



**PUBLICATION OF DRAFT LEGISLATION
NORTHERN IRELAND
(MISCELLANEOUS PROVISIONS)**

Presented to Parliament
by the Secretary of State for Northern Ireland
by Command of Her Majesty

February 2013

Cm 8563

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This publication is available for download at www.official-documents.gov.uk

ISBN: 9780101856324

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 2540626 27250 02/13

Printed on paper containing 75% recycled fibre content minimum.

FOREWORD

This paper sets out draft legislative clauses relating to a number of matters of concern in Northern Ireland. If Parliamentary time permits, we propose that these provisions form a Bill to give effect to a number of institutional changes in Northern Ireland. These would include ending dual mandates between the Northern Ireland Assembly and the House of Commons; providing more transparency on party funding; and implementing changes to provide greater security of tenure for the NI Justice Minister. In addition, we also plan to use the Bill to implement a number of significant improvements to the administration of elections in NI, following recommendations made by the Electoral Commission and Chief Electoral Officer for NI.

The draft Bill does not seek to re-open the Belfast Agreement or its successors. Any kind of significant change to the Agreements could only come about with widespread consensus among the parties represented in the Assembly. Rather, the Government's purpose here is to make a limited number of useful reforms, generally of a technical nature, that will improve how politics, and the Assembly, function in NI.

The clauses relating to constitutional and institutional matters are the first of that nature in Northern Ireland for many years not to be introduced in an atmosphere of political crisis. They are also the first to be submitted for pre-legislative scrutiny. This has been made possible by the ongoing stability of the political institutions in Northern Ireland, which is unprecedented in recent history. It is testament to the great progress made in Northern Ireland since the early 1990s and to Northern Ireland's political leadership.

There remains widespread commitment to the principles of the Belfast Agreement and St Andrews Agreement at both Westminster and Stormont. This has ensured that there is now a settled institutional structure in Northern Ireland. It is right that the Northern Ireland Executive should take the lead on Northern Ireland's future. The UK Government will support it in any difficult decisions it must make in order to keep moving forward. The relationship between Westminster and Stormont is maturing and this draft legislation reflects that. The measures contained in the draft Bill are important, but unlike virtually all other Northern Ireland Bills since 1998, the motivation for their introduction is not an urgent need to prop up or resuscitate the devolved institutions.

Many of the draft measures included here have already been the subject of public consultation; they have also been discussed with the NI political parties. Most recently, in August last year, the then Secretary of State, Owen Paterson, published a Public Consultation on Measures to Improve the Operation of the Northern Ireland Assembly. The consultation sought responses on four key issues: number of seats in the Assembly, length of Assembly terms (whether the current term should be extended by one year, and whether there should be a move to five year fixed terms), multiple mandates, and the potential for moving to a system of 'government and opposition'.

That consultation closed on 23 October. There were 48 responses in total; 9 of which were from political parties. These responses will be published in full on the NIO website, where the respondent has consented to publication. A summary of consultation responses will be published alongside the individual contributions. A number of other measures in the draft Bill were subject to public consultation at earlier stages.

The context for these reforms is significant. Greater political stability in the Northern Ireland institutions provides the opportunity to move beyond the politics of the peace process and focus on the politics of delivery. In Northern Ireland, the Government is clear that this should mean a greater focus than ever before on the rebalancing of the economy, the promotion of jobs and growth, and the tackling of sectarianism and division to develop a genuinely shared society for everyone. We are determined to continue to work with the Executive to address these issues.

A handwritten signature in black ink, appearing to read 'Theresa Villiers', written in a cursive style.

**RT HON THERESA VILLIERS MP
SECRETARY OF STATE FOR NORTHERN IRELAND**

FEBRUARY 2013

PUBLICATION OF DRAFT LEGISLATION NORTHERN IRELAND (MISCELLANEOUS PROVISIONS)

Donations and Loans for Political Purposes

1. At present, it is unlawful for the Electoral Commission to release information relating to any NI political donation during a period prescribed by secondary legislation. The prescribed period, which initially lasted for two years from 1 November 2007, has since been extended three times and will expire on 30 September 2014.
2. Currently, when the prescribed period expires, details of the donations and loans reported during that period will be made public. However, most NI parties and the Electoral Commission are opposed to the release of this information. They argue that those making donations from 1 November 2007 were doing so in the belief that these donations would not be released even when the confidentiality arrangements expired. Following public consultation in NI during 2010, the Government committed to increasing transparency and to ensuring that that anonymity of donations during the prescribed period would be maintained.
3. Changes are therefore sought in two areas:
 - Take a power enabling modification of the existing scheme during the prescribed period, via secondary legislation, which gives flexibility to make further modifications in the future. For example, the Electoral Commission could be required to publish a list of donations and loans excluding the names and addresses of donors.
 - Provide retrospective anonymity for donors who made, or make, donations between 1 November 2007 and 30 September 2014, unless they give their express consent for their identity to become public.

Dual Mandates

4. The majority of respondents to the recent consultation favoured enacting primary legislation to bring an end to 'double jobbing' as soon as possible. The Government has always been clear that it wants to see this practice ended. It was a commitment in the Conservative and Unionist Manifesto for Northern Ireland at the 2010 General Election. In its 2009 report, the Commission on Standards in Public Life recommended that legislation to bring the practice to an end should be introduced by the time of the next Assembly elections, due in May 2015.
5. Whilst most parties in NI have signalled that they will voluntarily end the practice of holding dual mandates, and some individuals have moved to resign one seat or the other, double jobbing has not been completely eradicated. There is currently nothing to deter parties from resurrecting the practice should it prove politically expedient in the future. Given the strength of the response on this issue and the previously-expressed commitments

made by the Government, the draft legislation contains clauses which would prevent Members of Parliament from sitting concurrently in the NI Assembly. This will take effect following the dissolution of the current Assembly.

6. No provision barring dual mandates exists in relation to the devolved administrations in Scotland and Wales. Historically, double jobbing has been more prevalent in Northern Ireland. Indeed, the Committee on Standards in Public Life noted that the holding of multiple mandates appears to be “unusually ingrained” in Northern Ireland. This was thought to be both because of the legacy of the Troubles, which discouraged many individuals from getting involved in politics, and because of the recent history of political instability, which led a reluctance to give up seats in Westminster for fear that the local devolution settlement might again collapse. There remain in Northern Ireland a number of MPs/MLAs who hold a dual mandate. By contrast, there are no ‘double jobbers’ between the House of Commons and the National Assembly for Wales, and no Members of the Scottish Parliament also sit in the Commons. The Government therefore believes that introducing rules which apply specifically to Northern Ireland is objectively and reasonably justifiable and is proportionate to the desired aim.

Northern Ireland Justice Minister

7. Provision is needed to ensure that the NI Justice Minister has the same security of tenure as other NI Executive Ministers and cannot simply be removed by a cross-community vote in the Assembly. The NI Justice Minister is not appointed by the d’Hondt procedure which is used for all other Ministerial offices in the NI Executive. Instead he is appointed through nomination by one or more members of the Assembly and approval by cross-community vote. Currently, the incumbent can be removed if a motion is raised to that effect by either the First and deputy First Ministers acting together, or 30 or more Assembly members, followed by a majority cross-community vote.

8. There were discussions among political parties in Belfast in 2012 prior to the Assembly reaching a conclusion, in accordance with its legal obligations, on the permanent method of appointing a Justice Minister. In light of those discussions the First Minister and deputy First Minister asked my predecessor to bring forward provision to give the Justice Minister the same security of tenure as other ministers. He agreed to do so and the draft Bill gives effect to this.

9. The draft clauses also remedy the current anomaly created by the appointment of the Justice Minister outside the d’Hondt procedure which currently gives the party from which the Justice Minister is appointed an ‘extra’ Ministerial post to those which it would be entitled under the normal procedure for Ministerial appointments.

Electoral Registration and Administration

10. These provisions are intended to give effect to commitments made by the previous Government following its 20 July 2009 public consultation 'Improving Electoral Registration Procedures in Northern Ireland'. The then Government published its response to this consultation on 24 November 2009. Additionally, the provisions also cover recommendations made by the Electoral Commission in its October 2011 report on elections in Northern Ireland, and by the Chief Electoral Officer for NI. In summary they:

- Remove the requirement to have been resident in NI for three months before being entitled to register to vote;
- Permit people from NI, who qualify to vote under the current franchise and who wish to vote at a UK election whilst living abroad, to declare themselves as either a British or an Irish citizen;
- Remove the existing bar on those who apply to be registered during the late registration period in Northern Ireland from also applying for an absent vote;
- Make providing false information in relation to an electoral ID card application an offence.

11. If legislation is brought forward in the future, as expected, it is also the Government's intention to implement recommendations made by the Electoral Commission in its November 2012 report on the electoral register in Northern Ireland.

Miscellaneous Provisions

12. Any forthcoming Northern Ireland legislation is likely to be the main primary legislative vehicle for Northern Ireland-specific measures in this Parliament. Draft clauses have, therefore, also been prepared to deal with some additional issues. There is provision to ensure that the flexibility exists to partially designate public authorities in NI in relation to statutory equality duties under s75 of the Northern Ireland Act, should that prove necessary in future. This would replicate similar provisions in the Equality Act 2010 which apply to England and Wales. The change proposed would mean that bodies which currently cannot be designated in their entirety (for example because they carry out some functions which must be excepted from the relevant duties) can be considered for designation in the future.

