

NORTHERN IRELAND (ST ANDREWS AGREEMENT) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Amendments of the Northern Ireland Act 1998 Etc

Ministerial conduct

Section 5: The Executive Committee and the Ministerial Code

34. Section 20 of the 1998 Act makes provision for there to be an Executive Committee of the Northern Ireland Assembly and specifies that the functions of that Committee shall be those set out in paragraphs 19 and 20 of Strand One of the Belfast Agreement. This means that the Executive Committee is to provide the forum for the discussion of, and agreement on, issues which cut across the responsibilities of two or more Ministers, for prioritising executive and legislative proposals and for recommending a common position where necessary (e.g., in dealing with external relationships). It is also charged with seeking to agree each year, and review as necessary, a programme for government incorporating an agreed budget linked to policies and programmes.
35. Consistent with the St Andrews Agreement, section 5(1) adds a new subsection to section 20 to provide that the Committee shall also be the forum for discussion and agreement on significant or controversial matters that are clearly outside the scope of the programme of government agreed by the Committee, or significant or controversial matters that the First and deputy First Ministers acting jointly have determined to be matters that should fall to the Executive Committee.
36. Subsection (2) of section 5 inserts a new section 28A into the 1998 Act. The new section provides for a statutory Ministerial Code and places a duty on all Ministers and junior Ministers to act in accordance with the provisions of that Code (new section 28A(1)). In this new section, “Ministerial Code” refers either to the Ministerial Code prepared by the Transitional Assembly under paragraph 4 of Schedule 1 to this Act or to any replacement Code prepared and approved by the Northern Ireland Assembly in accordance with section 28A. Subsections (3) and (4) of section 28A set out that any draft amendments to the Code, or any draft replacement Code prepared by the Executive Committee, must be laid before the Assembly for approval and shall only have effect once approved by a cross-community vote in the Assembly.
37. Breach of the duty to act in accordance with the Ministerial Code would constitute a breach of the pledge of office, and so where a Minister or junior Minister has not acted in accordance with the Code it would be open to the Assembly to impose any sanction available to them for breach of the pledge. The available sanctions are censure, reduction of remuneration and financial assistance, and exclusion from Ministerial office.

38. Subsections (5) to (9) of new section 28A relate to the content of the Code, and specify that the Code must contain certain provisions in relation to Ministerial accountability to the Executive.
39. Subsection (5) of new section 28A sets out that the Code must contain a provision to require all Ministers and junior Ministers to bring to the attention of the Executive Committee any matter that ought to be considered by the Committee under subsection (3) or (4) of section 20 of the 1998 Act. This new provision is not intended to alter an individual Minister's authority in his area of responsibility, but rather to ensure that Ministerial decisions do not contravene any collective position agreed by the Executive Committee on a matter that falls to them by virtue of section 20 of the 1998 Act.
40. Subsection (6) of new section 28A builds on subsection (5) and requires the Code to set out a procedure to enable a Minister to determine whether any Ministerial decision that he has taken or is about to take relates to a matter that ought to be considered by the Executive Committee under section 20 of the 1998 Act. It is intended to provide clarity for Ministers, primarily to avoid them breaching the provisions of the Code inadvertently. It does not affect the Executive's competence at the expense of individual Ministers' executive authority within their areas of responsibility. The Code, as at present, will determine what is and is not, for the Executive, in line with the provision of paragraphs 19 and 20 of Strand One of the Belfast Agreement and the new section 20(4) of the 1998 Act.
41. Subsection (7) of new section 28A requires the Code to put in place procedures for the Executive Committee in relation to the taking of decisions and in relation to the Committee's consideration of decision papers that are due for consideration by the North-South Ministerial Council or by the British-Irish Council.
42. Subsection (8) of new section 28A requires the Code to place a duty on the First and deputy First Ministers, as chairmen of the Executive Committee, to seek to facilitate and encourage consensus within that Committee where possible. Where consensus cannot be reached on a given issue a vote may be taken and it will be open to any three members of the Committee to require that the vote should require cross-community support in the Committee.
43. Subsection (9) of new section 28A provides that the Code may also include other provisions that the Executive Committee thinks fit (subject, of course, to any Assembly cross-community approval required under subsection (4)).
44. Subsection (10) provides that a Minister or junior Minister does not have authority to take any decision outwith the procedures set out in the Ministerial Code under subsection (5).

