



# Northern Ireland Act 1998

## 1998 CHAPTER 47

### PART IV

#### THE NORTHERN IRELAND ASSEMBLY

##### *Elections etc*

### **31 Dates of elections and dissolutions**

- (1) Subject to subsection (2), the date of the poll for the election of each Assembly shall be the first Thursday in May in the fourth calendar year following that in which its predecessor was elected; and the predecessor shall be dissolved at the beginning of the minimum period which ends with that date.
- (2) The date of the poll for the election of the Assembly next following the Assembly elected under section 2 of the Northern Ireland (Elections) Act 1998 shall be 1st May 2003; and the Assembly elected under that section shall be dissolved at the beginning of the minimum period which ends with that date.
- (3) The Secretary of State may at any time by order direct that the date of the poll for the election of the next Assembly shall, instead of being that specified in subsection (1) or (2), be a date specified in the order being a date falling not more than two months before or after the date specified in that subsection.
- (4) An Assembly elected under this section or section 32 shall meet within the period of eight days beginning with the day of the poll at which it is elected.
- (5) For the purposes of subsection (4), a Saturday, a Sunday, Christmas Day, Good Friday and any day which is a bank holiday in Northern Ireland shall be disregarded.
- (6) In this section “minimum period” means a period determined in accordance with an order of the Secretary of State.

### **32 Extraordinary elections**

- (1) If the Assembly passes a resolution that it should be dissolved the Secretary of State shall propose a date for the poll for the election of the next Assembly.
- (2) A resolution under subsection (1) shall not be passed without the support of a number of members of the Assembly which equals or exceeds two thirds of the total number of seats in the Assembly.
- (3) If the period mentioned in section 16(1) or (8) ends without a First Minister and a deputy First Minister having been elected, the Secretary of State shall propose a date for the poll for the election of the next Assembly.
- (4) If the Secretary of State proposes a date under subsection (1) or (3), Her Majesty may by Order in Council—
  - (a) direct that the date of the poll for the election of the next Assembly shall, instead of being determined in accordance with section 31, be the date proposed; and
  - (b) provide for the Assembly to be dissolved on a date specified in the Order.

### **33 Constituencies and numbers of members**

- (1) The members of the Assembly shall be returned for the parliamentary constituencies in Northern Ireland.
- (2) Each constituency shall return six members.
- (3) An Order in Council under the Parliamentary Constituencies Act 1986 changing a parliamentary constituency in Northern Ireland shall have effect for the purposes of this Act in relation to—
  - (a) the first election under section 31 or 32 which takes place after the Order comes into force; and
  - (b) later elections under that section and by-elections.

### **34 Elections and franchise**

- (1) This section applies to elections of members of the Assembly, including by-elections.
- (2) Each vote in the poll at an election shall be a single transferable vote.
- (3) A single transferable vote is a vote—
  - (a) capable of being given so as to indicate the voter's order of preference for the candidates for election as members for the constituency; and
  - (b) capable of being transferred to the next choice when the vote is not needed to give a prior choice the necessary quota of votes or when a prior choice is eliminated from the list of candidates because of a deficiency in the number of votes given for him.
- (4) The Secretary of State may by order make provision about elections or any matter relating to them.
- (5) In particular, an order under subsection (4) may make—
  - (a) provision as to the persons entitled to vote at an election and the registration of such persons;

- (b) provision for securing that no person stands as a candidate for more than one constituency at a general election;
  - (c) provision for determining the date of the poll at a by-election;
  - (d) provision about deposits.
- (6) An order under subsection (4) may apply (with or without modifications) any provision of, or made under, any enactment.

### **35 Vacancies**

- (1) The Secretary of State may by order make provision for the filling of vacancies occurring in the Assembly's membership.
- (2) Such provision may be made by reference to by-elections or substitutes or such other method of filling vacancies as the Secretary of State thinks fit.
- (3) If a seat becomes vacant, the Presiding Officer shall as soon as reasonably practicable inform the Chief Electoral Officer for Northern Ireland.
- (4) The validity of any proceedings of the Assembly is not affected by any vacancy in its membership.
- (5) An order under subsection (1) may apply (with or without modifications) any provision of, or made under, any enactment.