13. Other clauses aim to remedy an anomaly created by administrative changes to approval processes for rules governing Court procedures in NI; and to ensure that DNA samples (gathered under general policing powers) can be used in the interests of national security and for the purposes of a terrorist investigation.

Measures still under consideration for potential inclusion in the Bill

13. The Government has repeatedly made clear that any significant institutional changes – with the exception of ending multiple mandates – could only be made on the basis of a broadly based consensus among the NI parties and the wider community. It is right that consideration is given to how the institutions might be made more effective, but the principles of the Agreements are paramount. As the Prime Minister has stated, any changes must be consistent with power sharing and inclusive government at the heart of the Belfast Agreement.

14. The responses to the consultation indicate that there is a desire to improve the efficacy of the institutions, and to make amendments to their operation with the aim of creating a system which can make decisions and adapt to changing circumstances more easily. To date, however, it is not clear that the widespread agreement necessary to bring about more substantial statutory reform exists.

Size of the Northern Ireland Assembly

15. The number of seats in the Assembly would have automatically gone down from 108 to 96 following the planned reduction in Westminster constituencies flowing from the Parliamentary Voting System and Constituencies Act 2011. Notwithstanding the outcome of that work, commitments were given to parties in the Assembly that a legislative vehicle would be made available to implement any agreement reached on the size of the Assembly, at a later date. The consultation responses indicate that there is a general desire to reduce the number of seats to improve the efficiency of the Assembly and provide better value for money to taxpayers. We will continue to engage with the Northern Ireland political parties to seek an outcome on this matter which commands broadly based support and which could therefore be included in the Bill.

Length of Assembly Terms and Future Election Dates

16. In 2011 the Government also brought forward legislation to introduce fixed-term Parliaments. As a result, the next Westminster election will be held in May 2015, then every five years thereafter. It was recognised during the passage of the Fixed Term Parliaments Act 2011 that May 2015 had already been set as the date of the next Assembly elections. Some concern was expressed in NI over the possibility of three elections being scheduled for the same day.

17. Following consultation with the NI party leaders, the Government decided to await the results of the 2011 triple poll (Assembly, local councils and the AV referendum) before deciding whether any provision to move the date of the poll would be needed. The consultation therefore asked whether the life of the current Assembly should be extended by one year, from 2015 to 2016, to avoid concurrence of Westminster and Assembly elections in May 2015. It also sought views on whether the Assembly should move to a fixed

5-year term permanently, as has already been established at Westminster and for the devolved legislatures in Cardiff and Edinburgh.

Length of Current Assembly Term

18. The Government has consistently made clear that any move to extend the length of the current term could only be made if there was a clearly demonstrable public benefit, and a very large measure of agreement in Northern Ireland. Only a small number of consultation responses addressed the issue. While the option remains open in principle, a compelling case for the extension of the Assembly term has not yet been made. As yet, there has been no sufficient indication of widespread public approval for the proposal. We are willing to revisit this issue should this assessment change (which it might, for example, if the Executive were able to demonstrate clearly that an extension of their term would allow them to deliver more on key priorities such as rebalancing the economy and addressing sectarian divisions in Northern Ireland).

Length of Future Terms

19. The scheduling of future Assembly elections is obviously dependent on final decisions on the length of the current Assembly term. The consultation responses were relatively ambivalent on the issue of moving to fixed five-year Assembly terms in the future. However, consideration of whether we should seek to avoid further clashes between Parliamentary and Assembly elections seems prudent. While no draft clauses are yet available for scrutiny, options remain open to make provision to avoid future concurrence of elections while still moving to fixed five year terms for the Assembly.

20. Should the current Assembly term end as scheduled in 2015, one more 4 year term until 2019 with a move to five year terms thereafter would avoid a double poll with the scheduled Parliamentary elections in 2020. However, if the current term is ultimately extended until 2016, then the move to five year fixed terms would take effect on the next Assembly elections in that year. This would make the subsequent Assembly election due in 2021 also avoiding the clash with the 2020 Parliamentary poll.

Government and Opposition

21. The 2011 consultation requested views on whether it was possible or desirable to move towards a more 'normal' system that continues to allow for inclusive government but also provides for a formal opposition in the Assembly. As the consultation stated, there are obvious flaws in a system where there is no opposition, in the traditionally understood sense, to enhance, challenge, provide a spur to innovation and offer an alternative government. These are aspects which the current system lacks, notwithstanding much valuable scrutiny work by the Assembly and its Committees.

22. While the Government would welcome moves towards a system of government and opposition, we remain clear that such changes could only come about with the agreement of parties in the Assembly. In addition, such moves must be consistent with the principles of inclusivity and of power-sharing that are central to the Belfast Agreement. We do not believe that there is sufficient consensus for statutory change at present which is why the draft Bill includes no provision on this issue.

23. However, the consultation document also drew attention to the possibility of procedural change within the Assembly aimed at providing for a more effective opposition. The Government notes that the Assembly & Executive Review Committee is examining these questions, amongst other institutional issues. The Assembly Research and Information Service produced a Briefing Paper¹ entitled 'Opposition, Community Designation and d'Hondt' in November 2012. Procedural developments are of course matters for the Assembly itself and not for the Government to seek to impose.

Devolution of responsibilities relating to Arms-Length Bodies

23. Some functions relating to the Civil Service Commissioners for Northern Ireland, the Northern Ireland Human Rights Commission and the District Electoral Areas Commissioner are currently not devolved matters and must still be exercised by the Secretary of State. It may become appropriate to transfer these functions, by agreement, so that they become the responsibility of the Northern Ireland Assembly and Executive at some future date. Any Northern Ireland-specific legislation at Westminster might, then, make provision to allow this transfer of functions to be achieved by future secondary legislation rather than requiring further primary legislation to effect a change.

1

http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/assembly_exec_review/18912.pdf

Northern Ireland (Miscellaneous Provisions) Bill (Draft)

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Make provision about donations and loans for political purposes in connection with Northern Ireland; to make provision disqualifying members of the House of Commons for membership of the Northern Ireland Assembly; to make provision about the appointment of the Northern Ireland Justice Minister; to make provision about the registration of electors and the administration of elections in Northern Ireland; and to make miscellaneous amendments in the law relating to Northern Ireland.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Donations and loans etc for political purposes

1 Donations

- (1) In the Northern Ireland (Miscellaneous Provisions) Act 2006—
- (a) for section 14 (modifications of the Political Parties, Elections and Referendums Act 2000 to have effect during a prescribed period) substitute—
- “14 Special provision in relation to Northern Ireland recipients**
- Schedule 1 contains amendments of the 2000 Act relating to donations received by Northern Ireland recipients.”;
- (b) in Schedule 1, in the heading, for “MODIFICATIONS” substitute “AMENDMENTS”.
- (2) After section 15 of that Act insert—
- “15A Power to increase transparency**
- (1) The Secretary of State may, after consulting the Electoral Commission, by order—

- (a) make provision permitting or requiring the Electoral Commission to publish information about donations received by Northern Ireland recipients, or
 - (b) make other provision for the purpose of increasing transparency in relation to such donations.
- (2) Provision made under this section may –
- (a) amend, repeal or modify any enactment connected with donations for political purposes (including in particular any of the provisions inserted into the 2000 Act by Schedule 1);
 - (b) include consequential, supplementary, incidental, transitional, transitory or saving provision.
- (3) Provision made under this section may apply in relation to donations received at any time on or after 1 November 2007.
- (4) The power to make an order under this section is exercisable by statutory instrument.
- (5) No order is to be made under this section unless a draft of the instrument containing the order has been laid before and approved by a resolution of each House of Parliament.
- (6) For the purposes of this section and section 15B –
- (a) “donation” has the same meaning as in Part 4 of the 2000 Act (see section 50 of that Act);
 - (b) the time at which a donation is received is to be determined in the same way as for the purposes of that Part;
 - (c) “Northern Ireland recipient” has the same meaning as in Chapter 6 of that Part (see section 71A of that Act).
- (7) Section 15B imposes limits on the provision that may be made under this section.

15B Protection of confidentiality of donations made before 1 October 2014

- (1) The provision that may be made under section 15A does not include provision which –
- (a) alters the effect of section 71E of the 2000 Act (duty not to disclose contents of donation reports) in relation to the disclosure of protected information,
 - (b) reduces the maximum penalty for an offence under that section committed in relation to the disclosure of protected information, or
 - (c) gives a person a right to obtain protected information contained in a register kept by the Commission under that Act.
- (2) “Protected information” means information –
- (a) which relates to a donation received before 1 October 2014, and
 - (b) which identifies the donor or from which it is possible to identify the donor.
- (3) In this section –
- (a) a reference to section 71E of the 2000 Act is to that section as it has effect on the coming into force of this section (and for this purpose the amendment made by section 1(3) of the Northern

Ireland (Miscellaneous Provisions) Act 2013 is treated as in force), and

- (b) a reference to a penalty for an offence under the 2000 Act is to that penalty as it has effect on the coming into force of this section.”
- (3) In section 71E of the Political Parties, Elections and Referendums Act 2000 (duty not to disclose contents of donation reports), after subsection (4) insert –
- “(4A) Such information may be disclosed if the Commission believe, on reasonable grounds, that –
- (a) the relevant person has consented to the disclosure, and
 - (b) the consent was given in accordance with any prescribed requirements.
- (4B) “The relevant person” means the person who made the donation to which the information relates.”

