44 of the 1998 Act shall continue to include, at the end of that subsection, the words “or during a period when section 1 of the Northern Ireland Act 2000 was in force” (notwithstanding the repeal of section 9(3) of the 2000 Act by virtue of paragraph 1 above).  
(9) In this paragraph-  
“instrument” includes a charter, contract or other document;  
“period of suspension” means a period when section 1 of the 2000 Act was in force.  
(10) Sub-paragraphs (1) to (8) are not to be taken as limiting the provision that may be made by an order under section 23 of this Act.

*Repeal of Schedule 3 to this Act on 28 March 2007*

3. Schedule 3 to this Act is repealed.

GENERAL NOTE

The schedule is introduced by s.2(5): restoration on March 26, 2007, and no subsequent revocation. Only then will the NIA 2000 be repealed, on March 28, 2007 (para.1). Schedule 3 of this Act is be repealed on the same date, under para.3.

## EXECUTIVE SELECTION: CONSEQUENTIAL AMENDMENTS

1. The 1998 Act is amended as follows.
2. (1) Section 18 (Northern Ireland Ministers) is amended as follows.
  - (2) Omit subsection (1)(a).
  - (3) For subsection (13) substitute-
    - “(13) In this section “nominating officer”, in relation to a party, means-
      - (a) the person registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 as the party’s nominating officer; or
      - (b) a member of the Assembly nominated by him for the purposes of this section.”
3. In section 19A (disqualification for certain offices which may be held by members of the Assembly), in subsection (1), for paragraphs (a) and (b) substitute-
  - “(a) be nominated to hold the office of First Minister or deputy First Minister or a Ministerial office to be held by a Northern Ireland Minister.”
4. In section 32 (extraordinary elections), for subsection (3) substitute-
  - “(3) If-
    - (a) the period mentioned in section 16A(3) ends without the offices of First Minister and deputy First Minister and the Ministerial offices to be held by Northern Ireland Ministers having been filled; or
    - (b) the period mentioned in section 16B(3) ends without the offices of First Minister and deputy First Minister having been filled,the Secretary of State shall propose a date for the poll for the election of the next Assembly.”
5. In section 98(1) (interpretation), in the definition of “the pledge of office”, for “16(10)” substitute “16C(14)”.
6. (1) Schedule 12A (effect of application of section 95A(6) or (7)) is amended as follows.
  - (2) In paragraph 6(4), for “16(8)” substitute “16B(3) to (9)”.
  - (3) In paragraph 7(4), for “16(7)” substitute “16B(2)”.
  - (4) In paragraph 8(1)(a), for “the six weeks” substitute “the period of seven days”.
  - (5) In paragraph 8(3), for “16” substitute “16B(3) to (9)”.
  - (6) In paragraph 8(4)-
    - (a) for “for an election under section 16” substitute “under section 16B(3) to (9)”;
    - (b) for “of six weeks mentioned in section 16(8)” substitute “mentioned in section 16B(3)”.
7. In section 1 of the 2000 Act (suspension of devolved government in Northern Ireland), in subsection (4), omit “elected.”.
8. In Schedule 2 to the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33) (department with policing and justice functions), the inserted Schedule 4A to the 1998 Act is amended as follows.
9. After paragraph 1 insert-

*Modification of section 16A*

  - “1A Section 16A(3) shall have effect as if, for paragraph (b) (and the word “and” before it) there were substituted-
    - “(aa) once those offices have been filled, the relevant Ministerial office (within the meaning of Part 1 of Schedule 4A) shall be filled by applying paragraph 3(3) to (6) of that Schedule; and
    - (b) once that office has been filled, the other Ministerial offices to be held by Northern Ireland Ministers shall be filled by applying section 18(2) to (6).”
10. In paragraph 3 (department in the charge of Minister approved by resolution of Assembly; provisions relating to relevant Minister), in sub-paragraph (1), for “(a) to (e)” substitute “(b) to (e)”.