### *Disqualification*

### **36 Disqualification**

- (1) The Northern Ireland Assembly Disqualification Act 1975 shall have effect as if any reference to the Assembly established under section 1 of the Northern Ireland Assembly Act 1973 were a reference to the Assembly.
- (2) No recommendation shall be made to Her Majesty to make an Order in Council under section 3(1) of the Northern Ireland Assembly Disqualification Act 1975 (power to amend Schedule 1) without the consent of the Secretary of State.
- (3) A person who is Her Majesty's Lord-Lieutenant or Lieutenant for a county or county borough in Northern Ireland is disqualified for membership of the Assembly for a constituency comprising the whole or part of the county or county borough.
- (4) A person is disqualified for membership of the Assembly if he is disqualified for membership of the House of Commons otherwise than under the House of Commons Disqualification Act 1975.
- (5) A person is not disqualified for membership of the Assembly by virtue of subsection (1) by reason only that he is a member of the Seanad Éireann (Senate of Ireland).
- (6) A person is not disqualified for membership of the Assembly by virtue of subsection (4) by reason only that—
  - (a) he is a peer (other than a Lord of Appeal in Ordinary); or
  - (b) he is ordained or is a minister of any religious denomination.

- (7) A person is not disqualified for membership of the Assembly by virtue of subsection (4) by reason only that he is disqualified under section 3 of the Act of Settlement (certain persons born out of the Kingdom) if he is a citizen of the European Union.

### **37 Effect of disqualification and provision for relief**

- (1) Subject to any order made by the Assembly under this section—
- (a) if any person disqualified by virtue of section 36 is returned as a member of the Assembly, his return shall be void; and
  - (b) if any person being a member of the Assembly becomes disqualified by virtue of that section, his seat shall be vacated.
- (2) If, in a case which falls or is alleged to fall within subsection (1) otherwise than by virtue of section 36(4), it appears to the Assembly—
- (a) that the grounds of disqualification or alleged disqualification which subsisted or arose at the material time have been removed; and
  - (b) that it is otherwise proper so to do,
- the Assembly may by order direct that any such disqualification incurred on those grounds at that time shall be disregarded for the purposes of this section.
- (3) No order under subsection (2) shall affect the proceedings on any election petition or any determination of an election court.
- (4) Subsection (1)(b) has effect subject to section 141 of the Mental Health Act 1983 (mental illness) and section 427 of the Insolvency Act 1986 (bankruptcy etc); and where, in consequence of either of those sections, the seat of a disqualified member of the Assembly has not been vacated—
- (a) he shall not participate in any proceedings of the Assembly; and
  - (b) any of his other rights and privileges as a member of the Assembly may be withdrawn by a resolution of the Assembly.
- (5) The validity of any proceedings of the Assembly is not affected by the disqualification of any person from being a member of the Assembly or from being a member for the constituency for which he purports to sit.

### **38 Disqualification: judicial proceedings**

- (1) Any person who claims that a person purporting to be a member of the Assembly—
- (a) is disqualified; or
  - (b) was disqualified when, or at any time since, he was returned,
- may apply to the High Court of Justice in Northern Ireland for a declaration to that effect.
- (2) On an application—
- (a) the person in respect of whom the application is made shall be the respondent;
  - (b) the applicant shall give such security for costs, not exceeding £5,000, as the court may direct; and
  - (c) the decision of the court shall be final.

- (3) A declaration made in accordance with this section shall be certified in writing to the Secretary of State by the court.
- (4) No such declaration shall be made in respect of a person on any grounds if an order has been made by the Assembly under subsection (2) of section 37 directing that any disqualification incurred by him on those grounds shall be disregarded for the purposes of that section.
- (5) No declaration shall be made in respect of any person on grounds which subsisted when he was elected if an election petition is pending or has been tried in which his disqualification on those grounds is or was in issue.
- (6) The Secretary of State may by order substitute for the amount specified in subsection (2)(b) such other amount as may be specified in the order.

