

NORTHERN IRELAND (ST ANDREWS AGREEMENT) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Amendments of the Northern Ireland Act 1998 Etc

Ministerial appointments

Section 8: First Minister, deputy First Minister and Northern Ireland Ministers

52. **Section 8** puts in place new arrangements for appointing the First and deputy First Ministers following an Assembly election. Subsection (1) substitutes new sections 16A, 16B and 16C for existing section 16 of the 1998 Act. These provisions need to be read in conjunction with section 11 and, in particular, the new section 29B.
53. The new arrangements for filling the positions of First and deputy First Ministers after an election are provided for in the new section 16A.
54. Under the new section 16A, the First Minister is nominated by the largest party within the largest political designation (see new section 16A(4)); the deputy First Minister is nominated by the largest party within the next largest designation (see section 16A(5)). (“Designation” is the term used to refer to the group of MLAs who have designated themselves as “Nationalist” or “Unionist” or “Other” – see new section 16C.) Once these nominations have been made, the d’Hondt procedure for filling Ministerial offices, set out in section 18 of the 1998 Act, is run. These procedures take place within seven days following the first meeting of the Assembly after an election (new section 16A(3)) and may be re-run if the individuals nominated do not take up office within a period to be specified in standing orders (new section 16A(6) and (7)).
55. New section 16A(9) provides that the people nominated for the offices of First Minister and deputy First Minister cannot take up office until they have each affirmed the terms of the pledge of office. New section 16A(11) sets out arrangements that allow the holder of either office to designate a Northern Ireland Minister to carry out his functions if he is absent or incapacitated; but this can only be for a maximum of six weeks.
56. New section 16B applies where a vacancy arises in the office of First or deputy First Minister otherwise than following an Assembly dissolution or election. As at present, either the First Minister or the deputy First Minister may resign at any time by notice in writing to the Presiding Officer (new section 16B(1)(a)), and will also cease to hold office if he ceases to be a Member of the Assembly (new section 16B(1)(b)). If one of the office holders ceases to hold office, the other technically does as well (because the offices are jointly operated -- see new section 16B(2)(a)) but he may continue to exercise the functions of the office to ensure continuity of government (new section 16B(2)(b)). The procedure for filling vacancies where this section applies mirrors the procedure set out in new section 16A for filling the offices after an election.

57. The new section 16C makes supplementary provision for the appointment of the First and deputy First Ministers. It clarifies who is entitled to make nominations on behalf of a party (subsection (1) defines the “nominating officer” in line with the provisions of the Political Parties, Elections and Referendums Act 2000), defines party designation (new section 16C(3)) and sets out how party size and designation size are calculated (new section 16C(2), (4) and (5)).
58. New section 16C(6) deals with the arrangements that apply if the largest party within the largest designation is not the largest party within the Assembly. In such circumstances, the responsibility for nominating the First Minister falls to the largest party within the Assembly, with the largest party in the largest designation nominating the deputy First Minister.
59. New section 16C(7) to (12) deals with the arrangements that apply if a party is entitled to make nominations under new section 16A but its members have been excluded from holding Ministerial office under section 30(2) or 30A(5) of the 1998 Act. The size of the party is counted as nil, so that the party’s right to nominate the First or deputy First Minister passes to the next largest party within the same designation (new section 16C(7) and (8)). The calculation of designation size is not affected.
60. New section 16C(9) provides that the incumbent First and deputy First Ministers both cease to hold office if either of their predecessors ceased to hold office as a result of an exclusion order under section 30(2) or 30A(5) and that period of exclusion comes to an end (unless any period of exclusion of the party under the other provision has not come to an end). The procedure in new section 16B will be used to fill the offices.
61. New section 16C(11) and (12) defines the time periods that are to apply to the foregoing subsections. New section 16C(13) provides for standing orders to make further provision as to the procedures to be followed in making nominations under new sections 16A and 16B.
62. [Section 8\(2\)](#) provides for the consequential amendments set out in Schedule 5 to have effect.

Section 9: Department with policing and justice functions: nomination etc of Ministers

63. [Section 9](#) gives effect to Schedule 6 to the Act. Schedule 6 amends Schedule 2 to the Northern Ireland (Miscellaneous Provisions) Act 2006, which itself inserts new Schedule 4A (department with policing and justice functions) into the Northern Ireland Act 1998. New Schedule 4A establishes alternative departmental structures for any new department with policing and justice functions, and the amendments made by Schedule 6 to the Act make further provision about ministerial appointments to the new department.