

# NORTHERN IRELAND (ST ANDREWS AGREEMENT) ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Preparations for the Restoration of Devolved Government**

##### *Section 1: Preparations for the restoration of devolved government*

24. **Section 1** provides for the creation of a new “Transitional Assembly”. Section 1(1)(a) provides that the members of the Transitional Assembly will be the members of the Northern Ireland Assembly (which is currently suspended under the Northern Ireland Act 2000). Section 1(1)(b) makes clear that the purpose of the Transitional Assembly is to take part in preparations for the restoration of devolved government in Northern Ireland, in line with the strategy set out in the St Andrews Agreement.
25. Subsection (2) of section 1 introduces Schedule 1 to the Act, which makes further provision in relation to the Transitional Assembly. Subsection (3) states that the Act does not alter the operation of section 1 of the Northern Ireland Act 2000 (“the 2000 Act”). This means that direct rule remains in force until the making of a restoration order. Limited exceptions to this are set out in subsection (4), which refers, in particular, to nomination of First and deputy First Ministers to the Northern Ireland Assembly, and full restoration of devolved government and the repeal of the 2000 Act under Schedules 2 and 4.

##### *Section 2: Compliance or non-compliance with the St Andrews Agreement timetable*

26. **Section 2** makes provision for bringing into force Schedules 2 to 4. Schedules 2 and 3 respectively provide for, amongst other things, the restoration, or alternatively, dissolution of the Northern Ireland Assembly. Under subsection (1), if, at any time before 25 March 2007, the Secretary of State considers that there is no reasonable prospect that an Executive will be formed on 26 March 2007, he may make an order bringing Schedule 3 to the Act into force (which would in effect provide for the dissolution of the Assembly and the indefinite postponement of Assembly elections).
27. If the Secretary of State does not make an order under subsection (1) before 25 March 2007, subsection (2) requires him to make a restoration order (under section 2(2) of the 2000 Act), and brings Schedule 2 into force on 26 March 2007. Schedule 4 – which provides for the repeal of the 2000 Act – will come into force on 28 March 2007 so long as an Executive is formed on 26 March 2007.
28. Subsections (3) and (4) provide for a scenario where the Secretary of State has made a restoration order, but it appears to him that not all of the Ministerial offices of the Northern Ireland Executive have been filled by the end of 26 March 2007. In these circumstances, the Secretary of State must make an order under the 2000 Act revoking

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the restoration order and this must come into force on 28 March 2007, at the same time as Schedule 3.

### ***Section 3: Next Northern Ireland Assembly election to be in March 2007 etc***

29. **Section 3** makes provision for the election of the next Assembly. It specifies that the current Assembly (i.e. that elected on 26 November 2003) should be dissolved on 30 January 2007 and sets the date of the poll for the election to the next Assembly as 7 March 2007.
30. Subsections (2) and (3) disapply Article 7 of the **Northern Ireland Assembly (Elections) Order 2001** (“the Elections Order”) (S.I. 2001/2599). The Elections Order makes provision for cases where the Presiding Officer of the Assembly notifies the Chief Electoral Officer (“the CEO”) of a vacancy in the membership of the Assembly, or a court notifies the CEO of a successful challenge to the election of a person to the Assembly. Where the CEO receives such a notification, Article 7 would normally require him to call a by-election for the vacant seat. This requirement is disapplied by section 3 in respect of any vacancy which exists between the passing of the Act (including any vacancy that has arisen before the passing of this Act) and the date of the next Assembly election. This affects the Transitional Assembly membership because of the effect of section 1(1)(a).

### ***Section 4: Remuneration of members of the Northern Ireland Assembly***

31. This section authorises the payment of salaries and allowances to former Members of the Assembly after it is dissolved in January 2007 and before the March 2007 election and the payment of salaries and allowances to members elected in March 2007.
32. Specifically, subsection (2) enables provisions to be made for former Members to receive salaries and allowances up to the last nomination day for the March 2007 election, and, if nominated, up to the end of the day of the poll for that election.
33. Also, subsections (3) and (4) ensure that members of the Assembly who are elected in March 2007 can receive their salaries from the date (following the election) on which they take their seats in the Transitional Assembly.