### *Presiding Officer and Commission*

## **39 Presiding Officer**

- (1) Each Assembly shall as its first business elect from among its members a Presiding Officer and deputies.
- (2) A person elected Presiding Officer or deputy shall hold office until the conclusion of the next election for Presiding Officer under subsection (1) unless—
  - (a) he previously resigns;
  - (b) he ceases to be a member of the Assembly otherwise than by virtue of a dissolution; or
  - (c) the Assembly elects from among its members a person to hold office as Presiding Officer or deputy in his place.
- (3) If the Presiding Officer or a deputy ceases to hold office (otherwise than under subsection (2)(c)) before the Assembly is dissolved, the Assembly shall elect another from among its members to fill his place.
- (4) The Presiding Officer's functions may be exercised by a deputy if the office of Presiding Officer is vacant or the Presiding Officer is for any reason unable to act.
- (5) The Presiding Officer may (subject to standing orders) authorise a deputy to exercise functions on his behalf.
- (6) Standing orders may include provision as to the participation (including voting) of the Presiding Officer and deputies in the proceedings of the Assembly.
- (7) A person shall not be elected under subsections (1) to (3) without cross-community support.

## **40 Commission**

- (1) There shall be a body corporate, to be known as the Northern Ireland Assembly Commission ("the Commission"), to perform—
  - (a) the functions conferred on the Commission by virtue of any enactment; and
  - (b) any functions conferred on the Commission by resolution of the Assembly.
- (2) The members of the Commission shall be—

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- (a) the Presiding Officer; and
  - (b) the prescribed number of members of the Assembly appointed in accordance with standing orders.
- (3) In subsection (2) “the prescribed number” means 5 or such other number as may be prescribed by standing orders.
- (4) The Commission shall provide the Assembly, or ensure that the Assembly is provided, with the property, staff and services required for the Assembly’s purposes.
- (5) The Assembly may give special or general directions to the Commission for the purpose of or in connection with the exercise of the Commission’s functions.
- (6) Proceedings by or against the Assembly (other than proceedings on the Crown side of the Queen’s Bench Division) shall be instituted by or against the Commission on behalf of the Assembly.
- (7) Any property or liabilities acquired or incurred in relation to matters within the general responsibility of the Commission to which (apart from this subsection) the Assembly would be entitled or subject shall be treated for all purposes as property or liabilities of the Commission.
- (8) Any expenses of the Commission shall be defrayed out of money appropriated by Act of the Assembly.
- (9) Any sums received by the Commission shall be paid into the Consolidated Fund of Northern Ireland, subject to any provision made by Act of the Assembly for the disposal of or accounting for such sums.
- (10) Schedule 5 (which makes further provision about the Commission) shall have effect.

*Proceedings etc.*

#### **41 Standing orders**

- (1) The proceedings of the Assembly shall be regulated by standing orders.
- (2) Standing orders shall not be made, amended or repealed without cross-community support.
- (3) Schedule 6 (which makes provision as to how certain matters are to be dealt with by standing orders) shall have effect.

#### **42 Petitions of concern**

- (1) If 30 members petition the Assembly expressing their concern about a matter which is to be voted on by the Assembly, the vote on that matter shall require cross-community support.
- (2) Standing orders shall make provision with respect to the procedure to be followed in petitioning the Assembly under this section, including provision with respect to the period of notice required.
- (3) Standing orders shall provide that the matter to which a petition under this section relates may be referred, in accordance with paragraphs 11 and 13 of Strand One of the Belfast Agreement, to the committee established under section 13(3)(a).

#### **43 Members' interests**

- (1) Standing orders shall include provision for a register of interests of members of the Assembly, and for—
  - (a) registrable interests (as defined in standing orders) to be registered in it; and
  - (b) the register to be published and made available for public inspection.
- (2) Standing orders shall include provision requiring that any member of the Assembly who has—
  - (a) a financial interest (as defined in standing orders) in any matter; or
  - (b) any other interest, or an interest of any other kind, specified in standing orders in any matter,declares that interest before taking part in any proceedings of the Assembly relating to that matter.
- (3) Standing orders made in pursuance of subsection (1) or (2) may include provision for preventing or restricting the participation in proceedings of the Assembly of a member with a registrable interest, or an interest mentioned in subsection (2), in a matter to which the proceedings relate.
- (4) Standing orders shall include provision prohibiting a member of the Assembly from—
  - (a) advocating or initiating any cause or matter on behalf of any person, by any means specified in standing orders, in consideration of any payment or benefit in kind of a description so specified; or
  - (b) urging, in consideration of any such payment or benefit in kind, any other member of the Assembly to advocate or initiate any cause or matter on behalf of any person by any such means.
- (5) Standing orders may include provision—
  - (a) for excluding from proceedings of the Assembly any member who fails to comply with, or contravenes, any provision made in pursuance of subsections (1) to (4); and
  - (b) for withdrawing his rights and privileges as a member for the period of his exclusion.
- (6) Any member of the Assembly who—
  - (a) takes part in any proceedings of the Assembly without having complied with, or in contravention of, any provision made in pursuance of subsections (1) to (3); or
  - (b) contravenes any provision made in pursuance of subsection (4),is guilty of an offence.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) Proceedings for an offence under subsection (6) shall not be taken without the consent of the Director of Public Prosecutions for Northern Ireland.