2 Loans etc

- (1) In the Electoral Administration Act 2006 (Regulation of Loans etc: Northern Ireland) Order 2008 (S.I. 2008/1319) –
- (a) for article 5 (modifications of the Political Parties, Elections and Referendums Act 2000 to have effect during a prescribed period) substitute –
- “5 Special provision in relation to Northern Ireland participants**
- Schedule 1 contains amendments of the 2000 Act relating to loans etc involving Northern Ireland participants.”;
- (b) in Schedule 1, in the heading, for “MODIFICATIONS” substitute “AMENDMENTS”.
- (2) In section 71Z4 of the Political Parties, Elections and Referendums Act 2000 (duty not to disclose contents of transaction reports), after subsection (4) insert –
- “(4A) Such information may be disclosed if the Commission believe, on reasonable grounds, that –
- (a) each relevant person has consented to the disclosure, and
 - (b) the consent was given in accordance with any prescribed requirements.
- (4B) “Relevant person” means a party to the transaction to which the information relates other than –
- (a) a registered party whose treasurer is required under this Part to prepare a report to the Commission giving details of the transaction, or
 - (b) any other party to the transaction who is required under this Part to prepare such a report.”
- (3) In section 63 of the Electoral Administration Act 2006 (power to make provision for regulation of loans etc: Northern Ireland), after subsection (7)

insert –

- “(8) For the purposes of this section, section 1(3) of the Northern Ireland (Miscellaneous Provisions) Act 2013 (which amends section 71E of the 2000 Act) is treated as provision made by the 2006 Act.”

Dual mandates etc

3 MPs to be disqualified for membership of Assembly

- (1) In section 1(1) of the Northern Ireland Assembly Disqualification Act 1975 (disqualification of holders of certain offices etc) before paragraph (a) insert –
“(za) is a member of the House of Commons;”.
- (2) After section 1 of that Act insert –

“1A Members of the House of Commons

- (1) A person is not disqualified under section 1(1)(za) at any time during the period of 8 days beginning with any day on which the person is returned as a member of the Northern Ireland Assembly.
- (2) A recently returned member of the Assembly is not disqualified under section 1(1)(za) at any time during the period of 8 days beginning with any day on which the person is returned as a member of the House of Commons.
- (3) A person (“P”) is a “recently returned member of the Assembly” if P is returned as a member of the Assembly at any time in the period –
- (a) beginning with the day on which P’s nomination paper for election as a member of the House of Commons is delivered to the returning officer under rule 6 of Schedule 1 to the Representation of the People Act 1983 (parliamentary election rules), and
 - (b) ending with the day on which P is returned as a member of the House of Commons.
- (4) References in this section to a person being returned as a member of the Assembly are to the person being so returned at an election.”
- (3) In section 37(1) of the Northern Ireland Act 1998 (effect of disqualification) –
- (a) in paragraph (a), after “by virtue of” insert “the Northern Ireland Assembly Disqualification Act 1975 or”;
 - (b) in paragraph (b), after “by virtue of” insert “that Act or”.
- (4) In section 47(4) of that Act (remuneration of members), for “either House of Parliament” substitute “the House of Lords”.

4 Statements by prospective members of Assembly

- (1) The Northern Ireland Assembly (Elections) Order 2001 (S.I. 2001/2599) is amended as follows.
- (2) In article 6 (vacancies filled by substitutes) –
- (a) in paragraph (2), for the words from “state in writing” to the end substitute “make a statement of readiness”;

- (b) in paragraph (3) –
 - (i) in sub-paragraph (a)(ii), for the words from “in writing” to “Assembly” substitute “of readiness”;
 - (ii) in sub-paragraph (b) for “is not willing or able to be so returned” substitute “will not make a statement of readiness.”;
 - (c) in paragraph (4) –
 - (i) for “states in writing” substitute “makes a statement of readiness”;
 - (ii) omit “that he is willing and able to be returned as a member of the Assembly”;
 - (d) in paragraph (5) –
 - (i) in the opening words: after “a statement” insert “of readiness”; and omit “that he is willing and able to be returned as a member of the Assembly”;
 - (ii) in sub-paragraph (a), for “is not willing and able to be so returned” substitute “will not make a statement of readiness”;
 - (iii) in sub-paragraph (b), for “in writing that he is willing and able to be so returned” substitute “of readiness”;
 - (e) after paragraph (6) insert –
 - “(7) In this article and article 6B “statement of readiness” means a statement in writing by a person (“P”) –
 - (a) that P is willing and able to be returned as a member of the Assembly,
 - (b) that P is aware of the provisions of the Northern Ireland Disqualification Act 1975 and section 36 of the Northern Ireland Act 1998, and
 - (c) that P is, to the best of P’s knowledge and belief, not disqualified for membership of the Assembly.”
- (3) In article 6B (vacancies arising during an Assembly term: members of registered parties) –
- (a) in paragraph (3), for the words “in writing” to the end substitute “with –
 - (a) a statement of readiness, or
 - (b) a statement in writing that he will not make a statement of readiness.”;
 - (b) for paragraph (4)(a) and (b) substitute –
 - “(a) does not respond within such period as the Officer considers reasonable with a statement of the kind mentioned in paragraph (3)(a) or (b), or
 - (b) responds within such a period with a statement of the kind mentioned in paragraph (3)(b).”;
 - (c) in paragraph (6), for the words from “does” to “Assembly” substitute “responds within such period as the Officer considers reasonable with a statement of the kind mentioned in paragraph (3)(a)”.
- (4) In Schedule 1 (application with modifications of provisions of the Representation of the People Act 1983 etc), in the entry for rule 8 of the parliamentary elections rules (consent to nomination), for the first sentence

substitute “For paragraph (3)(b) substitute –

- “(b) shall state that he is aware of the provisions of the Northern Ireland Disqualification Act 1975 and section 36 of the Northern Ireland Act 1998; and
- (ba) shall state either –
 - (i) that he is, to the best of his knowledge and belief, not disqualified for membership of the Assembly, or
 - (ii) that he is, to the best of his knowledge and belief, disqualified for membership of the Assembly only under section 1(1)(za) of the Northern Ireland Assembly Disqualification Act 1975 (disqualification of MPs); and”.

Justice Minister

5 Appointment of Justice Minister

- (1) Part 1A of Schedule 4A to the Northern Ireland Act 1998 (department with policing and justice functions) is amended as follows.
- (2) For paragraph 3B (modification of section 16A) substitute –

“3B Section 16A(3) has 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 1A of Schedule 4A) shall be filled by applying paragraph 3D(4) to (8) of that Schedule; and
 - (b) once that office has been filled, the other Ministerial offices to be held by Northern Ireland Ministers shall be filled by applying section 18(2) to (6).”
- (3) In paragraph 3C (section 18 not to apply to relevant Minister) –
 - (a) the existing provision becomes sub-paragraph (1);
 - (b) after that sub-paragraph insert –

“(2) But the reference to Ministerial offices in subsection (5) of that section (in the definition of M) shall be taken to include the relevant Ministerial office.”
- (4) Paragraph 3D (provisions relating to relevant Minister) is amended in accordance with subsections (5) to (8).
- (5) In sub-paragraph (3), after “after” insert “section 16B(3) to (7) is applied in relation to the offices of First Minister and deputy First Minister but before”.
- (6) After sub-paragraph (4) insert –

“(4A) But a member of the Assembly who is a member of a political party may not be nominated unless the nominating officer of the party consents to the nomination within a period specified in standing orders.”
- (7) In sub-paragraph (11) –
 - (a) omit the “or” at the end of paragraph (b) and after that paragraph

insert –

- “(ba) where consent to the Minister’s nomination was required under sub-paragraph (4A), the Minister is dismissed by the nominating officer of the party and the Presiding Officer is notified of the dismissal, or”;
- (b) at the beginning of paragraph (c) insert “where consent to the Minister’s nomination was not required under sub-paragraph (4A),”.

(8) After sub-paragraph (17) insert –

“(18) In this paragraph and paragraph 3E “nominating officer” has the same meaning as in section 18.”

6 Reappointment of other Northern Ireland Ministers in certain cases

In Part 1A of Schedule 4A to the Northern Ireland Act 1998 (department with policing and justice functions), after paragraph 3D insert –

“Reappointment of other Northern Ireland Ministers in certain cases

3E (1) Where either of the following conditions is met –

- (a) all the Northern Ireland Ministers other than the relevant Minister cease to hold office, and
- (b) those Ministerial offices must be filled by applying section 18(2) to (6) within a period specified in standing orders.

