

NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Miscellaneous

Section 21: Arms decommissioning: extension of amnesty period

86. This section amends the [Northern Ireland Arms Decommissioning Act 1997 \(c.7\)](#) to the effect that the latest permitted end date of an amnesty period during which paramilitary arms may be decommissioned is extended from 27th February 2007 to 27th February 2010.

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

87. This section amends the [Northern Ireland \(Loans\) Act 1975 \(c.83\)](#) to the effect that the limits on loans specified in that Act are increased. It came into effect on Royal Assent. It amends the 1975 Act to increase the maximum loans limit to £3000 million from £2000 million. It further provides the Secretary of State with a power, by order and with the consent of the Treasury, to increase the loans limit by a maximum of £500 million at any time: under the amendments there will be no limit to the number of times such an increase may be made, although the consent of the Treasury will be needed on each occasion this order-making power is exercised.

Section 23: Single wholesale electricity market

88. This section enables Her Majesty, by Order in Council, to give legal effect to any agreement or arrangement between the British and Irish Governments on the creation of a single wholesale electricity market in Northern Ireland and Ireland. It came into force on Royal Assent. A copy of any such agreement or arrangement would be presented to Parliament by the Secretary of State. In order to give full effect to any such agreement or arrangement once it becomes agreed between the two Governments, subsection (2) of the section provides that an Order in Council may, in particular, provide for the amendment or repeal of legislation as necessary, grant powers to bodies or persons including the power to make subordinate legislation, and create offences.
89. Subsection (2)(c) provides for the creation of Northern Ireland offences required for the regulation of the market. Such offences may, for example, cover restrictions on the disclosure of commercially sensitive market information without consent. It may also be necessary to provide for a new offence of carrying out the functions of operator of the market without the benefit of a licence or exemption, so as to ensure that a market operator would be subject to appropriate regulation. Subsection (3) provides that the Order creating an offence must set out the mode of trial and punishment of offenders, and specifies the maximum penalties that any such offence could attract. These are broadly in line with the maximum penalties provided for in the existing electricity legislation in Northern Ireland, for example in the [Electricity \(Northern](#)

These notes refer to the Northern Ireland (Miscellaneous Provisions) Act 2006 (c.33) which received Royal Assent on 25th July 2006

Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) and the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)).

90. An Order in Council to be made under this provision would be subject to the affirmative resolution procedure.

Section 24: Financial assistance for energy purposes

91. This section enables financial assistance for specified energy purposes to be provided. The section substitutes a new Article 61 of the Energy (Northern Ireland) Order 2003. Funding may be provided for the purposes described in paragraph (2) of the Article, if the department is of the opinion that the form and amount of the assistance to be given is reasonable in all the circumstances. References in the Article to the department are to the Department of Enterprise, Trade and Investment.
92. The specified purposes for which funding may be given include: securing a diverse and viable long-term energy supply; promoting efficiency and economy in the generation and supply of energy; promoting the development of renewable energy sources or technologies for such energy production and related matters; promoting research and development; limiting or reducing energy-related greenhouse gas emissions; and other purposes which may be prescribed by regulations.
93. Paragraph (4) of the Article provides that funding may be given in such form and subject to such conditions as the department considers appropriate. Paragraph (5) sets out examples of the form in which funding may be provided (such as by way of grants, loans or indemnities or by way of investment). Paragraph (6) gives examples of the conditions to which the giving of assistance may be made subject. These include conditions as to repayment and conditions requiring payments to be made to the department. For example, the recipient of assistance may be required to pay to the department a proportion of the income it receives from the use by it of the assistance; such payments need not be capped at the level of the assistance given.

Section 25: Sustainable development

94. This section places a statutory duty on Northern Ireland departments and district councils to carry out their functions in a way which contributes to sustainable development. In fulfilling their statutory duty, Northern Ireland departments must have regard to the Northern Ireland Sustainable Development Strategy “First Steps to Sustainability” and any other guidance on sustainable development issued by the Department of the Environment. District councils must also have regard to the Strategy and to any guidance on sustainable development issued by any Northern Ireland department.
95. Subsection (3)(c) gives the Office of the First Minister and deputy First Minister a power to extend the list of public bodies to which the statutory duty applies. Such power would be exercisable by order which would need to be laid in draft before and approved by resolution of the Northern Ireland Assembly.

Section 26: Extension to Northern Ireland of provisions of SOCAP 2005

96. This section extends to Northern Ireland certain provisions of the [Serious Organised Crime and Police Act 2005 \(c.15\)](#) which apply in Great Britain – namely, sections 60 to 67, 69 and 70. The purpose is to provide powers of compulsion of witnesses and document production in investigations undertaken in Northern Ireland by police and Revenue and Customs officers. Schedule 3 to the Act sets out amendments of SOCAP made in connection with the extension of these provisions to Northern Ireland.