## **Part 2: Amendments of the Northern Ireland Act 1998 Etc**

### **Ministerial conduct**

#### ***Section 5: The Executive Committee and the Ministerial Code***

34. Section 20 of the 1998 Act makes provision for there to be an Executive Committee of the Northern Ireland Assembly and specifies that the functions of that Committee shall be those set out in paragraphs 19 and 20 of Strand One of the Belfast Agreement. This means that the Executive Committee is to provide the forum for the discussion of, and agreement on, issues which cut across the responsibilities of two or more Ministers, for prioritising executive and legislative proposals and for recommending a common position where necessary (e.g., in dealing with external relationships). It is also charged with seeking to agree each year, and review as necessary, a programme for government incorporating an agreed budget linked to policies and programmes.
35. Consistent with the St Andrews Agreement, section 5(1) adds a new subsection to section 20 to provide that the Committee shall also be the forum for discussion and agreement on significant or controversial matters that are clearly outside the scope of the programme of government agreed by the Committee, or significant or controversial matters that the First and deputy First Ministers acting jointly have determined to be matters that should fall to the Executive Committee.

36. Subsection (2) of section 5 inserts a new section 28A into the 1998 Act. The new section provides for a statutory Ministerial Code and places a duty on all Ministers and junior Ministers to act in accordance with the provisions of that Code (new section 28A(1)). In this new section, “Ministerial Code” refers either to the Ministerial Code prepared by the Transitional Assembly under paragraph 4 of Schedule 1 to this Act or to any replacement Code prepared and approved by the Northern Ireland Assembly in accordance with section 28A. Subsections (3) and (4) of section 28A set out that any draft amendments to the Code, or any draft replacement Code prepared by the Executive Committee, must be laid before the Assembly for approval and shall only have effect once approved by a cross-community vote in the Assembly.
37. Breach of the duty to act in accordance with the Ministerial Code would constitute a breach of the pledge of office, and so where a Minister or junior Minister has not acted in accordance with the Code it would be open to the Assembly to impose any sanction available to them for breach of the pledge. The available sanctions are censure, reduction of remuneration and financial assistance, and exclusion from Ministerial office.
38. Subsections (5) to (9) of new section 28A relate to the content of the Code, and specify that the Code must contain certain provisions in relation to Ministerial accountability to the Executive.
39. Subsection (5) of new section 28A sets out that the Code must contain a provision to require all Ministers and junior Ministers to bring to the attention of the Executive Committee any matter that ought to be considered by the Committee under subsection (3) or (4) of section 20 of the 1998 Act. This new provision is not intended to alter an individual Minister’s authority in his area of responsibility, but rather to ensure that Ministerial decisions do not contravene any collective position agreed by the Executive Committee on a matter that falls to them by virtue of section 20 of the 1998 Act.
40. Subsection (6) of new section 28A builds on subsection (5) and requires the Code to set out a procedure to enable a Minister to determine whether any Ministerial decision that he has taken or is about to take relates to a matter that ought to be considered by the Executive Committee under section 20 of the 1998 Act. It is intended to provide clarity for Ministers, primarily to avoid them breaching the provisions of the Code inadvertently. It does not affect the Executive’s competence at the expense of individual Ministers’ executive authority within their areas of responsibility. The Code, as at present, will determine what is and is not, for the Executive, in line with the provision of paragraphs 19 and 20 of Strand One of the Belfast Agreement and the new section 20(4) of the 1998 Act.
41. Subsection (7) of new section 28A requires the Code to put in place procedures for the Executive Committee in relation to the taking of decisions and in relation to the Committee’s consideration of decision papers that are due for consideration by the North-South Ministerial Council or by the British-Irish Council.
42. Subsection (8) of new section 28A requires the Code to place a duty on the First and deputy First Ministers, as chairmen of the Executive Committee, to seek to facilitate and encourage consensus within that Committee where possible. Where consensus cannot be reached on a given issue a vote may be taken and it will be open to any three members of the Committee to require that the vote should require cross-community support in the Committee.
43. Subsection (9) of new section 28A provides that the Code may also include other provisions that the Executive Committee thinks fit (subject, of course, to any Assembly cross-community approval required under subsection (4)).