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11. After paragraph 4 insert-

*Modification of section 16A*

“4A Section 16A(3) shall have effect as if, for paragraph (b) (and the word “and” before it) there were substituted-

- “(aa) once those offices have been filled, the relevant Ministerial offices (within the meaning of Part 2 of Schedule 4A) shall be filled by applying paragraph 7(3) to (6) of that Schedule; and  
(b) once those offices have been filled, the other Ministerial offices to be held by Northern Ireland Ministers shall be filled by applying section 18(2) to (6).”

12. In paragraph 7 (department in the charge of two Ministers: provisions relating to relevant Ministers), in sub-paragraph (1), for “(a) to (e)” substitute “(b) to (e)”.

13. After paragraph 8 insert-

*Modification of section 16A*

“8A Section 16A(3) shall have effect as if, for paragraph (b) (and the word “and” before it) there were substituted-

- “(aa) once those offices have been filled, the relevant Ministerial office (within the meaning of Part 3 of Schedule 4A) and the relevant junior Ministerial office (within that meaning) shall be filled by applying paragraph 11(3) to (6) of that Schedule; and  
(b) once those offices have been filled, the other Ministerial offices to be held by Northern Ireland Ministers shall be filled by applying section 18(2) to (6).”

14. In paragraph 11 (department with rotation between Minister and junior Minister: provisions relating to relevant Minister and relevant junior Minister), in sub-paragraph (1), for “(a) to (e)” substitute “(b) to (e)”.

GENERAL NOTE

This schedule is introduced by s.8: First Minister, Deputy First Minister and Northern Ireland ministers. Section 8 substitutes new ss.16A, 16B and 16C for s.16 of the NIA 1998. Section 16 is not strictly repealed, because of s.29B, inserted by s.11 of this Act. This schedule contains the consequential amendments.

SCHEDULE 6

Section 9

DEPARTMENT WITH POLICING AND JUSTICE FUNCTIONS:  
NOMINATION ETC OF MINISTERS

*Introduction*

1. In Schedule 2 to the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33) (department with policing and justice functions), the inserted Schedule 4A to the 1998 Act is amended as follows.

*Department in the charge of Minister approved by resolution of Assembly*

2. (1) Paragraph 3 (provisions relating to relevant Minister) is amended as follows.  
(2) After sub-paragraph (3) insert-  
“(3A) A member of the Assembly who is a member of a political party may not be nominated unless the nominating officer of the party consents to his nomination within a period specified in standing orders.”  
(3) In sub-paragraph (9), at the end insert  
“; or  
(d) where consent to his nomination was required under sub-paragraph (3A), he is dismissed by the nominating officer who consented (or that officer’s successor) and the Presiding Officer is notified of his dismissal.”  
(4) After sub-paragraph (10) insert-

“(10A) If, as a result of the relevant Minister (“the former Minister”) ceasing to hold office and the relevant Ministerial office being filled by virtue of sub-paragraph (10),-

- (a) the total number of Ministerial offices held by members of a political party increases; or
- (b) the total number of Ministerial offices held by members of a political party decreases,

all other Northern Ireland Ministers shall cease to hold office and those Ministerial offices shall be filled by applying section 18(2) to (6) within a period specified in standing orders.

(10B) But sub-paragraph (10A) shall not apply if-

- (a) the former Minister ceased to hold office by virtue of being dismissed by a nominating officer under sub-paragraph (9)(d); and
- (b) before the relevant Ministerial office was filled, either of the conditions in sub-paragraph (10C) was satisfied in relation to each member of the Assembly who was a member of the political party of the nominating officer.

(10C) The conditions are that-

- (a) the First Minister and the deputy First Minister sought to nominate the member under sub-paragraph (3) for the relevant Ministerial office but consent to his nomination was not given in accordance with sub-paragraph (3A); or
- (b) the member was nominated under sub-paragraph (3) for the relevant Ministerial office and the nomination took effect within the period specified in standing orders by virtue of sub-paragraph (5)(a), but the member did not take up the office within that period.”

(5) After sub-paragraph (13) insert-

“(14) In this paragraph “nominating officer” has the same meaning as in section 18.”

#### *Department in the charge of two Ministers*

3. (1) Paragraph 7 (provisions relating to relevant Ministers) is amended as follows.