Section 6: Power to refer Ministerial decision to the Executive Committee

45. **Section 6** inserts a new section 28B into the 1998 Act, to establish a new procedure by which a Ministerial decision may be referred to the Executive Committee for consideration.
46. This new section applies where thirty MLAs raise a petition of concern in the Assembly that a Ministerial decision may have been taken in contravention of the Ministerial Code or that it relates to a matter of public importance. The decision can only be referred to the Committee once under the provisions set out in this section.
47. New section 28B(3) of the 1998 Act places a duty on the Presiding Officer to refer the Ministerial decision to the Executive Committee for consideration, if he has first both consulted the parties and certified that the decision relates to a matter of public importance. These two conditions, along with the bar on repeat referrals, offer protection against the vexatious or malicious exercise of the referral power. Subsection (5) establishes a time limit on referrals and specifies that any referral to the Executive

Committee under this section must be made within seven sitting days of the decision being taken, or, where appropriate, within seven sitting days of the day on which the decision was notified to the Assembly.

48. Subsection (4) of section 28B of the 1998 Act requires the Executive Committee to consider any referral under this section and then notify the Presiding Officer whether in its view the decision was taken in contravention of the Code, whether it relates to a significant or controversial matter and what, if any, action the Committee intends to take or has taken.
49. Section 28B does not specify what action the Committee can take. However, if it concluded that the decision was taken in breach of the Code, it could propose a motion (to be passed only with cross-community support) that any of the sanctions for breach of the pledge of office available under the 1998 Act be imposed upon the relevant Minister.
50. Subsection (6) specifies that the Committee must complete its consideration of any decision within seven sitting days of the referral.

Section 7: Pledge of office

51. **Section 7** amends the pledge of office, as set out in Schedule 4 to the 1998 Act, which all Ministers are required to affirm on taking up office. Under this section Ministers are required to make four new commitments as conditions of office. They must promote the interests of the whole Northern Ireland community, participate fully in the Executive Committee, the NSMC and the BIC, observe the joint nature of the offices of First Minister and deputy First Minister and uphold the rule of law (including by supporting policing and the courts as set out in paragraph 6 of the St Andrews Agreement).

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.

Committees

Section 10: Statutory committee for Office of First Minister and deputy First Minister

64. [Section 10](#) makes amendments to section 29 of the 1998 Act to provide for the establishment of a statutory committee to advise and assist the First and deputy First Ministers in the formulation of policies in relation to their responsibilities as the

Ministers jointly in charge of the Office of the First Minister and deputy First Minister. The effect of this section is to put the former non-statutory “Committee of the Centre”, which was in operation prior to the suspension of the Northern Ireland Assembly, on a statutory footing.

