

NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Devolution of Policing and Justice Etc.

Section 16: Conditions for devolving policing and justice matters

73. **Section 16** amends section 4 of the 1998 Act to make the devolution of policing and justice contingent upon a motion to that effect being tabled by the First Minister and deputy First Minister acting jointly, and passed with the support in the Assembly of a majority both of designated Nationalists and designated Unionists. (Devolution of other matters will continue to require the passing of a resolution with cross-community support.)
74. The amendments reflect the Government's view that the support of a majority of both sections of the community in Northern Ireland would be essential for the devolution of policing and justice functions to succeed. The substantive amendment – new section 4(2A) – is made by subsection (3) of the section: the other subsections make drafting amendments pursuant to that.

Section 17: Department with policing and justice functions

75. This section inserts a new section 21A into the 1998 Act along with an accompanying new Schedule 4A (which is set out in Schedule 2 to the Act). It applies where an Act of the Assembly establishes a new department responsible for devolved policing and justice functions. (Devolved policing and justice functions are defined in section 21A(8).) Where such a department is established, an Act of the Assembly may provide for the department to be headed by a single elected Northern Ireland Minister, or by two elected Northern Ireland Ministers acting jointly. Alternatively, the Act may provide for the department to be headed by one elected Minister supported by an elected junior Minister, and for those persons to rotate at intervals.
76. This section is additional to existing provision in the 1998 Act which provides for separate departments to be established, and headed up by a single Northern Ireland Minister. The 1998 Act would already allow for a new department for policing and criminal justice to be established under the control of a single Minister appointed via the d'Hondt process.
77. The overall purpose is to ensure that policing and justice functions can be devolved to any possible departmental structure agreed by the Northern Ireland parties. The range of possible departmental structures was discussed in the Joint Declaration of 2003.

Schedule 2: new Schedule 4A to the 1998 Act: Department with policing and justice functions

78. The new Schedule 4A to the 1998 Act sets out the procedures that will apply where one of the departmental structures provided for by new section 21A is adopted. Part 1 of the Schedule provides for the model where a single elected Minister is in charge of the department; Part 2 provides for the case in which two Ministers in charge act jointly; and Part 3 for the rotational model. The Schedule requires, in each case, that the First Minister and deputy First Minister nominate the member or members of the Assembly to head up the department. The nomination must be approved by a resolution of the Assembly passed with the support of a majority of members voting, a majority of designated Nationalists voting and a majority of designated Unionists voting - see paragraphs 3(4), 7(4) and 11(4) of the Schedule. It is possible in any of these cases for the First Minister or deputy First Minister to be nominated.
79. [Parts 1, 2 and 3](#) of the Schedule make provision for what happens if one of the Ministers ceases to hold office, requiring the nomination process to begin again. They also deal with how the nomination and appointment of Ministers under each scheme will affect the nomination and appointment of Ministers to other Northern Ireland departments under section 18 of the 1998 Act.
80. Part 4 of new Schedule 4A enables further modifications to be made by Order in Council, under the affirmative resolution procedure, in consequence of one of the new departmental structures being adopted. For example, in the event of one of the structures being adopted, it would be necessary to make modifications to Schedule 12A to the 1998 Act.

Section 18: Power of Assembly to call for witnesses and documents

81. This section amends section 44 of the 1998 Act, which deals with the Assembly's power to call witnesses and require the production of documents. The amendment prevents the Assembly from calling (current or former) Ministers of the Crown or civil servants to give evidence or to produce documents in relation to:
- the discharge of functions devolved by an Order in Council under section 4 of the 1998 Act during the period before they were devolved;
 - the discharge of statutory functions transferred from a Minister of the Crown to a Northern Ireland department or Minister during the period before they were transferred. (This would cover, for example, functions transferred under the new section 86A of the 1998 Act inserted by section 19.)
82. [Section 44](#) already makes similar provision in relation to the discharge of any functions during the period before devolution on the "appointed day" (i.e. 2 December 1999) or during a period of suspension. The change is designed to be consistent with the existing principle that the Assembly should have competence only in relation to transferred matters.

Section 19: Provision for transfer of functions relating to extradition etc.

83. This section inserts a new section 86A (provision for transfer of functions relating to extradition etc.) into the 1998 Act. Its purpose is to enable amendments to be made by Order in Council to legislation relevant to extradition. The relevant legislation is the [Crime \(International Co-operation\) Act 2003 \(c.32\)](#) and the [Extradition Act 2003 \(c.41\)](#). The power is available only for the purpose of transferring to Northern Ireland departments or Ministers functions under those Acts that are exercisable by Ministers of the Crown in relation to Northern Ireland.

Section 20: Provision for entrenching enactments

84. This section inserts a new section 86B (provision for entrenching enactments) into the 1998 Act. This enables an Order in Council to amend section 7 of the 1998 Act, so as to “entrench” additional enactments, or to provide that entrenchments should cease to have effect. An Order under this section would require affirmative resolution approval. An enactment entrenched under this power could not be amended by the Assembly, but could nevertheless be a transferred matter. The power enables Acts and individual provisions of Acts, in particular, to be entrenched.
85. During suspension, the power could be used to entrench amendments made to enactments relating to matters which are already transferred. For example, it could be used to entrench an amendment to create a policing precept to give the Assembly the power to provide an enhanced level of expenditure on policing by raising money for policing from the Northern Ireland regional rate.