(2) After sub-paragraph (3) insert-

“(3A) But a member of the Assembly who is a member of a political party may not be nominated unless the nominating officer of the party consents to his nomination within a period specified in standing orders.”

(3) In sub-paragraph (9), at the end insert

“; or

- (d) where consent to his nomination was required under sub-paragraph (3A), he is dismissed by the nominating officer who consented (or that officer’s successor) and the Presiding Officer is notified of his dismissal.”

(4) After sub-paragraph (10) insert-

“(10A) If, as a result of the relevant Ministers (“the former Ministers”) ceasing to hold office and the relevant Ministerial offices being filled by virtue of sub-paragraph (10)(b),-

- (a) the total number of Ministerial offices held by members of a political party increases; or
- (b) the total number of Ministerial offices held by members of a political party decreases,

all other Northern Ireland Ministers shall cease to hold office and those Ministerial offices shall be filled by applying section 18(2) to (6) within a period specified in standing orders.

(10B) But sub-paragraph (10A) shall not apply if-

- (a) either of the former Ministers ceased to hold office by virtue of being dismissed by a nominating officer under sub-paragraph (9)(d); and
- (b) before the relevant Ministerial offices were filled, either of the conditions in sub-paragraph (10C) was satisfied in relation to each member of the Assembly who was a member of the political party of the nominating officer concerned.

(10C) The conditions are that-

- (a) the First Minister and the deputy First Minister sought to nominate the member under sub-paragraph (3) for one of the relevant Ministerial offices but consent to his nomination was not given in accordance with sub-paragraph (3A); or
- (b) the member was nominated under sub-paragraph (3) for one of the relevant Ministerial offices and the nomination took effect within the period specified in standing orders by virtue of sub-paragraph (5)(a), but the member did not take up the office within that period.”

(5) After sub-paragraph (13) insert-

“(14) In this paragraph “nominating officer” has the same meaning as in section 18.”

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*Department with rotation between Minister and junior Minister*

4. (1) Paragraph 11 (provisions relating to relevant Minister and relevant junior Minister) is amended as follows.
- (2) After sub-paragraph (3) insert-
- “(3A) But a member of the Assembly who is a member of a political party may not be nominated unless the nominating officer of the party consents to his nomination within a period specified in standing orders.”
- (3) In sub-paragraph (9), at the end insert
- “; or
- (d) where consent to his nomination was required under sub-paragraph (3A), he is dismissed by the nominating officer who consented (or that officer’s successor) and the Presiding Officer is notified of his dismissal.”
- (4) After sub-paragraph (11) insert-
- “(11A) If, as a result of the relevant Minister (“the former Minister”) and the relevant junior Minister (“the former junior Minister”) ceasing to hold office and the relevant Ministerial office and the relevant junior Ministerial office being filled by virtue of sub-paragraph (11)(b),-
- (a) the total number of Ministerial offices or junior Ministerial offices held by members of a political party increases; or
- (b) the total number of Ministerial offices or junior Ministerial offices held by members of a political party decreases,
- all other Northern Ireland Ministers shall cease to hold office and those Ministerial offices shall be filled by applying section 18(2) to (6) within a period specified in standing orders.
- (11B) But sub-paragraph (11A) shall not apply if-
- (a) the former Minister or the former junior Minister ceased to hold office by virtue of being dismissed by a nominating officer under sub-paragraph (9)(d); and
- (b) before the relevant Ministerial office and the relevant junior Ministerial office were filled, either of the conditions in sub-paragraph (11C) was satisfied in relation to each member of the Assembly who was a member of the political party of the nominating officer concerned.
- (11C) The conditions are that-
- (a) the First Minister and the deputy First Minister sought to nominate the member under sub-paragraph (3) for the appropriate office, but consent to his nomination was not given in accordance with sub-paragraph (3A); or
- (b) the member was nominated under sub-paragraph (3) for the appropriate office and the nomination took effect within the period specified in standing orders by virtue of sub-paragraph (5)(a), but the member did not take up the office within that period.
- (11D) In sub-paragraph (11C) “the appropriate office” means-
- (a) in relation to a person who was a member of the political party of the nominating officer who dismissed the former Minister, the relevant Ministerial office;
- (b) in relation to a person who was a member of the political party of the nominating officer who dismissed the former junior Minister, the relevant junior Ministerial office.”
- (5) After sub-paragraph (14) insert-
- “(15) In this paragraph “nominating officer” has the same meaning as in section 18.”