44. Subsection (10) provides that a Minister or junior Minister does not have authority to take any decision outwith the procedures set out in the Ministerial Code under subsection (5).

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

45. Section 6 inserts a new section 28B into the 1998 Act, to establish a new procedure by which a Ministerial decision may be referred to the Executive Committee for consideration.
46. This new section applies where thirty MLAs raise a petition of concern in the Assembly that a Ministerial decision may have been taken in contravention of the Ministerial Code or that it relates to a matter of public importance. The decision can only be referred to the Committee once under the provisions set out in this section.
47. New section 28B(3) of the 1998 Act places a duty on the Presiding Officer to refer the Ministerial decision to the Executive Committee for consideration, if he has first both consulted the parties and certified that the decision relates to a matter of public importance. These two conditions, along with the bar on repeat referrals, offer protection against the vexatious or malicious exercise of the referral power. Subsection (5) establishes a time limit on referrals and specifies that any referral to the Executive Committee under this section must be made within seven sitting days of the decision being taken, or, where appropriate, within seven sitting days of the day on which the decision was notified to the Assembly.
48. Subsection (4) of section 28B of the 1998 Act requires the Executive Committee to consider any referral under this section and then notify the Presiding Officer whether in its view the decision was taken in contravention of the Code, whether it relates to a significant or controversial matter and what, if any, action the Committee intends to take or has taken.
49. Section 28B does not specify what action the Committee can take. However, if it concluded that the decision was taken in breach of the Code, it could propose a motion (to be passed only with cross-community support) that any of the sanctions for breach of the pledge of office available under the 1998 Act be imposed upon the relevant Minister.
50. Subsection (6) specifies that the Committee must complete its consideration of any decision within seven sitting days of the referral.

### ***Section 7: Pledge of office***

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

## **Ministerial appointments**

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

52. Section 8 puts in place new arrangements for appointing the First and deputy First Ministers following an Assembly election. Subsection (1) substitutes new sections 16A, 16B and 16C for existing section 16 of the 1998 Act. These provisions need to be read in conjunction with section 11 and, in particular, the new section 29B.
53. The new arrangements for filling the positions of First and deputy First Ministers after an election are provided for in the new section 16A.