(2) The first condition is that –

- (a) the relevant Minister ceased to hold office by virtue of paragraph 3D(1)(a), and the office was filled by virtue of paragraph 3D(1)(b),
- (b) paragraph 3D(1) applied because a resolution was passed under section 30(2) which caused no Ministerial office other than the relevant Ministerial office to become vacant, and
- (c) as a result of the events mentioned in paragraph (a) the total number of Ministerial offices held by members of a political party increased or decreased.

(3) The second condition is that –

- (a) the relevant Minister (“the former Minister”) ceased to hold office otherwise than by virtue of paragraph 3D(1)(a), and the office was filled by virtue of paragraph 3D(14), and
- (b) as a result of the events mentioned in paragraph (a) the total number of Ministerial offices held by members of a political party increased or decreased.

(4) But the second condition is not met where –

- (a) the former Minister ceased to hold office by virtue of being dismissed by a nominating officer under paragraph 3D(11)(ba),
- (b) immediately before the office was filled there was at least one eligible member of the nominating officer’s political party, and
- (c) each such eligible member failed to fill the office for one or other of the following reasons.

- (5) Those reasons are—
- (a) that one or more members of the Assembly sought to nominate the eligible member for the office, but consent to the nomination was not given by the nominating officer in accordance with paragraph 3D(4A);
 - (b) that the eligible member was nominated for the office but did not take it up within the period specified in standing orders under paragraph 3D(7)(a).
- (6) References in this paragraph to an eligible member of a political party are to a member of that party who is also a member of the Assembly, but do not include the former Minister.”

Electoral registration and administration

7 Registration as an elector: abolition of 3 month residence requirement

- (1) The following provisions (which impose or relate to the requirement that persons registering as electors in Northern Ireland must have been resident there for three months) are repealed or revoked—
- (a) in the Representation of the People Act 1983—
 - (i) section 4(2);
 - (ii) section 7B(5);
 - (iii) section 7C(1)(b) (and the “and” before it);
 - (iv) section 10(4A)(c)(ii) (but not the “and” after it);
 - (v) section 10A(1A)(c)(ii) (but not the “and” after it);
 - (vi) section 13A(2A)(c)(ii) (but not the “and” after it);
 - (vii) section 14(2);
 - (viii) section 17(1)(b) (but not the “and” after it);
 - (b) in the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 (S.I. 2001/1184)—
 - (i) regulation 4(2);
 - (ii) regulation 6(1)(c);
 - (c) in the Representation of the People (Northern Ireland) Regulations 2008 (S.I. 2008/1741), regulation 25(6).
- (2) In consequence of the amendments made by subsection (1)—
- (a) in the Elected Authorities (Northern Ireland) Act 1989, in Schedule 1—
 - (i) in Part 1, for “Section 4(2)” substitute “Section 4(3)”;
 - (ii) in Part 2, omit paragraph 7(1);
 - (b) in the Representation of the People Act 2000, omit paragraph 7 of Schedule 1.

8 Registration as an overseas elector: declaration of nationality

- (1) In the Representation of the People Act 1985, in section 2 (registration of British citizens overseas)—
- (a) after subsection (3) insert—

“(3A) An overseas elector’s declaration that specifies an address in Northern Ireland under subsection (4) may, instead of or in

- addition to including a statement under subsection (3)(b), state that the declarant is an eligible Irish citizen.”;
- (b) after subsection (8) insert –
- “(9) In this section “eligible Irish citizen” means an Irish citizen who –
- (a) was born in Northern Ireland, and
- (b) qualifies as a British citizen (whether or not he identifies himself as such).
- (10) A person found abandoned in Northern Ireland as a new-born infant is, unless the contrary is shown, deemed for the purposes of subsection (9) to have been born in Northern Ireland.”
- (2) In the Representation of the People (Northern Ireland) Regulations 2008 (S.I. 2008/1741), in regulation 20 (contents of overseas elector’s declaration) –
- (a) in paragraph (1) –
- (i) after “required” insert “or permitted”;
- (ii) after “2(3)(a) to (d)” insert “, (3A)”;
- (iii) for “(7)” substitute “(6B)”;
- (b) after paragraph (5) insert –
- “(5A) Where the conditions in paragraph (4)(a) and (b) are not met in relation to a declarant, his overseas elector’s declaration shall comply with paragraphs (6) to (6B).”;
- (c) in paragraph (6) for the words before sub-paragraph (a) substitute “If the declaration includes a statement under section 2(3)(b) of the 1985 Act (statement that declarant is a British citizen), the declaration shall state –”;
- (d) after that paragraph insert –
- “(6A) If the declaration includes a statement under section 2(3A) of the 1985 Act (statement that declarant is an eligible Irish citizen), the declaration shall state –
- (a) in the case of a declarant who is the bearer of an Irish passport, the number of that passport together with its date and place of issue, or
- (b) otherwise, when and how the declarant acquired the status of Irish citizen, together with the date, place and country of the declarant’s birth.
- (6B) Where, apart from this paragraph, a declaration would be required to include both a statement under paragraph (6) and a statement under paragraph (6A), the declaration need include only one of those statements.”;
- (e) omit paragraph (7).
- (3) In regulation 22 of those regulations (attestation of certain overseas electors’ declarations) –
- (a) in paragraph (3) for “the bearer of a British passport which describes his national status as a “British citizen”” substitute “a person”;
- (b) after paragraph (3)(c) insert “; and
- (d) is –
- (i) the bearer of a British passport which describes his national status as a “British citizen”, or

- (ii) an eligible Irish citizen who is the bearer of an Irish passport.”;
- (c) in paragraph (4), after “British citizen” insert “, or an eligible Irish citizen,”;
- (d) for paragraph (5)(b) substitute—
 - “(b) any of the following—
 - (i) that he is the bearer of a British passport which describes his national status as a “British citizen”, together with the number of that passport and its date and place of issue;
 - (ii) that he is an eligible Irish citizen who is the bearer of an Irish passport, together with the number of that passport and its date and place of issue;
 - (iii) that he is the bearer of a British passport which describes his national status as a “British citizen” and is an eligible Irish citizen who is the bearer of an Irish passport, together with the number of either of those passports and its date and place of issue;”;
- (e) in paragraph (5)(f), after “British citizen” insert “, or an eligible Irish citizen,”;
- (f) after paragraph (5) insert—
 - “(6) In this regulation “eligible Irish citizen” has the meaning given by section 2(9) and (10) of the 1985 Act.”

9 Absent voting

- (1) In section 13BA of the Representation of the People Act 1983 (alteration of registers in Northern Ireland: pending elections), omit subsection (4) (which prevents late registration as an absent voter).
- (2) In consequence of the amendment made by subsection (1)—
 - (a) in Part 2 of Schedule 1 to the Elected Authorities (Northern Ireland) Act 1989, omit paragraph 8A;
 - (b) in Schedule 4 to the Northern Ireland (Miscellaneous Provisions) Act 2006, omit paragraph 7(4).

10 Electoral identity cards

After section 13C of the Representation of the People Act 1983 (electoral identity card: Northern Ireland) insert—

“13CZA Provision of false information: application for electoral identity card

- (1) A person who provides false information in connection with an application for an electoral identity card is guilty of an offence.
- (2) In relation to a signature, “false information” for the purposes of subsection (1) means a signature which—
 - (a) is not the usual signature of, or
 - (b) was written by a person other than,

the person whose signature it purports to be.

- (3) A person does not commit an offence under subsection (1) if the person did not know, and had no reason to suspect, that the information was false.
- (4) Where sufficient evidence is adduced to raise an issue with respect to the defence under subsection (3), the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (5) A person guilty of an offence under this section is liable on summary conviction to –
 - (a) imprisonment for a term not exceeding six months, or
 - (b) a fine not exceeding level 5 on the standard scale, or to both.”

Miscellaneous

11 Equality duties

- (1) In section 75 of the Northern Ireland Act 1998 (statutory duty on public authorities), after subsection (3) insert –

“(3A) An order under subsection (3)(a) or (d) may provide that the designated department, corporation, body or other person –

 - (a) is not subject to, or is only subject to, specified obligations under subsection (1) or (2), or
 - (b) is not subject to, or is only subject to, specified obligations under subsection (1) or (2) –
 - (i) when exercising a specified function, or
 - (ii) when exercising a specified function in specified circumstances or for specified purposes.

(3B) In subsection (3A) “specified” means specified in the order.”
- (2) In Schedule 9 to that Act (equality: enforcement of duties), in paragraph 4, after sub-paragraph (4) insert –

“(5) But where the public authority is designated by order under section 75(3)(a) or (d) –

“equality of opportunity” does not include equality of opportunity in relation to which (by virtue of the order) the public authority has no obligations under section 75(1);

“the relevant functions” does not include functions of the public authority so far as the obligations imposed by section 75 do not (by virtue of the order) apply to their exercise.”

12 Rules of court

- (1) In section 56 of the Judicature (Northern Ireland) Act 1978 (control and publication of rules), for subsection (1) substitute –

“(1) Rules made by the Rules Committee –

- (a) in the case of rules that are required under section 55A to be submitted to the Lord Chancellor, are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 applies accordingly; and
 - (b) otherwise, are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.”
- (2) In section 53 of that Act (Crown Court Rules Committee) after subsection (3) insert—
- “(4) In the application of section 56(1) by virtue of subsection (3), the reference to section 55A includes a reference to section 53A.”
- (3) The amendments made by this section have effect in relation to rules made on or after the day on which this section comes into force.

