

**Changes to legislation:** There are currently no known outstanding effects for the Justice and Security (Northern Ireland) Act 2007, SCHEDULE 5. (See end of Document for details)

## S C H E D U L E S

### SCHEDULE 5

Section 44

#### NORTHERN IRELAND DEPARTMENT WITH POLICING AND JUSTICE FUNCTIONS

- 1 In Schedule 2 to the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33), the inserted Schedule 4A to the Northern Ireland Act 1998 (c. 47) (department with policing and justice functions) is amended as follows.
- 2 After Part 3 insert—

#### “PART 3A

##### DEPARTMENT IN THE CHARGE OF MINISTER AND DEPUTY MINISTER

###### **Introduction**

- 11A(1) This Part of this Schedule has effect in relation to a Northern Ireland department—
- (a) the functions of which consist wholly or mainly of devolved policing and justice functions; and
  - (b) in relation to which an Act of the Assembly provides, by virtue of section 21A(5A)—
    - (i) for it to be in the charge of a Northern Ireland Minister (the “relevant Minister”) elected by the Assembly; and
    - (ii) for that Minister to be supported by a deputy Minister (the “deputy Minister”) elected by the Assembly.
- (2) In this paragraph “devolved policing and justice function” has the same meaning as in section 21A (see subsection (8) of that section).

###### **Modification of section 16A**

- 11B(1) Section 16A shall have effect subject to the following modifications.
- (2) Subsection (2) shall have effect as if, at the end there were inserted “; and the deputy Minister (within the meaning of Part 3A of Schedule 4A) shall cease to hold office.”
- (3) Subsection (3) shall have effect as if, for paragraph (b) (and the word “and” before it) there were substituted—
- “(aa) once those offices have been filled, the relevant Ministerial office (within the meaning of Part 3A of Schedule 4A) and the deputy Ministerial office (within that meaning) shall be filled by applying paragraph 11E(2)(b) and (3) to (8) of that Schedule; and

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- (b) once those offices have been filled, the other Ministerial offices to be held by Northern Ireland Ministers shall be filled by applying section 18(2) to (6).”

### **Section 18 not to apply to relevant Minister**

- 11C (1) Subject to sub-paragraphs (2) to (5), section 18 (Northern Ireland Ministers) shall not apply in relation to—
- (a) the relevant Minister; or
  - (b) the Ministerial office held by the relevant Minister (the “relevant Ministerial office”),
- and paragraphs 11E to 11G shall apply instead.
- (2) The references to Ministerial offices in subsection (1)(c) and (d) of section 18 shall be taken to include the relevant Ministerial office.
- (3) In the application of section 18(5) to a political party which is entitled to two or more Ministerial offices, the reference to Ministerial offices (in the definition of M)—
- (a) at any time when the number of Ministerial offices held by members of the party (apart from the relevant Ministerial office) is nil, shall be taken not to include the relevant Ministerial office; but
  - (b) at any time when the number of Ministerial offices held by members of the party (apart from the relevant Ministerial office) is one or more, shall be taken to include the relevant Ministerial office.
- (4) In the application of section 18(5) to any other political party, that reference to Ministerial offices shall be taken to include the relevant Ministerial office.
- (5) For the purposes of this paragraph, a political party is entitled to two or more Ministerial offices if the nominating officer of the party would be entitled to nominate persons to hold two or more Ministerial offices under section 18, assuming that—
- (a) on each occasion on which a nominating officer of a political party is entitled to exercise the power conferred by section 18(2), he does so within the period mentioned in section 18(3)(a);
  - (b) the nominated person, in each case, takes up the selected Ministerial office within that period; and
  - (c) the reference in section 18(5) to Ministerial offices (in the definition of M) is taken to include the relevant Ministerial office.

### **Section 19 not to apply to deputy Minister**

- 11D (1) The deputy Minister is to be treated for the purposes of this Act as if he were a junior Minister, but the provisions of section 19 (junior Ministers) shall not apply in relation to—
- (a) him; or
  - (b) the office held by him (the “deputy Ministerial office”),
- (so that, in particular, the deputy Ministerial office shall not count for the purposes of any formulae or other rules mentioned in section 19(2)); and the following provisions of this Part of this Schedule shall apply instead.

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- (2) The functions exercisable by virtue of the deputy Ministerial office shall be those determined in relation to that office by the relevant Minister and the deputy Minister acting jointly.
- (3) The relevant Minister and the deputy Minister shall consult the First Minister and the deputy First Minister before making any determination under subparagraph (2).