54. Under the new section 16A, the First Minister is nominated by the largest party within the largest political designation (see new section 16A(4)); the deputy First Minister is nominated by the largest party within the next largest designation (see section 16A(5)). (“Designation” is the term used to refer to the group of MLAs who have designated themselves as “Nationalist” or “Unionist” or “Other” – see new section 16C.) Once these nominations have been made, the d’Hondt procedure for filling Ministerial offices, set out in section 18 of the 1998 Act, is run. These procedures take place within seven days following the first meeting of the Assembly after an election (new section 16A(3)) and may be re-run if the individuals nominated do not take up office within a period to be specified in standing orders (new section 16A(6) and (7)).
55. New section 16A(9) provides that the people nominated for the offices of First Minister and deputy First Minister cannot take up office until they have each affirmed the terms of the pledge of office. New section 16A(11) sets out arrangements that allow the holder of either office to designate a Northern Ireland Minister to carry out his functions if he is absent or incapacitated; but this can only be for a maximum of six weeks.
56. New section 16B applies where a vacancy arises in the office of First or deputy First Minister otherwise than following an Assembly dissolution or election. As at present, either the First Minister or the deputy First Minister may resign at any time by notice in writing to the Presiding Officer (new section 16B(1)(a)), and will also cease to hold office if he ceases to be a Member of the Assembly (new section 16B(1)(b)). If one of the office holders ceases to hold office, the other technically does as well (because the offices are jointly operated -- see new section 16B(2)(a)) but he may continue to exercise the functions of the office to ensure continuity of government (new section 16B(2)(b)). The procedure for filling vacancies where this section applies mirrors the procedure set out in new section 16A for filling the offices after an election.
57. The new section 16C makes supplementary provision for the appointment of the First and deputy First Ministers. It clarifies who is entitled to make nominations on behalf of a party (subsection (1) defines the “nominating officer” in line with the provisions of the Political Parties, Elections and Referendums Act 2000), defines party designation (new section 16C(3)) and sets out how party size and designation size are calculated (new section 16C(2), (4) and (5)).
58. New section 16C(6) deals with the arrangements that apply if the largest party within the largest designation is not the largest party within the Assembly. In such circumstances, the responsibility for nominating the First Minister falls to the largest party within the Assembly, with the largest party in the largest designation nominating the deputy First Minister.
59. New section 16C(7) to (12) deals with the arrangements that apply if a party is entitled to make nominations under new section 16A but its members have been excluded from holding Ministerial office under section 30(2) or 30A(5) of the 1998 Act. The size of the party is counted as nil, so that the party’s right to nominate the First or deputy First Minister passes to the next largest party within the same designation (new section 16C(7) and (8)). The calculation of designation size is not affected.
60. New section 16C(9) provides that the incumbent First and deputy First Ministers both cease to hold office if either of their predecessors ceased to hold office as a result of an exclusion order under section 30(2) or 30A(5) and that period of exclusion comes to an end (unless any period of exclusion of the party under the other provision has not come to an end). The procedure in new section 16B will be used to fill the offices.
61. New section 16C(11) and (12) defines the time periods that are to apply to the foregoing subsections. New section 16C(13) provides for standing orders to make further provision as to the procedures to be followed in making nominations under new sections 16A and 16B.

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62. **Section 8(2)** provides for the consequential amendments set out in Schedule 5 to have effect.

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

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

**Committees**

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

64. **Section 10** makes amendments to section 29 of the 1998 Act to provide for the establishment of a statutory committee to advise and assist the First and deputy First Ministers in the formulation of policies in relation to their responsibilities as the Ministers jointly in charge of the Office of the First Minister and deputy First Minister. The effect of this section is to put the former non-statutory “Committee of the Centre”, which was in operation prior to the suspension of the Northern Ireland Assembly, on a statutory footing.