13 Regulation of biometric data

In Schedule 1 to the Protection of Freedoms Act 2012 (amendments of regimes other than PACE), in Part 7 (corresponding Northern Ireland provision for excepted or reserved matters etc), in paragraph 8(1) for “2011 or 2012 (whether before or after the passing of this Act)” substitute “2013 or 2014”.

Final provisions

14 Amendments that could have been made under existing powers

- (1) The amendments made by section 2(1) and (2) are treated, for the purposes of section 63 of the Electoral Administration Act 2006, as made under that section.
- (2) Where—
- (a) any other provision of this Act amends or revokes subordinate legislation (within the meaning of the Interpretation Act 1978), and
 - (b) the amendment or revocation could have been made under a power conferred by an enactment,
- the amendment or revocation is treated, for the purposes of that enactment, as having been made under it.

15 Extent

- (1) The amendment made by section 10 extends to Northern Ireland only.
- (2) Any other amendment, repeal, revocation or other modification of an enactment made by this Act has the same extent as the enactment, or relevant part of the enactment, to which it relates.
- (3) Subject to subsections (1) and (2), this Act extends to the whole of the United Kingdom.

16 Commencement

- (1) The following provisions come into force on the day on which this Act is passed—

- (a) in section 1 (donations for political purposes) –
 - (i) subsections (1) and (2), and
 - (ii) subsection (3) for the purpose of prescribing requirements;
 - (b) in section 2 (loans etc for political purposes) –
 - (i) subsection (1),
 - (ii) subsection (2) for the purpose of prescribing requirements, and
 - (iii) subsection (3);
 - (c) section 11 (equality duties);
 - (d) section 13 (regulation of biometric data);
 - (e) sections 14 to 17 (final provisions).
- (2) The following provisions come into force at the end of the period of two months beginning with the day on which this Act is passed –
- section 7 (abolition of three month residence requirement);
 - section 8 (declaration of nationality);
 - section 9 (absent voting);
 - section 10 (electoral identity cards);
 - section 12 (rules of court).
- (3) The following provisions come into force on the first day after this Act is passed on which the Northern Ireland Assembly is dissolved –
- section 3 (MPs to be disqualified for membership of the Assembly);
 - section 4 (statements by prospective members of the Assembly).
- (4) Subject to the preceding subsections of this section, this Act comes into force on such day as the Secretary of State may appoint by order made by statutory instrument.
- (5) An order under subsection (4) –
- (a) may appoint different days for different purposes, and
 - (b) may make transitional, transitory or saving provision.

17 Short title

This Act may be cited as the Northern Ireland (Miscellaneous Provisions) Act 2013.

NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Northern Ireland (Miscellaneous Provisions) Bill. They have been prepared by the Northern Ireland Office in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes should be read in conjunction with the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. Where a clause does not seem to require any explanation or comment, none is given.
3. A draft of the Bill was published for public consultation on 11 February 2013 (Cm 8563).

SUMMARY

3. The Bill makes provision in relation to the following:
 - donations and loans for political purposes in connection with Northern Ireland;
 - ending the practice of MPs holding a dual mandate to sit concurrently as Members of the Northern Ireland Assembly;
 - changes to the process of appointment and dismissal for the Northern Ireland Justice Minister;
 - registration of electors and electoral administration in Northern Ireland; and
 - amendments to certain order making powers in respect of Northern Ireland.

COMMENTARY ON CLAUSES

CLAUSES 1 AND 2: DONATIONS AND LOANS ETC FOR POLITICAL PURPOSES

4. These clauses give effect to commitments made by the Government following a public consultation: '*Donations and Loans to Northern Ireland Political Parties – The Confidentiality Arrangements*', published on 3 August 2010.¹ The Government published its response to this consultation on 17 January 2011.
5. Northern Ireland political parties, like parties elsewhere in the UK, must report donations and loans above a certain threshold to the Electoral Commission. However, in contrast to Great Britain, the Electoral Commission is under a strict statutory obligation not to disclose any information that relates to these donations or loans, including donor identities. These arrangements, which were introduced to protect donors and lenders from intimidation, apply only during the 'prescribed period'. This period began on 1 November 2007 (prior to that the regulatory scheme had been disapplied in respect of Northern Ireland). The period was extended on 1 August 2010 and again on 1 March 2011. The prescribed period is due to expire on 28 February 2013. The Government has laid a further order before Parliament to extend the prescribed period until 30 September 2014 to allow for primary legislation on this issue to be introduced.
6. In its January 2011 consultation response, the Government noted that, while a majority of responses were in favour of moving directly to the system used in Great Britain, there were a number of responses which expressed continued concern about the security implications of such a change. The provisions of this Bill implement the Government's commitment to modify the law gradually to make more information about donations and loans to political parties available to the public, without compromising the security of individuals or businesses, before a move to full transparency.
7. The August 2010 consultation also sought views on the retrospective disclosure of donor information. At present, the details of donations and loans reported to the Electoral Commission during the prescribed period can be made public when that period ends. In response to the consultation, the majority of political parties, as well as the Electoral Commission, acknowledged the need to prevent retrospective disclosure of this information, arguing that those making donations from 1 November 2007 were doing so in the belief that these donations would not be released even when the confidentiality arrangements expired. In its response to the consultation, the Government committed to introducing primary legislation to ensure that the identities of those who made donations and loans during the prescribed period – including any extended periods - would not be released after the expiry of that period.

¹ <http://www.nio.gov.uk/Public-Consultation/Article?id=314>

Clause 1: Donations

8. Clause 1 makes amendments to the Northern Ireland (Miscellaneous Provisions) Act 2006 (“NIMPA”) and the Political Parties, Elections and Referendums Act 2000 (“PPERA”).
9. Subsection (1) makes the temporary provisions inserted into PPERA by section 14 of and Schedule 1 to NIMPA permanent.
10. Subsection (2) inserts a new section 15A into NIMPA, giving the Secretary of State the power to amend or modify the current donations regime to increase (but not to reduce) transparency. It gives the Secretary of State the power to amend, repeal or modify any enactment connected with political donations, provided that the overall effect is to increase transparency. Any secondary legislation made under this power will be subject to the affirmative resolution procedure.
11. Subsection (2) also inserts a new section 15B into NIMPA. This restricts the power of the Secretary of State to increase transparency in relation to “protected information”, which is information from which it is possible to identify a person who made a donation before 1 October 2014 (during the prescribed period). The Secretary of State cannot (a) permit or require the publication of protected information; (b) reduce the maximum penalty for an offence of disclosure of protected information; or (c) allow persons to access protected information in the Electoral Commission’s register. Section 15B does not prevent the Secretary of State from permitting or requiring the publication of other information which would not reveal the identity of a person who made a donation before 1 October 2014. For example, the Secretary of State could require the publication of some information, such as the size of donations, the nationality of donors, or whether the donor was an individual or a corporation.
12. Subsection (3) creates an exception to the provisions preventing disclosure of information reported to the Electoral Commission. Any information contained in reports submitted to the Electoral Commission, including information that would reveal the identity of a person who made a donation before 1 October 2014, can be published if the Electoral Commission has reasonable grounds to believe that the donor has consented to information being disclosed.

Clause 2: Loans

13. Clause 2 makes provision for loans, equivalent to that set out in section 1 for donations.
14. Subsection (1) makes the temporary provisions set out in Schedule 1 to the

Electoral Administration Act 2006 (Regulation of Loans etc: Northern Ireland) Order 2008 (S.I. 2008/1319) permanent.

15. There is no express statement of the Secretary of State's power to increase transparency in respect of the loans regime. This is because, under section 63 of Electoral Administration Act 2006, the Secretary of State can make provision in respect of loans corresponding or similar to any provision relating to donations for political purposes which is made by or which may be made under NIMPA. Accordingly, once the new section 15A and 15B of NIMPA in clause 1(2) are in force in respect of donations, the Secretary of State will have the power to make corresponding or similar provision in respect of loans.
16. Subsection (2) creates an exception to the provisions preventing disclosure of information reported to the Electoral Commission. Any information contained in reports submitted to the Electoral Commission, including information that would reveal the identity of a person who made a loan before 1 October 2014, can be published if the Electoral Commission has reasonable grounds to believe that the lender has consented to information being disclosed.

CLAUSES 3 AND 4: DUAL MANDATES

17. These clauses prevent a member of the Northern Ireland Assembly (a Member of the Legislative Assembly or "MLA") from holding office simultaneously as a MLA and a member of the House of Commons. This practice, commonly known as "double jobbing" has been the source of some criticism, particularly in the wake of the expenses scandal. In its 2009 report on 'MPs' Expenses and Allowances: Supporting Parliament, safeguarding the taxpayer', the Committee on Standards in Public Life examined the issue and came to the following conclusions:

12.18 The holding of multiple mandates, or 'double jobbing' as it is known in Northern Ireland, appears to be unusually ingrained in the political culture there because of:

- *The legacy of 'the Troubles', which discouraged many individuals from getting involved in politics, leaving it to a small minority to participate.*
- *The recent history of political instability, which led the political parties to be fearful of giving up seats in Westminster in case the local devolution settlement collapsed, as it has more than once already.*

12.19 The Committee expressed the view in Chapter 11 of this report that

MPs should not be prohibited from earning income from limited activity outside the House of Commons, provided that the activity does not interfere with the primary role as an MP, is completely transparent to electors and does not present a conflict of interest.