### **Provisions relating to relevant Minister and deputy Minister**

- 11E (1) When devolved policing and justice functions are first transferred to, or conferred on, the department mentioned in paragraph 11A, the relevant Ministerial office and the deputy Ministerial office shall be filled by applying sub-paragraphs (3) to (8) within a period specified in standing orders.
- (2) The relevant Ministerial office and the deputy Ministerial office shall be filled by applying sub-paragraphs (3) to (8)—
  - (a) before section 18(2) to (6) is applied in relation to the other Ministerial offices; and
  - (b) before the procedures specified in any determination under section 19 are applied in relation to the junior Ministerial offices.
- (3) Any member of the Assembly may stand as a candidate for election as—
  - (a) the relevant Minister; or
  - (b) the deputy Minister.
- (4) But a member of the Assembly may not stand for election to either of those offices unless—
  - (a) he belongs to the largest or the second largest political designation (see paragraph 11H);
  - (b) he is nominated by another member of the Assembly; and
  - (c) if he is a member of a political party, the nominating officer of the party consents to his nomination within a period specified in standing orders.
- (5) A candidate shall not be elected to either of those offices by the Assembly without the support of—
  - (a) a majority of the members voting in the election;
  - (b) a majority of the designated Nationalists voting; and
  - (c) a majority of the designated Unionists voting.
- (6) A candidate shall not be elected to hold office as deputy Minister unless—
  - (a) the relevant Ministerial office is filled; and
  - (b) the candidate and the relevant Minister belong to different political designations.
- (7) A person elected to the office of relevant Minister or deputy Minister shall not take up office until he has affirmed the terms of the pledge of office.
- (8) If a person elected to either office does not take up the office within a period specified in standing orders, his election shall be deemed to be ineffective.
- (9) The relevant Minister or the deputy Minister shall cease to hold office if—

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- (a) he resigns by notice in writing to the First Minister and the deputy First Minister;
  - (b) he ceases to be a member of the Assembly otherwise than by virtue of a dissolution;
  - (c) where consent to his nomination was required under subparagraph (4)(c), he is dismissed by the nominating officer who consented (or that officer's successor) and the Presiding Officer is notified of his dismissal.
- (10) If the relevant Minister or the deputy Minister ceases to hold office at any time, otherwise than by virtue of section 16A(2), the office shall be filled by applying sub-paragraphs (3) to (8) within a period specified in standing orders.
- (11) But if—
- (a) the relevant Ministerial office is filled by virtue of subparagraph (10); and
  - (b) the person appointed as the relevant Minister belongs to the same political designation as the deputy Minister,
- the deputy Minister shall cease to hold office and the deputy Ministerial office shall be filled by applying sub-paragraphs (3) to (8) within a period specified in standing orders.
- (12) Standing orders may make provision with respect to the holding of elections under this paragraph.

### **Eligibility to become relevant Minister or deputy Minister**

- 11F (1) The holding of office as First Minister or deputy First Minister shall not prevent a person being elected to hold—
- (a) the relevant Ministerial office; or
  - (b) the deputy Ministerial office.
- (2) Where—
- (a) the Assembly has resolved under section 30(2) that a political party does not enjoy its confidence; and
  - (b) the party's period of exclusion under that provision has not come to an end,
- no member of that party may be nominated under paragraph 11E(4)(b).
- (3) 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,
- no member of that party may be nominated under paragraph 11E(4)(b).
- (4) In this paragraph, 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.

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### **Change in number of Ministerial offices held by members of a political party**

11G(1) If, as a result of the relevant Minister (“the former Minister”) ceasing to hold office and the relevant Ministerial office being filled by virtue of paragraph 11E(10)—

- (a) the total number of Ministerial offices held by members of a political party increases; or
- (b) the total number of Ministerial offices held by members of a political party decreases,

all other Northern Ireland Ministers shall cease to hold office and those Ministerial offices shall be filled by applying section 18(2) to (6) within a period specified in standing orders.

(2) But sub-paragraph (1) shall not apply if—

- (a) the former Minister ceased to hold office by virtue of being dismissed by a nominating officer under paragraph 11E(9)(c); and
- (b) before the relevant Ministerial office was filled, either of the conditions in sub-paragraph (3) was satisfied in relation to each member of the Assembly who was a member of the political party of the nominating officer.

(3) The conditions are that—

- (a) another member of the Assembly sought to nominate the member under paragraph 11E(4)(b) for the relevant Ministerial office but consent to his nomination was not given in accordance with paragraph 11E(4)(c); or
- (b) the member was elected to the relevant Ministerial office, but the member did not take up the office within the period specified in standing orders by virtue of paragraph 11E(8).

### **Interpretation**

11H(1) In this Part of this Schedule “nominating officer” has the same meaning as in section 18.

(2) For the purposes of this Part of this Schedule, a member of the Assembly is to be taken—

- (a) to belong to the political designation “Nationalist” if he is a designated Nationalist;
- (b) to belong to the political designation “Unionist” if he is a designated Unionist;
- (c) otherwise, to belong to the political designation “Other”;

and the size of each of the political designations “Nationalist”, “Unionist” and “Other” is to be determined in accordance with section 16C(4) and (5). ”

3      In paragraph 12(1), for “or (5)” substitute “ , (5) or (5A) or an Order in Council under section 21A(7C) ”.

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