#### **44 Power to call for witnesses and documents**

- (1) The Assembly may require any person—
  - (a) to attend its proceedings for the purpose of giving evidence; or
  - (b) to produce documents in his custody or under his control,

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relating to any of the matters mentioned in subsection (2).

- (2) Those matters are—
  - (a) transferred matters concerning Northern Ireland;
  - (b) other matters in relation to which statutory functions are exercisable by Ministers or the Northern Ireland departments.
- (3) The power in subsection (1) is exercisable in relation to a person outside Northern Ireland only in connection with the discharge by him of functions relating to matters within subsection (2).
- (4) That power is not exercisable in relation to a person who is or has been a Minister of the Crown, or a person who is or has been in Crown employment within the meaning of Article 236 of the Employment Rights (Northern Ireland) Order 1996, in connection with the discharge of any functions prior to the appointed day.
- (5) That power is not exercisable in relation to—
  - (a) a person discharging functions of any body whose functions relate to excepted matters, in connection with the discharge by him of those functions;
  - (b) a person discharging functions of any body whose functions relate to reserved matters, in connection with the discharge by him of those functions;
  - (c) a judge of any court or a member of any tribunal which exercises the judicial power of the State.
- (6) That power may be exercised by a committee of the Assembly only if the committee is expressly authorised to do so by standing orders.
- (7) The Presiding Officer shall give the person in question notice in writing specifying—
  - (a) the time and place at which the person is to attend and the particular matters relating to which he is required to give evidence; or
  - (b) the documents, or types of documents, which he is to produce, the date by which he is to produce them and the particular matters to which they are to relate.
- (8) Such notice shall be given—
  - (a) in the case of an individual, by sending it, by registered post or the recorded delivery service, addressed to him at his usual or last known address or, where he has given an address for service, at that address;
  - (b) in any other case, by sending it, by registered post or the recorded delivery service, addressed to the person at the person's registered or principal office.
- (9) A person is not obliged under this section to answer any question or produce any document which he would be entitled to refuse to answer or produce in proceedings in a court in Northern Ireland.
- (10) In this section “statutory functions” means functions conferred by virtue of any enactment.

#### **45 Witnesses and documents: offences**

- (1) Subject to subsection (9) of section 44, any person to whom a notice under subsection (7) of that section has been given who—
  - (a) refuses or fails to attend proceedings as required by the notice;

- (b) refuses or fails, when attending proceedings as required by the notice, to answer any question relating to the matters specified in the notice;
  - (c) deliberately alters, suppresses, conceals or destroys any document which he is required to produce by the notice; or
  - (d) refuses or fails to produce any such document,is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.
- (2) It is a defence for a person charged with an offence under subsection (1)(a), (b) or (d) to prove that he had a reasonable excuse for the refusal or failure.
- (3) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) a director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person who was purporting to act in any such capacity,he, as well as the body corporate, is guilty of that offence and liable to be proceeded against accordingly.
- (4) Proceedings for an offence under this section shall not be taken without the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) For the purposes of section 44 and this section, a person shall be taken to comply with a requirement to produce a document if he produces a copy of, or an extract of the relevant part of, the document.

#### **46 Witnesses: oaths**

- (1) The Presiding Officer or such other person as may be authorised by standing orders may—
  - (a) administer an oath to any person giving evidence in proceedings of the Assembly; and
  - (b) require him to take the oath.
- (2) Any person who refuses to take an oath when required to do so under subsection (1) (b) is guilty of an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.