12.20 We do not think these conditions are met in the case of multiple mandates. There is transparency – the issue has been widely aired in the Northern Ireland media. But the Committee questions whether it is possible to sit in two national legislatures simultaneously and do justice to both roles, particularly if the MP concerned holds a ministerial position in one of them.

18. The Committee went on to recommend ‘that the practice of holding dual mandates in both the House of Commons and the devolved legislatures should be brought to an end as soon as possible. Ideally that would happen by the time of the scheduled elections to the three devolved legislatures in May 2011, or failing that by 2015 at the very latest.’ Former Secretary of State for Northern Ireland Owen Paterson pledged to bring an end to the procedure in 2011, and his commitment was reiterated by the current Secretary of State Theresa Villiers in 2012.

Clause 3 – MPs to be disqualified for membership of the Assembly

19. Section 1 of the Northern Ireland Assembly Disqualification Act 1975 (“NIADA 1975”) provides that a person is disqualified for membership of the Assembly who for the time being holds the offices, memberships and employments described in section 1(1). Clause 3(1) of the Bill inserts new section 1(1)(za) into NIADA 1975, adding membership of the House of Commons to the list. The effect is that MPs are disqualified for membership of the Assembly, subject to the exception created in clause 3(2).
20. Clause 3(2) of the Bill provides a limited exception to the disqualification of MPs for membership of the Assembly. Its object is to ensure that a person may stand for election both to the Assembly and to the House of Commons, and then decide which membership to pursue if successfully returned to both. It equally ensures that a person who is already an MP may stand for nomination to the Assembly, and may then choose which membership to pursue if subsequently returned to the Assembly.
21. Clause 3(2) of the Bill accordingly inserts into the NIADA 1975 a new section 1A(1), which provides that a member of the House of Commons is not disqualified for membership of the Assembly for a period of 8 days following his return to the Assembly. This short period of grace is given so that the MP, should he wish to do so, may divest himself of his seat in the Commons in order to pursue membership of the Assembly. Alternatively, the MP may use the grace period to resign his membership as an MLA. If he

does nothing, the MP will automatically be disqualified for membership of the Assembly upon the expiry of the period in section 1A(1) NIADA 1975.

22. It may be that a person who is already an MLA wishes to seek election to the House of Commons. In general, an MLA who chooses to stand for membership of the Commons will, on successful return to Westminster, automatically be disqualified for membership of the Assembly. There is no exception provided in such a case other than that contained in new section 1A(2) NIADA 1975 for persons recently returned to the Assembly. New section 1A(2) ensures that a person who has been recently returned to the Assembly following an election may also take the benefit of the 8 day period of grace. The saving is provided so that a person who finds himself elected both as an MP and an MLA following a combined Assembly and Westminster election has the benefit of the full 8 day period to decide which membership to pursue and to achieve any necessary resignation. Otherwise, it is possible that such a person would be returned as a MLA first, and as an MP sometime after, thus depriving him of the benefit of the full period.
23. Clause 3(2) of the Bill also inserts a new section 1A(3) into NIADA 1975, providing a definition of a “recently returned member of the Assembly”. The effect is that the exception to disqualification will only apply where a person is returned to the Assembly after sending their nomination papers for Westminster but before they are returned as a member of the House of Commons.
24. Clause 3(2) of the Bill further provides, through the insertion of a new section 1A(4) NIADA 1975, that the exceptions in new section 1A(1) and (2) NIADA 1975 will only apply to a person who is returned as a member of the Assembly following an election. This means that a person who is returned to fill a vacancy in the Assembly’s membership via methods prescribed by the Secretary of State under section 35 of the Northern Ireland Act 1998 (“the 1998 Act”), for example by substitution, can not take the benefit of the 8 day period unless that vacancy was filled by the method of election. This is because such a person will have sufficient time under the amended provisions in Articles 6-6B of the Northern Ireland Assembly (Elections) Order 2001 (S.I. 2001/2599) to resign their seat in Westminster before returning a statement of readiness (see paragraphs 27-30 below).
25. Section 37 of the 1998 Act makes provision for the effects of disqualification for membership of the Assembly and gives the Assembly certain powers to provide for relief from disqualification. Clause 3(3) of the Bill makes an amendment to section 37(1) of the 1998 Act to make clearer that the provisions about the effects of disqualification and relief apply where a person has been disqualified under the NIADA 1975 under provision inserted into that Act after the 1998 Act was passed.

26. Clause 3(4) of the Bill makes an amendment to section 47(4) of the 1998 Act. Section 47(4) requires the Assembly to make provision in respect of salaries payable to Assembly members who are also members of the House of Commons. This provision is rendered unnecessary by clause 3 of the Bill, as Assembly members are now effectively disqualified from holding a dual mandate in the House of Commons.
27. Clause 4 of the Bill amends the Northern Ireland Assembly (Elections) Order 2001 (S.I. 2001/2599) (“the 2001 Order”). The 2001 Order (as amended by the Northern Ireland Assembly (Elections) (Amendment) Order 2009 (S.I. 2009/256)) provides for a system of substitutes and nominees to avoid the need for a by-election where the seat of a member of the Assembly falls vacant.
28. By Articles 6 and 6A of the 2001 Order, the Chief Electoral Officer will contact substitutes to fill the vacancies of independent candidates who gave such a list. Clause 4(2) of the Bill will require a person who wishes to be returned under the Article 6 procedure to make a written “statement of readiness”. The person will be required to indicate (as he was previously) that he is willing and able to be returned to the Assembly, but will now in addition be required to state both that he is aware of the provisions of the NIADA 1975 and section 36 of the 1998 Act, and that he is to the best of his knowledge and belief not disqualified for membership of the Assembly. This will ensure that a person may only consent to be returned to the Assembly under the Article 6 procedure when he has divested himself of any disqualifying office, including that of MP. Through the inclusion of a statement regarding disqualification, the statement of readiness now more closely reflects the statement that is given by a candidate when he consents to nomination for election to the Assembly under Rule 8 of the Parliamentary Election Rules (themselves contained in Schedule 1 to the Representation of the People Act 1983) as modified by Schedule 1 to the 2001 Order.
29. Clause 4(3)(a) of the Bill similarly amends article 6B of the 2001 Order (vacancies arising during an Assembly term: members of registered parties) to provide that a member of a registered party who is nominated to fill a vacancy under the procedure in Article 6B of the 2001 Order will be required to make an equivalent “statement of readiness”. Again, this will ensure that a person may only consent to be returned to the Assembly under the Article 6B procedure when he has divested himself of any disqualifying office, including that of MP.
30. Article 6B of the 2001 Order required the nominated person to respond within 7 days to the Chief Electoral Officer’s request that he was willing and able to be returned as a member of the Assembly. Clause 4(3)(b) of the Bill substitutes the 7 day rule with a more flexible period: the person is required to respond within “such period as the Officer considers reasonable”. This

amendment is made so that a person nominated under Article 6B may have sufficient time to divest himself of any disqualifying office (including that of MP) before he is required to make the statement of readiness. In so doing, it brings the period for response to the Chief Electoral Officer's request into line with the period set for responses from substitutes under Art 6 of the 2001 Order.

31. Clause 4(4) of the Bill modifies the statement required from those seeking election to the Assembly, which is governed by Rule 8(3) of the Parliamentary Election Rules as modified by Schedule 1 to the 2001 Order. Previously, a person was required to state that he was not disqualified from membership of the Assembly. The statement is now modified to enable a person to indicate either that he is not disqualified, or instead that he is disqualified, but only by virtue of being an MP. This amendment is necessary to allow an MP to consent to nomination for the Assembly notwithstanding new section 1(1)(za) of the NIADA 1975 introduced by clause 3(1) of the Bill. Clause 4(4) of the Bill also amends the statement to acknowledge the fact that a person may be disqualified under section 36 of the 1998 Act as well as under NIADA 1975.

CLAUSES 5 AND 6: JUSTICE MINISTER

32. These clauses give effect to an agreement between the Northern Ireland political parties to amend the Northern Ireland Act 1998 (the "1998 Act") to change the means by which the Minister of Justice for Northern Ireland (the "Justice Minister") is appointed, and to remove the anomaly whereby the party of which the Justice Minister is a member has one extra seat in the Northern Ireland Assembly (the "Assembly") than that which it would have pursuant to the d'Hondt formula.
33. The 1998 Act sets out the majority of the devolution settlement with Northern Ireland. Whilst certain matters were transferred to the competence of the Assembly in 1998, other matters were transferred later. Of particular note, was the transfer of policing and justice to the Assembly in 2010. This transfer is not straight forward, with related national security matters continuing to be excepted and therefore largely outside the competence of the Assembly. Given this complexity, and the fact that policing and justice remains a politically sensitive issue, the provisions in the 1998 Act for the appointment of the Justice Minister are complex and the Justice Minister is not dealt with in the same way as the other Northern Ireland Ministers.
34. The Justice Minister is not appointed by the d'Hondt procedure, but through nomination by one or more members of the Assembly and approval by cross-community vote. Currently, the incumbent can be removed if a motion is raised to that effect by either the First Minister and deputy First Minister (the

“FM/dFM”) acting together, or 30 or more Assembly members, followed by a majority cross-community vote. The Bill amends this process to give the Justice Minister the same security of tenure as that of the other Ministerial posts, although the process is not exactly the same due to the different appointment system.