Section 11: Committee to review functioning of Assembly and Executive Committee

65. **Section 11** provides for a Committee to review the functioning of the Assembly and the Executive Committee.
66. Subsection (1) inserts new sections 29A and 29B into the 1998 Act to require the Assembly to establish a Committee to review the functioning of the Assembly and the Executive Committee. The detailed practical arrangements for the committee’s operation are a matter for standing orders (new section 29A(1)), which are required to provide for the committee to make reports to the Assembly and to the Executive Committee (new section 29A(2)).
67. New section 29A(3) requires the new committee to make a report on the operation of the provisions of Parts 3 and 4 of the 1998 Act (which deal respectively with the devolved executive authorities and the Assembly) to the Secretary of State, the Assembly and the Executive Committee. The report might, for example, consider whether changes should be made to the provisions for appointing Ministers, the provisions dealing with the exclusion of individuals and parties from holding Ministerial offices, and the arrangements for dealing with the calculation of cross-community support within the Assembly.
68. New section 29B(1) provides that standing orders must require the committee to consider the operation of the new arrangements for appointing Ministers (provided for in the new sections 16A to 16C, inserted by section 8) and whether, in particular, these should continue in operation beyond the Assembly election in 2011 or whether the arrangements should revert to those set out in section 16 of the 1998 Act. The procedure to be followed if it recommends the latter is set out in subsections (2) to (5) of section 11. In particular, if the recommendation receives cross-community support in the Assembly, subsection (2) requires the Secretary of State to bring forward an order to amend the 1998 Act and any other enactment so far as necessary to ensure that the procedure reverts to the section 16 one.

NSMC and BIC

Section 12: North-South Ministerial Council and British-Irish Council

69. **Section 12** substitutes new sections 52A, 52B and 52C for section 52 of the 1998 Act, which deals with the North-South Ministerial Council and the British-Irish Council.
70. New section 52A(1) places a duty on the First and deputy First Ministers to ensure that the Executive Committee and Assembly are made aware of the date and agenda of forthcoming meetings of the NSMC or BIC and of the name of the Ministers or junior Ministers who are to attend the meeting.
71. New section 52A(2) provides that a Minister or junior Minister with responsibility for a matter included on the agenda for a meeting of either the NSMC or BIC shall be entitled to attend and participate in the meeting. He may also, under new section 52A(3), nominate another Minister or junior Minister to attend in his place. The responsible Minister or junior Minister is required (under new section 52A(4) and (6)) to notify the First and deputy First Ministers as to whether he intends to attend the meeting or to nominate someone to attend in his place, or neither. Where the First and deputy First Ministers haven’t received notification under the section that the responsible Minister or junior Minister or a substitute will attend the meeting, new section 52A(5) places a duty on the First and deputy First Ministers to nominate someone to attend. The First and deputy First Ministers are also obliged, as necessary, to make nominations of other

Ministers or junior Ministers to attend to ensure cross-community participation in the meeting (see section 52A(7)).

72. New section 52A(8) and (9) provides that when a matter for discussion at either Council is one that ought to be considered by the Executive Committee (by virtue of section 20(3) or new section 20(4) of the 1998 Act), the First Minister and deputy First Minister may attend the meeting, in addition to the Minister or junior Minister with responsibility for the matter or a Minister or junior Minister nominated under new section 52A(3) or (5).
73. New section 52B(1) and (2) requires Ministers and junior Ministers to participate in NSMC and BIC meetings they are attending. New section 52B(3) requires the responsible Minister or junior Minister to ensure that any other Minister or junior Minister attending an NSMC or BIC meeting in his place has access to whatever information is necessary to enable that person to participate fully in the meeting. However, if the responsible Minister or junior Minister has provided insufficient information to enable the nominated Minister or junior Minister's full participation, new section 52B(4) makes provision for the First Minister and deputy First Minister acting jointly to request the information. The responsible Minister or junior Minister is obliged to comply with that request.
74. New section 52B(5) authorises a person who has been nominated to attend a meeting on behalf of another Minister or junior Minister to enter into arrangements and agreements on his behalf. New section 52B(6) provides that any Minister or junior Minister attending an NSMC or BIC meeting must act in accordance with any relevant decisions of the Assembly or Executive Committee, taken within their existing competence.
75. New section 52C makes supplementary provision for the operation of new sections 52A and 52B, including providing for the First and deputy First Ministers acting jointly to determine which Minister or junior Minister has responsibility for a matter in the event of there being a dispute. It also places a duty on Ministers and junior Ministers who attend meetings of either Council to make an oral report (unless standing orders authorise it to be made in writing) to both the Assembly and Executive Committee.