GENERAL NOTE

This schedule is introduced by s.9. Indeed, s.9 does nothing else. The origin of this provision is: Pt 4 of the NIMPA 2006. This, as noted, was enabling legislation. Section 17 is: department with policing and justice functions. It added a new s.21A to the NIA 1998, and, through Sch.2, a new Sch.4A to the same statute.

This schedule amends Sch.4A of the NIA 1998: department with policing and justice functions. There, three scenarios were put forward: (1) a single minister; (2) two ministers; and (3) rotation between a minister and junior minister. Paragraph 2 amends the single minister provisions: it creates a role for party nominating officers. Paragraph 3 relates to two ministers: the amendments are similar. Paragraph 4 relates to a senior and junior minister: again the amendments are similar.

## MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART 2

1. The 1998 Act is amended as follows.
2. In section 53 (agreements etc., by persons participating in North-South Ministerial Council and British-Irish Council), in subsection (1), for “a nomination under section 52” substitute “any provision of section 52A or 52B”.
3. In section 98 (interpretation), in subsection (1), insert the following definition at the appropriate place—  
“the St Andrews Agreement” means the agreement reached on 13 October 2006 at multi-party talks on Northern Ireland held at St Andrews;”.
4.
  - (1) Schedule 2 (excepted matters) is amended as follows.
  - (2) In paragraph 3(b)(i), for “a nomination under section 52” substitute “any provision of section 52A or 52B”.
  - (3) In paragraph 22—
    - (a) in sub-paragraph (b), for “and 28” substitute “, 28, 28A, 28B, 28D and 28E”;
    - (b) in sub-paragraph (d), for “52” substitute “52A to 52C”.
5. In Schedule 3 (reserved matters), in paragraph 42(a), for “and 28” substitute “, 28, 28A and 28B”.
6. In section 1 of the 2000 Act (suspension of devolved government in Northern Ireland), in subsection (5), for “section 52” substitute “section 52A, 52B”.

### GENERAL NOTE

This schedule is introduced by s.19: minor and consequential amendments relating to Pt 2 of this Act (amendments to the NIA 1998). Indeed, s.19 does nothing else. There are amendments to the NIA 1998 and NIA 2000.

## RECONSTITUTION OF DISTRICT POLICING PARTNERSHIPS

### *Introduction*

1. (1) Schedule 3 to the Police (Northern Ireland) Act 2000 (c. 32) has effect subject to this Schedule.
- (2) In this Schedule—
  - “the Board” means the Northern Ireland Policing Board;
  - “the commencement date” means the date on which this Schedule comes into force;
  - “the council”, in relation to a DPP, means the district council by which the DPP is established;
  - “district council” has the same meaning as in the Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.));
  - “DPP” means a district policing partnership;
  - “independent appointment date”, in relation to a DPP, means the date published by the Board under paragraph 4(2) of this Schedule;
  - “independent member”, in relation to a DPP, means a member appointed under paragraph 2(3)(b), (4)(b) or (5)(b) of Schedule 3 to the Police (Northern Ireland) Act 2000;
  - “political appointment date”, in relation to a DPP, means the date published by the council under paragraph 3(2) of this Schedule;
  - “political member”, in relation to a DPP, means a member appointed under paragraph 2(3)(a), (4)(a) or (5)(a) of Schedule 3 to the Police (Northern Ireland) Act 2000.

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*Report on whether DPPs meet the political condition*

2. (1) The Board must comply with the requirements of this paragraph within a period of 15 days beginning with the commencement date.
- (2) The Board must consider whether the political condition is met in relation to each DPP.
- (3) The Board must submit to the Secretary of State a report on each DPP-
  - (a) stating whether or not, in the view of the Board, the political condition is met in relation to the DPP, and
  - (b) setting out its reasons for that view.
- (4) The Board must provide to each district council a copy of the report so far as the report relates to the DPP established by that council.
- (5) The Board must publish a list of the DPPs which, in its view, do not meet the political condition.
- (6) For the purposes of this paragraph the political condition is met in relation to a DPP if the political members of the DPP reflect, so far as practicable, the balance of parties prevailing among the members of the council on the commencement date.
- (7) For the purposes of this paragraph an independent member of a council shall be treated as a party.