Existing law

35. Section 21A of the 1998 Act sets out a number of possible appointment mechanisms for the Justice Minister, one of which may be selected and provided for by an Act of the Assembly. The Assembly enacted legislation in 2010 (the Department of Justice Act (Northern Ireland) 2010) which opted for the mechanism set out in section 21A(3A) of the 1998 Act. The Justice Minister is appointed by virtue of a nomination made by one or more members of the Assembly, and approved by a cross-community vote. Part 1A of Schedule 4A to the 1998 Act applies to this appointment, creating certain differences between this appointment and the appointment of other Northern Ireland Ministers.
36. First, the Justice Minister is appointed after the other Northern Ireland Ministers. The d’Hondt procedure, which ensures that each party is responsible for appointing a number of Ministers in proportion to the number of seats they hold in the Assembly, governs all Ministerial appointments, save for that of the Justice Minister. The Justice Minister’s appointment is made outside the parameters of the d’Hondt procedure, which means that the party from which the Justice Minister is appointed will have an ‘extra’ Ministerial post.
37. Second, the incumbent Justice Minister can be removed if a motion is raised to that effect by either the FM/dFM acting together, or 30 or more Assembly members, followed by a majority cross-community vote. This is in contrast to other Ministers, who are appointed by their party’s Nominating Officer, who has the power to dismiss the incumbent and refill the Ministerial position. The effect of the current provisions is that the position of the Justice Minister is less secure than that of the other Ministers in the Assembly.
38. The Bill amends the appointment procedure to give the Justice Minister the same security of tenure as that of the other Ministerial posts, and to rectify the anomaly in respect of the relationship between the representation of parties in the Assembly and appointment to Ministerial office.

Clause 5: Appointment of Justice Minister

39. This clause makes changes to Schedule 4A to the 1998 Act.
40. Subsection (2) sets out the appointment procedure for the Justice Minister

post, with reference to paragraph 3D(4) to (8) of Schedule 4A to the 1998 Act. The Justice Minister is to be nominated by one or more members of the Assembly and is to be approved by a resolution of the Assembly passed by a cross-community vote (paragraph 3D(4) and (5)). A further nomination can only be made if the initial nomination does not take effect or the nominated person does not take up office within a period specified in standing orders (paragraph 3D(6) and (7) of Schedule 4A). This procedure shall be applied as many times as necessary to secure the office of Justice Minister is filled (paragraph 3D(8)).

41. Subsections (2), (4) and (5) provide for the order in which Ministerial positions are filled. The Justice Minister will now be appointed immediately after the First Minister and deputy First Minister posts are decided upon. This means that the formula for working out the number of Ministerial offices to which each party is entitled can be amended (subsection (3)) to take into account the position of Justice Minister. The effect of this amendment is that the party of which the Justice Minister is a member will no longer have an 'extra' Ministerial position: the Justice Minister post will now be factored into the d'Hondt allocation.
42. Subsection (6) gives a power of veto to the Nominating Officer for the party of which a nominated candidate for the position is a member, by providing that the Nominating Officer must consent to the nomination.
43. Subsection (7) provides for security of tenure. Where the appointed Justice Minister is a member of a political party who was nominated with the consent of a Nominating Officer, that official can now remove the Justice Minister. However, where the Justice Minister is not be a member of a political party, the incumbent can be removed if a motion is raised to that effect by either the FM/dFM acting together, or 30 or more Assembly members, followed by a majority cross-community vote.

Clause 6 – Reappointment of other Northern Ireland Ministers in certain cases

44. This clause deals with the procedures to be followed in the event that the Justice Minister position becomes vacant. The new paragraph 3E means that if the Justice Minister ceases to hold office (otherwise than by exclusion) and the effect is to create a change in the total number of Ministerial offices held by members of a political party, then all Ministers will cease to hold office, and the d'Hondt procedure will be re-run again after a new Justice Minister has been appointed. This is to ensure that any potential anomaly in the number of Ministerial offices held by a political party is avoided.
45. The effect of new paragraph 3E(4) is that if the Justice Minister is dismissed by the Nominating Officer of his party, and there is an eligible member of that party who could fill the position but does not do so, either because the

Nominating Officer does not consent to the nomination, or the potential replacement fails to take up the position, then all the other Ministers will remain in office and d'Hondt will not be re-run. Should the party fail to replace a dismissed Justice Minister with an eligible member from their ranks, then no steps will be taken to redress any imbalance in Ministerial seats which may result.

CLAUSES 7-10: ELECTORAL REGISTRATION AND ADMINISTRATION

46. These clauses give effect to commitments made by the Government following its 20 July 2009 public consultation: *'Improving Electoral Registration Procedures in Northern Ireland'*. The Government published its response to this consultation on 24 November 2009. These clauses also give effect to recommendations made by the Electoral Commission in its October 2011 report on elections in Northern Ireland.
47. A number of measures simplify registration and voting procedures, bringing Northern Ireland closer to the system used in Great Britain. In view of reduced concern about electoral fraud in Northern Ireland, the requirement for electors to have been resident for at least three months is abolished. The prohibition on application for an absent vote during the late registration period is also removed.
48. The Bill also includes provision for a number of matters specific to Northern Ireland. Changes are made to the nationality declaration for overseas electors in order to adequately reflect the provisions of the Belfast Agreement. There is also provision to close a loophole in the law on electoral identity cards.

Clause 7 – Abolition of the 3-month residence requirement

49. The requirement that persons registering as electors in Northern Ireland must have been resident in Northern Ireland for at least three months has been in force in one form or other since 1949. However, it has the effect of disenfranchising a small number of individuals. The requirement to provide evidence of residence also places an additional burden on those wishing to register to vote. The residence requirement is no longer needed to prevent fraud, following the introduction of a system of individual registration in 2002. No objections were made to the proposal to remove it during a public consultation in 2009.
50. Subsection (1) removes the 3-month residency requirement for registration in respect of all elections held in Northern Ireland, including elections to Parliament, the European Parliament, the Northern Ireland Assembly and local government.

51. Subsection (2) makes relevant consequential amendments.

Clause 8 – Registration as an overseas elector: declaration of nationality

52. Section 1 of the Representation of the People Act 1985 (the “1985 Act”) makes provision for the eligibility of persons resident outside the UK to vote at parliamentary elections in the UK (including in Northern Ireland). A person qualifies as an “overseas elector” if certain conditions are met. One of those conditions is that the person is a British citizen (section 1(1)(b)(ii)). Section 2 of the 1985 Act provides for the registration of overseas electors. As part of the registration process, section 2(3)(b) requires an overseas elector to make a declaration that he is a British citizen.
53. The Belfast (Good Friday) Agreement 1998 (the “Agreement”) recognises *“the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose”*. To ensure consistency with the terms of the Agreement, clause 8 allows persons born in Northern Ireland to identify themselves as British citizens or Irish citizens or both when making a declaration under section 2 of the 1985 Act. Clause 8 does not remove the requirement in section 1 of the 1985 Act that persons born in Northern Ireland must have the legal status of British citizens in order to register as overseas electors.
54. Subsection (1) inserts subsections (3A), (9) and (10) into section 2 of the 1985 Act to provide for a possible alternative declaration for persons who are on the electoral register in Northern Ireland. Instead of declaring that they are British citizens, such persons can declare that they are “eligible Irish citizens”.
55. The definition of “eligible Irish citizen” does not encompass all Irish citizens. Instead, “eligible Irish citizen” denotes a person who is an Irish citizen under Irish law, who was born in Northern Ireland and who also qualifies as a British citizen under UK law. In general, under British nationality law, persons born in Northern Ireland before 31 December 1982 will qualify as British citizens, regardless of their parentage; persons born after that date will qualify as British citizens if they have at least one parent who was a British citizen or who was otherwise settled in the United Kingdom at the time of their birth. This results in a slightly broader range of persons being entitled to make a declaration than are covered by the Agreement.
56. Subsection (2) makes amendments to regulation 20 of the Representation of the People (Northern Ireland) Regulations 2008 (the “2008 Regulations”), which reflect the contents of the new alternative declaration available to persons born in Northern Ireland who are on the Northern Ireland electoral register. Eligible Irish citizens are required to provide equivalent evidence

and information to that required of British citizens. There is no additional burden on those who declare themselves to be both British and Irish; such persons can make a choice about which information that they provide.

