



# Northern Ireland Act 1998

## 1998 CHAPTER 47

### PART II

#### LEGISLATIVE POWERS

##### *General*

#### **5 Acts of the Northern Ireland Assembly.**

- (1) Subject to sections 6 to 8, the Assembly may make laws, to be known as Acts.
- (2) A Bill shall become an Act when it has been passed by the Assembly and has received Royal Assent.
- (3) A Bill receives Royal Assent at the beginning of the day on which Letters Patent under the Great Seal of Northern Ireland signed with Her Majesty's own hand signifying Her Assent are notified to the Presiding Officer.
- (4) The date of Royal Assent shall be written on the Act by the Presiding Officer, and shall form part of the Act.
- (5) The validity of any proceedings leading to the enactment of an Act of the Assembly shall not be called into question in any legal proceedings.
- (6) This section does not affect the power of the Parliament of the United Kingdom to make laws for Northern Ireland, but an Act of the Assembly may modify any provision made by or under an Act of Parliament in so far as it is part of the law of Northern Ireland.

#### **6 Legislative competence.**

- (1) A provision of an Act is not law if it is outside the legislative competence of the Assembly.
- (2) A provision is outside that competence if any of the following paragraphs apply—

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- (a) it would form part of the law of a country or territory other than Northern Ireland, or confer or remove functions exercisable otherwise than in or as regards Northern Ireland;
  - (b) it deals with an excepted matter and is not ancillary to other provisions (whether in the Act or previously enacted) dealing with reserved or transferred matters;
  - (c) it is incompatible with any of the Convention rights;
  - (d) it is incompatible with [F1EU] law;
  - (e) it discriminates against any person or class of person on the ground of religious belief or political opinion;
  - (f) it modifies an enactment in breach of section 7.
- (3) For the purposes of this Act, a provision is ancillary to other provisions if it is a provision—
- (a) which provides for the enforcement of those other provisions or is otherwise necessary or expedient for making those other provisions effective; or
  - (b) which is otherwise incidental to, or consequential on, those provisions;
- and references in this Act to provisions previously enacted are references to provisions contained in, or in any instrument made under, other Northern Ireland legislation or an Act of Parliament.
- (4) Her Majesty may by Order in Council specify functions which are to be treated, for such purposes of this Act as may be specified, as being, or as not being, functions which are exercisable in or as regards Northern Ireland.
- (5) No recommendation shall be made to Her Majesty to make an Order in Council under subsection (4) unless a draft of the Order has been laid before and approved by resolution of each House of Parliament.

#### Textual Amendments

**F1** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with arts. 3(2)(3), 4(2), 6(4)(5))

#### Modifications etc. (not altering text)

**C1** S. 6(2)(d) restricted (1.3.2019) by [European Union \(Withdrawal\) Act 2018 \(c. 16\)](#), s. 25(4), Sch. 8 para. 41(5)(9) (with s. 19, Sch. 8 para. 37); S.I. 2019/399, reg. 2

### [F26A Restriction relating to retained EU law

- (1) An Act of the Assembly cannot modify, or confer power by subordinate legislation to modify, retained EU law so far as the modification is of a description specified in regulations made by a Minister of the Crown.
- (2) But subsection (1) does not apply to any modification so far as it would, immediately before [F3exit day][F3IP completion day], have been within the legislative competence of the Assembly.
- (3) A Minister of the Crown must not lay for approval before each House of Parliament a draft of a statutory instrument containing regulations under this section unless—
  - (a) the Assembly has made a consent decision in relation to the laying of the draft, or

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- (b) the 40 day period has ended without the Assembly having made such a decision.
- (4) For the purposes of subsection (3) a consent decision is—
- (a) a decision to agree a motion consenting to the laying of the draft,
  - (b) a decision not to agree a motion consenting to the laying of the draft, or
  - (c) a decision to agree a motion refusing to consent to the laying of the draft;
- and a consent decision is made when the Assembly first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).
- (5) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (3) must—
- (a) provide a copy of the draft to the relevant Northern Ireland department, and
  - (b) inform the Presiding Officer that a copy has been so provided.
- (6) See also section 96A (duty to make explanatory statement about regulations under this section including a duty to explain any decision to lay a draft without the consent of the Assembly).
- (7) No regulations may be made under this section after the end of the period of two years beginning with exit day.
- (8) Subsection (7) does not affect the continuation in force of regulations made under this section at or before the end of the period mentioned in that subsection.
- (9) Any regulations under this section which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to any Act of the Assembly which receives Royal Assent after the end of that period.
- (10) Subsections (3) to (8) do not apply in relation to regulations which only relate to a revocation of a specification.
- (11) Regulations under this section may include such supplementary, incidental, consequential, transitional, transitory or saving provision as the Minister of the Crown making them considers appropriate.
- (12) In this section—
- “the relevant Northern Ireland department” means such Northern Ireland department as the Minister of the Crown concerned considers appropriate;
  - “the 40 day period” means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the relevant Northern Ireland department,
- and, in calculating that period, no account is to be taken of any time during which the Assembly is dissolved or during which it is in recess for more than four days.]

