NORTHERN IRELAND (MONITORING COMMISSION ETC.) ACT 2003

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EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 5: *Secretary of State's powers in relation to exclusion*

22.   This section inserts new section 30A into the 1998 Act, conferring on the Secretary of State new powers to exclude Ministers, junior Ministers and all members of a political party from holding ministerial office. It also amends section 18 of the 1998 Act to provide for the running of the d'Hondt mechanism to fill Ministerial offices where the Secretary of State exercises his exclusion powers.

23.   New section 30A(1) provides that the Secretary of State may only exercise his power to exclude if :

  •   The Commission makes a report under the terms of the Treaty which contains a recommendation about the steps that the Assembly might consider taking; and

  •   The taking of those steps requires the Assembly to pass a resolution under section 30(1), (1A),(2) or (3); and

  •   The first motion for a resolution to take those recommended steps does not attract cross-community support.

Exclusion of individual Ministers

24.   The Secretary of State is given power to exclude a Minister or junior Minister from holding ministerial office for a period of between three and twelve months (new section 30A(2)). The power is exercisable by direction. The parliamentary procedure which must be followed is set out in section 9 of the present Act (see below). He is also given power to extend a period of exclusion for a further period of between three and twelve months (new section 30A(3)). The same test as is applied by the Assembly (see paragraph 1616 above) applies to the exercise of these powers by the Secretary of State (new section 30A(4)).

Exclusion of parties

25.   The Secretary of State is given power by direction to exclude members of a political party from holding ministerial office for a period of between six and twelve months (new section 30A(5)). Again, he may extend a period of exclusion of members of a party (for a further period of between six and twelve months (new section 30A(6)). In order to impose or to extend a period of exclusion the Secretary of State must be satisfied that either of the conditions for exclusion set out at paragraph 1919 above is met (new section 30A(7)).

Filling of vacancies in ministerial office

26.   *Subsection (2)* makes consequential amendments to section 18 of the 1998 Act, to provide the for the running of d'Hondt mechanism to fill Ministerial offices following the exercise of the Secretary of State's new powers. The d'Hondt mechanism is designed to allocate ministerial positions to parties in turn in the light of the number of seats they hold following an Assembly Election.

27.   New section 18(1)(d) and (da), inserted by *subsection (2)*, add the following two cases to the list:

    •   When the Secretary of State directs that all members of a political party are excluded from holding office under section 30A(5) and the direction causes ministerial offices to become vacant (new section 18 (1)(d)) ; and

    •   On the coming to an end of a period of exclusion imposed on a political party by a direction given by the Secretary of State under section 30A(5) or an Assembly resolution under section 30(2) (new section 18(1)(da)).

28.   *Subsection (5)* provides that regardless of how a period of exclusion may have been extended, it is treated as a period of exclusion under the original excluding provision. For example, if a period of exclusion is initially imposed by a resolution of the Assembly under section 30(1) and is later extended by direction of the Secretary of State under section 30A(3), it is still regarded as an exclusion under section 30(1). This ensures that the d'Hondt procedure is only triggered when a period of exclusion, however extended, finally runs out.