57. Subsection (3) makes similar amendments to the 2008 Regulations in respect of those who are required to attest overseas electors' declarations. Such persons can also identify themselves as eligible Irish citizens (as defined in the amendment made by subsection (1)(b)) for the purpose of attesting an overseas declaration made by another individual, whether that individual declares himself to be British or Irish.

Clause 9 – Absent Voting

58. Section 13A of the Representation of the People Act 1983 (the “1983 Act”) provides for the procedure to be followed for the alteration of an electoral register (for example, for a change of address or addition to the register). Having received an application for registration, the registration officer must determine whether to allow the application, taking into account any objections. The process of determining each application for registration can take some time. If the registration officer allows an application, he shall issue a notice specifying the appropriate alteration in the register. The alteration will take effect in the register between 2 weeks and 6 ½ weeks after the application has been allowed.
59. Section 13BA of the 1983 Act provides for alterations to be made where an election is pending. In normal circumstances, alterations which would take effect after the ‘final nomination day’ (the 11th working day before the poll) will have no effect for the purpose of that election unless the alterations are due to an appeal or a clerical error. However, there is a “late registration period” between the final nomination day and the 11th calendar day before the poll. Persons who want their details to be altered in the register in time for the election must submit additional evidence to the registration officer before the end of the “late registration period”. The alteration (if approved) will take effect on the 5th or 6th calendar day before the poll, which gives the registration officer time to consider the application and additional evidence before publishing the alteration.
60. There is an additional limitation in Northern Ireland. A person whose registration took place as a result of an alteration made during the ‘late registration’ period is not entitled as an elector to an absent vote at that election and must not be shown in the absent voters list for that election. This restriction has the effect of disenfranchising a small number of people who register or change their details on the register during the late registration period, but are unable to attend a polling station in person.
61. Subsection (1) removes the current bar on those who register during the late

registration period from applying for an absent vote. Persons who register during the late registration period will be able to apply for an absent vote on the same basis as persons who were already on the electoral register and made no alteration during the late registration period. Subsection (2) makes consequential amendments.

62. This clause does not amend the more general closing dates for applications for an absent vote, which are set out in regulation 61 of the 2008 Regulations, paragraph 11 of Schedule 2 to the Local Elections (Northern Ireland) Order 1985 and paragraph 8 of the European Parliamentary Elections (Northern Ireland) Regulations 2004.

Clause 10 – Electoral Identity Cards

63. In order to exercise the right to vote in any election in Northern Ireland, registered persons must provide a prescribed form of identification to the presiding officer or clerk at the polling station before being provided with a ballot paper. One of the acceptable documents that can be produced is an ‘electoral identity card’, which is issued by the Chief Electoral Officer for Northern Ireland under section 13C of the 1983 Act. To obtain an electoral identity card, persons registered (or who are applying to be registered) on the register of parliamentary or local electors in Northern Ireland can submit an application to the Chief Electoral Officer in accordance with the requirements set out in regulation 13 of the 2008 Regulations.
64. Section 13D of the 1983 Act provides that a person who for any purpose connected with the registration of electors provides to a registration officer any false information is guilty of an offence. However, there is a lack of clarity as to whether this provision would cover the provision of false information in an application for an electoral identity card. This is because an application for an electoral identity card might be made when a person is already registered to vote. In addition, an application for an electoral identity card must contain some information that is not required for registration purposes, such as a photograph certified as being a true likeness. Clause 10 closes this potential loophole in the law.
65. Clause 10 inserts section 13CZA into the 1983 Act, which provides that it is an offence to provide false information in connection with an application for an electoral identity card. The offence is similar to the existing offence under section 13D of the 1983 Act, with the same defence open to a defendant, the same evidential burden on the defendant and the same maximum penalty.

CLAUSES 11-13: MISCELLANEOUS

66. These clauses amend various order making powers in relation to Northern Ireland.

Clause 11 – Equality Duties

67. Section 75 of the 1998 Act imposes a statutory duty to promote equality of opportunity on public authorities. Section 75(3) lists a number of public authorities to whom the statutory duty applies and contains powers (but not any obligation) for the Secretary of State to designate by order other persons or bodies as public authorities for that purpose. Currently, the power under section 75 only allows the Secretary of State to make a ‘full’ designation – that is, for all of a person’s functions and without exceptions. The effect of the current law is that even where it might be sensible to designate a person for certain functions only, that option is not available.
68. Clause 11 amends the power of the Secretary of State under section 75 to enable persons to be designated in respect of certain of their functions only or to apply to certain elements of the equality duty only. This means that persons or bodies who it is currently considered cannot be designated in their entirety (because, for example, certain of their functions must be excepted from the duty) can be considered for designation in the future. This clause facilitates designation in a manner similar to that permitted by the Equality Act 2010 in England and Wales.
69. Clause 11 does not alter the position of any persons who have already been designated for the purpose of section 75. It does not identify the persons who might be designated by the Secretary of State in future for certain of their functions only.

Clause 12 – Rules of Court

70. The Bill amends the Judicature (Northern Ireland) Act 1978 to make provision regarding the parliamentary procedure to be followed for rules of court relating to excepted matters. Currently such rules are subject to negative resolution in the Northern Ireland Assembly. The amendment makes them subject to negative resolution of either House of Parliament. This change remedies an oversight in the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (the “2010 Order”).
71. The 1998 Act sets out the majority of the devolution settlement with Northern Ireland. Substantive issues are either excepted (Schedule 2), reserved (Schedule 3) or transferred (everything else). The legislative competence of the Assembly in relation to primary legislation is set out in sections 5-8, providing that the Assembly may legislate on reserved matters, and on excepted matters to the extent that they are ancillary to other provisions dealing with reserved or transferred matters, in both cases with the consent of the Secretary of State.

72. Although many aspects of policing and justice were transferred to the devolved administration in 2010, certain issues were not, and in particular national security and counter-terrorism continue to be excepted. This has resulted in split order-making or rule-making powers in a number of areas, with the Secretary of State (or the Lord Chancellor) retaining the power when it relates to an excepted matter, (and in some instances but not always, when it relates to a reserved matter too), but otherwise the power has passed to a devolved Minister or department, usually the Northern Ireland Department of Justice.
73. One of the rule-making powers devolved under the 2010 Order was the power to approve court rules. The Department of Justice, rather than the Lord Chancellor, shall approve court rules, save where those rules relate to excepted matters. The amendments to the 2010 Order provided that the parliamentary procedure to be followed for all court rules is the negative resolution procedure in the Northern Ireland Assembly. This was an oversight, as it should have provided that rules dealing with an excepted matter are subject to the negative resolution procedure in the Westminster Parliament.
74. Clause 12 rectifies that error in relation to rules of court. It amends sections 53 and 56 of the Judicature (Northern Ireland) Act 1978 to ensure that rules dealing with an excepted matter are subject to the negative resolution procedure in the Westminster Parliament.

Clause 13 – Regulation of Biometric Data

75. Clause 13 makes a minor and technical amendment to paragraph 8 of Schedule 1 to the Protection of Freedoms Act 2012 (the “2012 Act”). Paragraph 8 of Schedule 1 contains two order making powers that enable the Secretary of State to make an order regarding the retention, use and destruction of DNA samples and profiles, fingerprints and footwear impressions (biometric data) in Northern Ireland for excepted or reserved purposes (in particular, in the interests of national security or for the purposes of a terrorist investigation) if an Act of the Northern Ireland Assembly made in 2011 or 2012 makes provision regarding the retention and use of biometric data for transferred (devolved) purposes. The order may also make provision in respect of a transferred matter where that matter is ancillary to an excepted or reserved matter. By virtue of paragraph 8(6) and (7) the order is subject to the affirmative resolution procedure if it amends or repeals primary legislation and to the negative resolution procedure if it does not.
76. Clause 13 amends paragraph 8 of Schedule 1 to the 2012 Act to enable the order to be made by the Secretary of State if the Act of the Assembly is made in 2013 or 2014 (rather than 2011 or 2012). The amendment is necessary

because the Assembly did not pass the relevant legislation before the end of 2012 and because the Assembly is expected to legislate in 2013 or 2014.

PART 6 – FINAL PROVISIONS

Amendments by existing powers

77. The Bill amends certain provisions of subordinate legislation. Clause 14 provides that those amendments are to be treated as having been made under the relevant power to make subordinate legislation. This is to ensure that any such provisions can be amended again by subordinate legislation in future.

Territorial Extent

78. Clause 15 makes provision about extent. The main impact of the Bill's provisions is on Northern Ireland. However, because many of the enactments upon which the Bill operates extend to the whole of the UK, as a technical matter much of the Bill extends to the whole of the UK. The exceptions are provisions modifying enactments with a different extent. Those provisions have the same extent as the enactments being modified.

Commencement

79. Clause 16 provides for the commencement of the clauses in the Bill. Subsection (1) sets out the clauses that will be commenced on Royal Assent. Subsection (2) sets out the clauses that will be commenced two months after Royal Assent. Subsection (3) provides for commencement of clauses 3 and 4 on the first day after the Bill is passed on which the Northern Ireland Assembly is dissolved. Subsections (4) and (5) provide for the remaining provisions to be commenced by order of the Secretary of State.



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ISBN 978-0-10-185632-4



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