



# Northern Ireland (Monitoring Commission etc.) Act 2003

## 2003 CHAPTER 25

### *Exclusion from Ministerial office*

#### **4 Resolutions about exclusion**

- (1) Section 30 of the Northern Ireland Act 1998 (c. 47) (exclusion of Ministers from office) is amended as follows.
- (2) In subsection (1) (exclusion of individual Minister), for “a period of twelve months beginning with the date of the resolution” there is substituted “such period of not less than three months, and not more than twelve months, beginning with the date of the resolution as the resolution may provide”.
- (3) After that subsection there is inserted—

“(1A) The Assembly may, before a period of exclusion under subsection (1) comes to an end, by resolution extend it until the end of such period of not less than three months, and not more than twelve months, beginning with the date of the resolution as the resolution may provide.”
- (4) In subsection (2) (exclusion of members of party from holding office as Ministers or junior Ministers), for “a period of twelve months beginning with the date of the resolution” there is substituted “such period of not less than six months, and not more than twelve months, beginning with the date of the resolution as the resolution may provide”.
- (5) For subsection (3) there is substituted—

“(3) The Assembly may, before a period of exclusion under subsection (2) comes to an end, by resolution extend it until the end of such period of not less than six months, and not more than twelve months, beginning with the date of the resolution as the resolution may provide.”

(6) In subsection (4) (ending exclusion), after “A period of exclusion” there is inserted “under subsection (1) or (2)”.

(7) For subsections (6) and (7) there is substituted—

“(6) If the Secretary of State is of the opinion that the Assembly ought to consider a resolution under this section, he shall serve a notice on the Presiding Officer requiring him to move a motion for such a resolution.

(7) In forming an opinion under subsection (6), the Secretary of State shall in particular take into account—

- (a) whether the person or party concerned is committed to the use now and in the future of only democratic and peaceful means to achieve his or its objectives;
- (b) whether he or it has ceased to be involved in any acts of violence or of preparation for violence;
- (c) whether he or it is directing or promoting acts of violence by other persons;
- (d) whether he or it is co-operating fully with any Commission of the kind referred to in section 7 of the Northern Ireland Arms Decommissioning Act 1997 in implementing the Decommissioning section of the Belfast Agreement; and
- (e) any recommendation about steps the Assembly might consider taking which is contained in a report—
  - (i) made by the Commission mentioned in section 1 of the Northern Ireland (Monitoring Commission etc.) Act 2003, or
  - (ii) made under the agreement establishing that Commission by members of that Commission.”

(8) At the end there is inserted—

“(9) 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.”

## **5 Secretary of State’s powers in relation to exclusion**

(1) After section 30 of the Northern Ireland Act 1998 (c. 47) there is inserted—

### **“30A Secretary of State’s powers in relation to exclusion**

(1) This section applies if—

- (a) the Monitoring Commission has, or members of that Commission have under the agreement establishing it, made a report containing a recommendation about steps the Assembly might consider taking;
- (b) the taking of those steps by the Assembly requires the passing by it of a resolution under section 30(1), (1A), (2) or (3) in relation to a Minister, junior Minister or political party; and
- (c) the first motion for a resolution under that provision in relation to the Minister, junior Minister or political party concerned that is put to the vote after the making of the report does not attract cross-community support.

- (2) Where this section applies because of the failure of a motion for a resolution under section 30(1), the Secretary of State may by direction exclude the Minister or junior Minister concerned from holding office as a Minister or junior Minister for such period of not less than three months, and not more than twelve months, beginning with the date of the direction as the direction may provide (subject to subsection (4)).
- (3) Where this section applies because of the failure of a motion for a resolution under section 30(1A), the Secretary of State may, before the period of exclusion to which the motion related comes to an end, by direction extend it until the end of such period of not less than three months, and not more than twelve months, beginning with the date of the direction as the direction may provide (subject to subsection (4)).
- (4) The Secretary of State may exercise the power under subsection (2) or (3) only if he is satisfied that the Minister or junior Minister concerned—
  - (a) is not committed to non-violence and exclusively peaceful and democratic means; or
  - (b) has failed to observe any other terms of the pledge of office.
- (5) Where this section applies because of the failure of a motion for a resolution under section 30(2), the Secretary of State may by direction exclude members of the political party concerned from holding office as Ministers or junior Ministers for such period of not less than six months, and not more than twelve months, beginning with the date of the direction as the direction may provide (subject to subsection (7)).
- (6) Where this section applies because of the failure of a motion for a resolution under section 30(3), the Secretary of State may, before the period of exclusion to which the motion related comes to an end, by direction extend it until the end of such period of not less than six months, and not more than twelve months, beginning with the date of the direction as the direction may provide (subject to subsection (7)).
- (7) The Secretary of State may exercise the power under subsection (5) or (6) only if he is satisfied that the political party concerned—
  - (a) is not committed to non-violence and exclusively peaceful and democratic means; or
  - (b) is not committed to such of its members as are or might become Ministers or junior Ministers observing the other terms of the pledge of office.
- (8) A period of exclusion under subsection (2) or (5) shall come to an end if—
  - (a) the Secretary of State by direction so provides; or
  - (b) the Assembly is dissolved.
- (9) In subsection (1)(a) “the Monitoring Commission” means the Commission mentioned in section 1 of the Northern Ireland (Monitoring Commission etc.) Act 2003.
- (10) 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.”

- (2) In section 18 of that Act (which provides for the filling of Ministerial offices), in subsection (1) (occasions when offices are to be filled in accordance with the section), for paragraph (d) there is substituted—
- “(d) a direction which causes one or more Ministerial offices to become vacant is given under section 30A(5);
- (da) a period of exclusion under section 30(2) or 30A(5) comes to an end; or.”
- (3) In subsection (12)(b) of that section (application of section where party excluded under section 30(2)), after “party’s period of exclusion” there is inserted “under that provision”.
- (4) In that section, after subsection (12) there is inserted—
- “(12A) 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,
- the party shall be disregarded for the purposes of any application of subsections (2) to (6).”
- (5) At the end of that section there is inserted—
- “(14) 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.”
- (6) In section 30 of that Act (exclusion of Ministers from office by resolution of the Assembly)—
- (a) in subsection (1A) (power to extend period of exclusion under subsection (1)), after “subsection (1)” there is inserted “or section 30A(2)”, and
- (b) in subsection (3) (power to extend period of exclusion under subsection (2)), after “subsection (2)” there is inserted “or section 30A(5)”.

## 6 Secretary of State’s powers in exceptional circumstances

After section 30A of the Northern Ireland Act 1998 (c. 47) there is inserted—

### “30B Secretary of State’s powers in exceptional circumstances

- (1) Notwithstanding the provisions of section 30A, under exceptional circumstances the Secretary of State may by direction temporarily exclude a Minister or junior Minister.
- (2) An exclusion under subsection (1) shall only remain in effect until either—
- (a) a report from the Commission has been made; or
- (b) the Assembly has considered a resolution under section 30(1) or (2); or
- (c) a period of two weeks has elapsed.
- (3) In subsection (1) “exceptional circumstances” include where—
- (a) there is insufficient time for the Commission to make a report; and

- (b) there is insufficient time for the Assembly to consider a resolution under section 30(1) or (2).
- (4) A direction made under this section shall be in writing and shall be laid before Parliament after the direction is given.”