Schedule 3: Extension to Northern Ireland of provisions of SOCAP 2005

97. Paragraph 2 of Schedule 3 provides that the Director of Public Prosecutions for Northern Ireland is an “Investigating Authority” within the meaning of section 60 of SOCAP, as is already, for example, the Director of Public Prosecutions for England and Wales. Paragraph 3 sets out the offences in Northern Ireland law to which the powers will apply. These correspond to the offences within Great Britain to which the British powers apply. For example, the powers will apply to section 17 of the [Theft Act \(Northern Ireland\) 1969 \(c. 16 \(N.I.\)\)](#) (which deals with false accounting) as SOCAP currently applies to section 17 of the [Theft Act 1968 \(c.60\)](#).
98. Paragraph 4 provides that where these provisions apply to Northern Ireland, they take effect as if paragraph (b) of section 62(2) of SOCAP were omitted. This omission ensures that a member of staff of the Serious Organised Crime Agency is not one of the types of person who may be authorised by an Investigating Authority to issue disclosure notices in Northern Ireland or who may search premises in Northern Ireland under a search warrant issued under section 66 of SOCAP. Paragraphs (a) and (c) of section 62(2) enable a police officer or a Revenue and Customs officer to be authorised to issue disclosure notices or search premises in this way.
99. Paragraph 7 of Schedule 3 makes provision in Northern Ireland for the power of an Investigating Authority to apply for a warrant to enter and search premises and seize documents. This will be by making a complaint on oath to a lay magistrate who will decide whether a warrant should be granted.

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

100. This section provides a person who holds the office of Chief Constable of the Police Service of Northern Ireland with “corporation sole” status, and came into force on Royal Assent. Like section 158 of SOCAP in relation to Great Britain, this section amends relevant health and safety legislation in relation to Northern Ireland so that any prosecution will ordinarily be brought against the office of Chief Constable rather than against the individual incumbent. An effect of the provision is that the office of Chief Constable, rather than the individual who temporarily holds it, would be legally responsible for relevant breaches of the [Health and Safety at Work \(Northern Ireland\) Order 1978 \(S.I. 1978/1039 \(N.I. 9\)\)](#).
101. However, the section also creates exceptions for cases where it can be shown that the Chief Constable bore some degree of personal responsibility for the breach – for example, where he consented to the commission of any offence or the commission was attributable to his personal neglect. In these circumstances, the individual Chief Constable could be guilty of the offence in the usual way and would be liable to be proceeded against.
102. Subsections (2) and (3) of the section make the Chief Constable of the PSNI into a corporation sole for the purposes of Articles 72A and 169A of the [Employment Rights \(Northern Ireland\) Order 1996 \(S.I. 1996/1919 \(N.I. 16\)\)](#). Those Articles concern rights not to suffer detriments and not to be unfairly dismissed in connection with health and safety issues. Subsections (4) to (6) make provision for Northern Ireland corresponding to section 158(5) to (7) of SOCAP. For example, the effect of the amendments is backdated to 1 July 1998 for the purpose of any legal proceedings begun on or after commencement of this section.

Section 28: Duty to fill judicial vacancies

103. Section 12 of the [Judicature \(Northern Ireland\) Act 1978 \(c.23\)](#) (“the 1978 Act”) provides for the appointment of the Lord Chief Justice of Northern Ireland, Lords Justices of Appeal and High Court judges by Her Majesty the Queen. Subsection (1) of section 28 amends section 12 of the 1978 Act so that appointments to the office of Lord Chief Justice or Lord Justice of Appeal are to be made on the recommendation of the

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Prime Minister and appointments to the office of High Court judge are to be made on the recommendation of the Lord Chancellor. This subsection also places a duty on the Prime Minister to make a recommendation to fill any vacancy in the office of Lord Chief Justice or Lord Justice of Appeal (except that, while the Lord Chief Justice agrees, the Prime Minister may leave a vacancy in the office of Lord Justice of Appeal unfilled). Subsection (3) of section 28 places a corresponding duty on the Lord Chancellor in relation to the office of High Court judge.

104. On devolution of justice to the Northern Ireland Assembly, section 12 of the 1978 Act is to be replaced by virtue of section 4 of the [Justice \(Northern Ireland\) Act 2002 \(c. 26\)](#) (as amended by the [Justice \(Northern Ireland\) Act 2004 \(c.4\)](#)) to set out the post-devolution arrangements for senior judicial appointments. Subsection (2) of section 28 amends section 12 of the 1978 as substituted by section 4 of the 2002 Act (as amended) to place a duty on the Prime Minister to fill any vacancy in the office of Lord Chief Justice or Lord Justice of Appeal (except that, while the Lord Chief Justice agrees, the Prime Minister may leave a vacancy in the office of Lord Justice of Appeal unfilled).
105. Section 5 of the 2002 Act provides for judicial offices listed in Schedule 1 to that Act (High Court judge and below) to be appointed or recommended for appointment by the First Minister and deputy First Minister, acting jointly following selection by the Judicial Appointments Commission for Northern Ireland on devolution of justice. Section 5 of the 2002 Act was amended by paragraph 3 of Schedule 1 to the 2004 Act to allow the establishment of the Commission prior to devolution and consequently transferred functions of the First Minister and the deputy First Minister in relation to the Commission to the Lord Chancellor. The Commission was established in June 2005.
106. Subsection (3) of section 28 amends section 5 of the 2002 Act (as amended). It places a duty on the Lord Chancellor to fill any vacancy in a listed judicial office. But while the Lord Chief Justice agrees, the Lord Chancellor may leave any vacancy in an office unfilled.