#### Textual Amendments

- F2** S. 6A inserted (26.6.2018 for specified purposes) by [European Union \(Withdrawal\) Act 2018 \(c. 16\)](#), [ss. 12\(6\)](#), [25\(2\)\(c\)](#) (with [s. 19](#), [Sch. 2 paras. 3\(5\)](#), [14\(5\)](#), [Sch. 8 paras. 37](#), [41](#))
- F3** Words in [s. 6A\(2\)](#) substituted (31.1.2020 for specified purposes) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\)](#), [s. 42\(7\)](#), [Sch. 5 para. 23](#) (with [s. 38\(3\)](#)); [S.I. 2020/75](#), [reg. 4\(n\)\(vii\)](#)

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#### Modifications etc. (not altering text)

- C2** S. 6A: power to repeal conferred (4.7.2018) by [European Union \(Withdrawal\) Act 2018 \(c. 16\)](#), **ss. 12(9)–(11), 25(4)** (with [s. 19, Sch. 8 paras. 37, 41](#)); [S.I. 2018/808](#), reg. 3(c)

## 7 Entrenched enactments.

(1) Subject to [<sup>F4</sup>subsections (2A) and (2B)], the following enactments shall not be modified by an Act of the Assembly or subordinate legislation made, confirmed or approved by a Minister or Northern Ireland department—

- (a) the <sup>M1</sup>European Communities Act 1972;
- (b) the <sup>M2</sup>Human Rights Act 1998; <sup>F5</sup>...
- (c) section 43(1) to (6) and (8), section 67, sections 84 to [<sup>F6</sup>86B], section 95(3) and (4) and section 98 <sup>F7</sup>[<sup>F8</sup>....
- <sup>F8</sup>(d) section 1 and section 84 of the Justice (Northern Ireland) Act 2002.][<sup>F9</sup>; and
- (e) the European Union (Withdrawal) Act 2018]

(2) Subsection (1) does not prevent an Act of the Assembly or subordinate legislation modifying section 3(3) or (4) or 11(1) of the European Communities Act 1972.

[<sup>F10</sup>(2A) Subsection (1) does not prevent an Act of the Assembly or subordinate legislation modifying—

- [ any excluded provision of the European Union (Withdrawal) Act 2018,] or <sup>F11</sup>(ba)
- (c) any regulations made under that Act.]

[<sup>F12</sup>(2B) For the purposes of subsection (2A)(ba), the following are excluded provisions of the European Union (Withdrawal) Act 2018—

- (a) section 1B(3) and (4),
- (b) sections 8A to 8C,
- (c) section 10(3) and (4),
- (d) sections 13A and 13B,
- (e) sections 15A to 15C,
- (f) Parts 1A to 1C of Schedule 2,
- (g) paragraphs 1(11) and (12), 2(12) and (13) and 8A to 8G of Schedule 7, and
- (h) paragraph 21 of Schedule 8.]

(3) In this Act “Minister”, unless the context otherwise requires, means the First Minister, the deputy First Minister or a Northern Ireland Minister.

#### Textual Amendments

- F4** Words in s. 7(1) substituted (23.1.2020) by virtue of [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\)](#), s. 42(6)(e)(vi), **Sch. 5 para. 24(2)** (with s. 38(3))
- F5** Word in s. 7(1) repealed (12.4.2010) by [Justice \(Northern Ireland\) Act 2002 \(c. 26\)](#), s. 87(1), **Sch. 13**; [S.R. 2010/113](#), art. 2, **Sch. para. 21(r)**
- F6** Word in s. 7(1)(c) substituted (11.3.2009) by [Northern Ireland \(Miscellaneous Provisions\) Act 2006 \(c. 33\)](#), ss. 30(1), 31, **Sch. 4 para. 10**; [S.I. 2009/448](#), **art. 2**
- F7** Word in s. 7(1)(c) omitted (26.6.2018) by virtue of [European Union \(Withdrawal\) Act 2018 \(c. 16\)](#), s. 25(1)(b), **Sch. 3 para. 51(2)(c)** (with s. 19, **Sch. 8 para. 37**)
- F8** S. 7(1)(d) and word inserted (16.4.2007) by [2002 c. 26](#), ss. 84(1), 87(1); [S.R. 2007/237](#), **art. 2**, **Sch.**

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- F9** S. 7(1)(e) and word inserted (26.6.2018) by [European Union \(Withdrawal\) Act 2018 \(c. 16\), s. 25\(1\)\(b\)](#), [Sch. 3 para. 51\(2\)\(d\)](#) (with s. 19, Sch. 8 para. 37)
- F10** S. 7(2A) inserted (26.6.2018) by [European Union \(Withdrawal\) Act 2018 \(c. 16\), s. 25\(1\)\(b\)](#), [Sch. 3 para. 51\(4\)](#) (with s. 19, Sch. 8 para. 37)
- F11** S. 7(2A)(ba) substituted for s. 7(2A)(a)(b) (23.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), s. 42\(6\)\(e\)\(vi\)](#), [Sch. 5 para. 24\(3\)](#) (with s. 38(3))
- F12** S. 7(2B) inserted (23.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\), s. 42\(6\)\(e\)\(vi\)](#), [Sch. 5 para. 24\(4\)](#) (with s. 38(3))

#### Marginal Citations

- M1** 1972 c.68.  
**M2** 1988 c.42.

### [<sup>F13</sup>7A Cross-community support required for Bill altering size of Assembly

- (1) The Assembly shall not pass a relevant Bill without cross-community support.
- (2) In this section—

“pass”, in relation to a Bill, means pass at the stage in the Assembly's proceedings at which the Bill falls finally to be passed or rejected;

“relevant Bill” means a Bill containing a provision which deals with a matter falling within a description specified in paragraph 7A of Schedule 3 (size of Assembly).]

#### Textual Amendments

- F13** S. 7A inserted (13.5.2014) by [Northern Ireland \(Miscellaneous Provisions\) Act 2014 \(c. 13\), ss. 6\(3\), 28\(4\)](#)

## 8 Consent of Secretary of State required in certain cases.

The consent of the Secretary of State shall be required in relation to a Bill which contains—

- (a) a provision which deals with an excepted matter and is ancillary to other provisions (whether in the Bill or previously enacted) dealing with reserved or transferred matters; or
- (b) a provision which deals with a reserved matter.

**Status:**

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**Changes to legislation:**

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