Miscellaneous

Section 13: Community designation

76. **Section 13** amends section 4 of the 1998 Act to require standing orders of the Assembly to provide that an MLA may only change his community designation of "Nationalist", "Unionist" or "Other" between elections if he changes his political party affiliation.

Section 14: Power of Executive Committee to call for witnesses and documents

77. **Section 14** inserts a new section 28C into the 1998 Act to give the Executive Committee the power to call for witnesses and documents. The section applies the provisions of section 44 of the 1998 Act (which provides the Assembly and its Committees with the power to compel witnesses and documents) to the Executive Committee with certain modifications. The power is exercisable in relation to senior civil servants working in Northern Ireland Departments where a matter falls within the Executive's functions under section 20(3) and (4) of the 1998 Act.

Section 15: Strategies in relation to Irish language and Ulster Scots language etc

78. **Section 15** of the Act inserts a new section 28D into the 1998 Act. Section 28D places a duty on the incoming Executive Committee to adopt a strategy relating to the enhancement and protection of the development of the Irish language and also to adopt a strategy relating to the enhancement and development of the Ulster Scots language, heritage and culture.

*These notes refer to the Northern Ireland (St Andrews Agreement)
Act 2006 (c.53) which received Royal Assent on 22 November 2006*

79. Subsection (3) of new section 28D of the 1998 Act provides for the Executive Committee to review and revise these strategies.

Section 16: Strategy in relation to poverty, social exclusion etc

80. **Section 16** inserts a new section 28E into the 1998 Act. The new section places a duty on the Executive Committee to adopt a strategy for tackling poverty and social exclusion and patterns of deprivation; and for that strategy to be based on objective need.
81. Subsection (2) of new section 28E places a duty on the Executive Committee to keep the strategy under review, and gives the Executive Committee a power to revise the strategy or adopt a new strategy.

Section 17: Vacancy in the Assembly

82. **Section 17** inserts a new paragraph 5 into Schedule 6 to the 1998 Act. This enables the Assembly to make standing orders preserving the exercise of the right to vote in the Assembly in cases where a vacancy in membership would otherwise prevent this right from being exercised. Paragraph 9(6) of Schedule 1 enables equivalent standing orders to be made for the Transitional Assembly. The standing orders could, for example, provide for voting in the Transitional Assembly to take account of any seats won by a party, but subsequently vacated and not filled as a result of section 3(2) and (3).

Section 18: Report on progress towards devolution of policing and justice matters

83. **Section 18** places an obligation on the Assembly to provide a report to the Secretary of State before 27 March 2008 on its consideration of policing and justice matters. The report is to address:
- the preparations the Assembly has made, and intends to make, for the devolution of such matters;
 - which of the matters the Assembly are likely to seek to have devolved; and
 - whether a request is likely to be made before 1 May 2008 that responsibility for such matters should be devolved.

The Secretary of State must lay the report before Parliament.

84. Subsections (4) to (6) contain technical amendments to the definition of a “devolved policing and justice matter”. They remove the adjective “devolved” from the definitions contained in sections 4(2A), 4(6) and 21A(8)(b) of the 1998 Act (inserted by the Northern Ireland (Miscellaneous Provisions) Act 2006) to clarify that they remain reserved until devolved.
85. The section does not affect any of the safeguards on the transfer of responsibility set out in section 4 of the 1998 Act, as amended by the Northern Ireland (Miscellaneous Provisions) Act 2006. It remains the case that the First Minister and deputy First Minister, acting jointly, must table a motion for a resolution of the Assembly that policing and justice matters be devolved; the Assembly must so resolve with cross-community support; the Secretary of State must concur and lay a draft order before Parliament; and Parliament must approve that order.

Section 19: Minor and consequential amendments

86. **Section 19** gives effect to Schedule 7 which makes minor and consequential amendments relating to Part 2 of the Act.