#### *Remuneration and pensions*

#### **47 Remuneration of members**

- (1) The Assembly shall pay to members of the Assembly such salaries as the Assembly may from time to time determine.
- (2) The Assembly may pay to members of the Assembly such allowances as the Assembly may from time to time determine.
- (3) A determination under this section may provide—
  - (a) for higher salaries to be payable to members of the Assembly—

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- (i) holding office as a Minister or junior Minister;
    - (ii) holding office as Presiding Officer or deputy;
    - (iii) holding office as a member of the Northern Ireland Assembly Commission; or
    - (iv) holding an office specified in standing orders; and
  - (b) for different salaries to be payable to members of the Assembly holding different such offices.
- (4) A determination under this section shall provide that, if a salary is payable to a member of the Assembly as a member of either House of Parliament or of the European Parliament, his salary as a member of the Assembly shall be reduced—
- (a) to a proportion of what it would otherwise be or to a particular amount; or
  - (b) by the amount of the other salary payable to him, by a proportion of that amount or by some other amount.
- (5) A determination under this section may provide for different allowances for different cases.
- (6) A determination under this section may provide for salaries or allowances to change from time to time by reference to other amounts or specified formulas.
- (7) The Assembly may not delegate the function of making a determination under this section.
- (8) Standing orders must include provision for the publication of every determination under this section.
- (9) For the purposes of this section—
- (a) a person's membership of the Assembly begins on the day on which he takes his seat in accordance with standing orders; and
  - (b) a person's holding of such an office as is mentioned in subsection (3)(a) begins on the day on which he takes up office.
- (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) if he continues to hold such an office as is mentioned in subsection (3)(a)(i) to (iii), as if he were a member of the Assembly until the end of the day on which he ceases to hold the office; and
  - (b) if he does not fall within paragraph (a) but is nominated as a candidate at the subsequent general election, as if he were a member of the Assembly until the end of the day of the poll for that election.
- (11) Any expenditure incurred by the Assembly under this section shall be defrayed out of money appropriated by Act of the Assembly.

## **48 Pensions of members**

- (1) The Assembly may make provision for the payment of pensions, gratuities or allowances to, or in respect of, any person who—
- (a) has ceased to be a member of the Assembly; or
  - (b) has ceased to hold such an office as is mentioned in section 47(3)(a) but continues to be a member of the Assembly.

- (2) Such provision may, in particular, include provision for—
  - (a) contributions or payments towards provision for such pensions, gratuities or allowances;
  - (b) the establishment and administration (whether by the Commission or otherwise) of one or more pension schemes.
- (3) In this section—
  - “the Commission” means the Northern Ireland Assembly Commission;
  - “provision” includes provision—
    - (a) by an Act of the Assembly; or
    - (b) by a resolution of the Assembly conferring functions on the Commission.
- (4) Any expenditure incurred by the Assembly under this section shall be defrayed out of money appropriated by Act of the Assembly.

#### *Miscellaneous*

### **49 Letters Patent etc**

- (1) Her Majesty may by Order in Council make provision as to—
  - (a) the form and manner of preparation; and
  - (b) the publication,of Letters Patent signed with Her Majesty’s own hand signifying Her Assent to a Bill passed by the Assembly.
- (2) If the First Minister and the deputy First Minister acting jointly so direct, impressions with the same device as the Great Seal of Northern Ireland shall be taken in such manner, of such size and on such material as is specified in the direction.
- (3) Each such impression—
  - (a) shall be known as a Wafer Great Seal of Northern Ireland; and
  - (b) shall be kept in accordance with directions of the First Minister and the deputy First Minister acting jointly.
- (4) If a Wafer Great Seal of Northern Ireland has been applied to Letters Patent mentioned in subsection (1), the document has the same validity as if it had passed under the Great Seal of Northern Ireland.

### **50 Privilege**

- (1) For the purposes of the law of defamation, absolute privilege shall attach to—
  - (a) the making of a statement in proceedings of the Assembly; and
  - (b) the publication of a statement under the Assembly’s authority.
- (2) A person is not guilty of contempt of court under the strict liability rule as the publisher of any matter—
  - (a) in the course of proceedings of the Assembly which relate to a Bill or subordinate legislation; or
  - (b) to the extent that it consists of a fair and accurate report of such proceedings which is made in good faith.

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(3) In this section—

“statement” has the same meaning as in the Defamation Act 1996;

“the strict liability rule” has the same meaning as in the Contempt of Court Act 1981.

## **51 Resignation of members**

A member of the Assembly may at any time resign his seat by notice in writing to the Presiding Officer.