*Appointment of political members of DPPs which do not meet the political condition*

3. (1) This paragraph applies in relation to each DPP specified in the list published under paragraph 2(5).
- (2) The council must publish notice of the date which is to be the political appointment date in relation to the DPP.
- (3) Notice under sub-paragraph (2) must be published in such manner as appears to the council appropriate for bringing it to the attention of interested persons.
- (4) The political appointment date in relation to a DPP must be a date no later than three months after the date on which the list is published.
- (5) Each person who is a political member of the DPP on the day before the political appointment date shall cease to hold office at the end of that day.
- (6) On the political appointment date, the council must appoint political members of the DPP in accordance with Schedule 3 to the Police (Northern Ireland) Act 2000 (c. 32); but for this purpose paragraph 3(1) of that Schedule is to have effect as if, for “immediately after the last local general election” there were substituted “on the date on which Schedule 8 to the Northern Ireland (St Andrews Agreement) Act 2006 comes into force”.
- (7) A person who ceases to hold office as a political member by virtue of sub-paragraph (5) shall be eligible for re-appointment.
- (8) Where a political member of the DPP ceases to hold office at any time during the period-
  - (a) beginning with the date on which the list is published, and
  - (b) ending with the day before the political appointment date,no appointment shall be made to fill the casual vacancy.
- (9) Where a person ceases to hold office as chairman of the DPP during that period, no appointment shall be made before the political appointment date to fill the vacancy in the office.

*Appointment of independent members of DPPs which do not meet the political condition*

4. (1) This paragraph applies in relation to each DPP specified in the list published under paragraph 2(5).
- (2) The Board must publish notice of the date which is to be the independent appointment date in relation to the DPP.
- (3) Notice under sub-paragraph (2) must be published in such manner as appears to the Board appropriate for bringing it to the attention of interested persons.
- (4) Each person who is an independent member of the DPP on the day before the independent appointment date shall cease to hold office at the end of that day.
- (5) On the independent appointment date, the Board must appoint independent members of the DPP in accordance with Schedule 3 to the Police (Northern Ireland) Act 2000 (c. 32).
- (6) A person who ceases to hold office as an independent member by virtue of sub-paragraph (4) shall be eligible for re-appointment.
- (7) Where an independent member of the DPP ceases to hold office at any time during the period-
  - (a) beginning with the date on which the list is published, and
  - (b) ending with the day before the independent appointment date,

no appointment shall be made to fill the casual vacancy.

- (8) Where a person ceases to hold office as vice-chairman of the DPP during that period, no election shall be conducted before the independent appointment date to fill the vacancy in the office.

### *Supplementary provisions*

5. (1) Section 15 of the Police (Northern Ireland) Act 2000 shall apply in relation to a failure by a district council to comply with any provision of this Schedule as it applies in relation to a failure by a district council to comply with any provision of Schedule 3 to that Act.
- (2) Paragraph 6 of Schedule 3 to that Act shall apply in relation to any functions of a district council or the Board under this Schedule as it applies in relation to any functions of a district council or the Board under paragraphs 4 and 5 of that Schedule.

### GENERAL NOTE

This schedule is introduced by s.21(1). Indeed, s.21(1) does nothing else. District policing partnerships (“DPPs”) were provided for initially in the Police (Northern Ireland) Act 2000 (c.32) (“PNIA 2000”) Pt III (ss.14-23) and Sch.3.

This schedule builds on Sch.3 of PNIA 2000: district policing partnerships. The five paragraphs provide for the reappointment of political and independent members of all DPPs. This is referred to as a reconstitution. The reason is to permit Sinn Féin to take up its seats on the DPPs. Paragraph 2(6) effectively defines the political condition.

## SCHEDULE 9

## Section 20(2)

# DISTRICT POLICING PARTNERSHIPS: BELFAST SUB-GROUPS

### *Introduction*

1. In paragraph 13 of Schedule 1 to the Police (Northern Ireland) Act 2003 (c. 6), (Belfast), the inserted Schedule 3A to the Police (Northern Ireland) Act 2000 is amended as follows.

### *Effect of local government election on membership of sub-group*

2. (1) In paragraph 1, after sub-paragraph (1) insert-
- “(1A) In this Schedule, in relation to a sub-group and the holding of a local general election-
- “the transitional period” means the period-
- (a) beginning with the election day; and
- (b) ending with the day before the reconstitution date;
- “reconstitution date” means the date published by notice of the Board under paragraph 4(2A).”
- (2) In paragraph 3(3), for “date of the local general election” substitute “day before the reconstitution date”.
- (3) At the end of paragraph 3 add-
- “(7) Where a political member ceases to hold office at any time during the transitional period, no appointment shall be made to fill the casual vacancy; and paragraph 2 and sub-paragraph (1) of this paragraph shall have effect subject to this sub-paragraph.”
- (4) In paragraph 4, after sub-paragraph (2) insert-
- “(2A) Where, following a local general election, the Board has completed the appointment of the independent members of the sub-group for a police district, it shall publish notice of the date which is to be the reconstitution date in relation to the sub-group for that police district.
- (2B) Notice under sub-paragraph (2A) shall be published in such manner as appears to the Board appropriate for bringing it to the attention of interested persons.”
- (5) In paragraph 4(4), for “date of the local general election” substitute “day before the reconstitution date”.
- (6) At the end of paragraph 4 add-
- “(8) Where an independent member ceases to hold office at any time during the transitional period, no appointment shall be made to fill the casual vacancy; and

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paragraph 2 and sub-paragraphs (1) and (2) of this paragraph shall have effect subject to this sub-paragraph.”

*Removal of members of sub-group from office*

3. In paragraph 7(1) (removal of members of sub-group), for head (c) substitute-  
“(c) he has been convicted in Northern Ireland or elsewhere after the date of his appointment of a criminal offence (whether committed before or after that date);”.

*Chairman and vice-chairman of sub-group*

4. For paragraph 9 (chairman and vice-chairman of sub-group) substitute-

“**9** Chairman and vice-chairman

- (1) For each sub-group there shall be a chairman appointed by the council from among the political members.  
(2) In making appointments to the office of chairman, the council shall ensure that, so far as is practicable-  
(a) a person is appointed to that office for a term of 12 months at a time or, where that period is shorter than 18 months, for a period ending with the reconstitution date next following his appointment;  
(b) that office is held in turn by each of the four largest parties represented on the council immediately after the last local general election.  
(3) Subject to the following provisions of this paragraph, a person shall hold and vacate office as chairman in accordance with the terms of his appointment.  
(4) A person may at any time resign as chairman by notice in writing to the council.  
(5) If the chairman ceases to be a member of the sub-group, he shall also cease to hold office as chairman.

**9A**

- (1) For each sub-group there shall be a vice-chairman elected by the independent members from among such members.  
(2) The election of a vice-chairman shall be conducted in accordance with procedures determined by the sub-group under paragraph 14(4).  
(3) Subject to the following provisions of this paragraph, a person shall hold and vacate office as vice-chairman in accordance with such terms as the Board may determine.  
(4) In determining terms under sub-paragraph (3), the Board shall ensure that, so far as is practicable, a person holds office as vice-chairman for a term of 12 months at a time or, where that period is shorter than 18 months, for a period ending with the reconstitution date next following his election to that office.  
(5) A person may at any time resign as vice-chairman by notice in writing to the Board.  
(6) If the vice-chairman ceases to be a member of the sub-group, he shall also cease to hold office as vice-chairman.”

**GENERAL NOTE**

This schedule is introduced by s.21(2). Indeed, s.21(1) does nothing else. The DPP Belfast sub-groups were provided for initially in the Police (Northern Ireland) Act 2003 (“PNIA”2003) (c.6) s.19 and Sch.1: Belfast. Paragraph 13 of Sch.1 inserted a new Sch.3A in the PNIA 2000: Belfast sub-groups. This schedule amends Sch.3A.

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