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

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

## **NSMC and BIC**

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

69. **Section 12** substitutes new sections 52A, 52B and 52C for section 52 of the 1998 Act, which deals with the North-South Ministerial Council and the British-Irish Council.
70. New section 52A(1) places a duty on the First and deputy First Ministers to ensure that the Executive Committee and Assembly are made aware of the date and agenda of forthcoming meetings of the NSMC or BIC and of the name of the Ministers or junior Ministers who are to attend the meeting.
71. New section 52A(2) provides that a Minister or junior Minister with responsibility for a matter included on the agenda for a meeting of either the NSMC or BIC shall be entitled to attend and participate in the meeting. He may also, under new section 52A(3), nominate another Minister or junior Minister to attend in his place. The responsible Minister or junior Minister is required (under new section 52A(4) and (6)) to notify the First and deputy First Ministers as to whether he intends to attend the meeting or to nominate someone to attend in his place, or neither. Where the First and deputy First Ministers haven't received notification under the section that the responsible Minister or junior Minister or a substitute will attend the meeting, new section 52A(5) places a duty on the First and deputy First Ministers to nominate someone to attend. The First and deputy First Ministers are also obliged, as necessary, to make nominations of other Ministers or junior Ministers to attend to ensure cross-community participation in the meeting (see section 52A(7)).
72. New section 52A(8) and (9) provides that when a matter for discussion at either Council is one that ought to be considered by the Executive Committee (by virtue of section 20(3) or new section 20(4) of the 1998 Act), the First Minister and deputy First Minister may attend the meeting, in addition to the Minister or junior Minister with responsibility for the matter or a Minister or junior Minister nominated under new section 52A(3) or (5).
73. New section 52B(1) and (2) requires Ministers and junior Ministers to participate in NSMC and BIC meetings they are attending. New section 52B(3) requires the responsible Minister or junior Minister to ensure that any other Minister or junior Minister attending an NSMC or BIC meeting in his place has access to whatever information is necessary to enable that person to participate fully in the meeting. However, if the responsible Minister or junior Minister has provided insufficient information to enable the nominated Minister or junior Minister's full participation, new section 52B(4) makes provision for the First Minister and deputy First Minister acting jointly to request the information. The responsible Minister or junior Minister is obliged to comply with that request.
74. New section 52B(5) authorises a person who has been nominated to attend a meeting on behalf of another Minister or junior Minister to enter into arrangements and agreements on his behalf. New section 52B(6) provides that any Minister or junior Minister attending an NSMC or BIC meeting must act in accordance with any relevant decisions of the Assembly or Executive Committee, taken within their existing competence.
75. New section 52C makes supplementary provision for the operation of new sections 52A and 52B, including providing for the First and deputy First Ministers acting jointly to determine which Minister or junior Minister has responsibility for a matter in the event of there being a dispute. It also places a duty on Ministers and junior Ministers who attend meetings of either Council to make an oral report (unless standing orders authorise it to be made in writing) to both the Assembly and Executive Committee.

## **Miscellaneous**

### ***Section 13: Community designation***

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

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

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

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

78. **Section 15** of the Act inserts a new section 28D into the 1998 Act. Section 28D places a duty on the incoming Executive Committee to adopt a strategy relating to the enhancement and protection of the development of the Irish language and also to adopt a strategy relating to the enhancement and development of the Ulster Scots language, heritage and culture.
79. Subsection (3) of new section 28D of the 1998 Act provides for the Executive Committee to review and revise these strategies.

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

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

### ***Section 17: Vacancy in the Assembly***

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

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

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



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- whether a request is likely to be made before 1 May 2008 that responsibility for such matters should be devolved.

The Secretary of State must lay the report before Parliament.

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

### ***Section 19: Minor and consequential amendments***

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

## **Part 3: Other Amendments**

### **Policing**

#### ***Section 20: District policing partnerships***

87. **Section 20** gives effect to Schedules 8 and 9 which make provision in relation to district policing partnerships, including Belfast sub-groups.

### **Education**

#### ***Section 21: Amendment of Education (Northern Ireland) Order 2006 etc***

88. **Section 21** amends the Education (Northern Ireland) Order 2006 in relation to the abolition of academic selection.
89. Currently, the Education (Northern Ireland) Order 2006 includes provisions which prohibit the use of academic ability as an admissions criterion but defers the provisions’ commencement and makes them subject to an affirmative resolution of the Assembly, provided the Assembly is restored by 24 November. Subsection (1) of section 21 further defers the commencement of the provisions, in line with the St Andrews Agreement timetable.
90. In the event of the repeal of the Northern Ireland Act 2000 under Schedule 4 to this Act, commencement of the provisions prohibiting academic selection will be subject to an affirmative resolution of the Assembly. However if Schedule 3 to this Act is invoked, the provisions will come into operation on the date on which Schedule 3 comes into force. In either case the prohibition will take effect only in relation to admissions on or after 31 July 2010.
91. **Section 21** also provides that, if the Northern Ireland Act 2000 is repealed under Schedule 4, schools admissions regulations may make different provision for different descriptions of schools. This will ensure that a restored Assembly’s options to agree new admissions arrangements are not constrained by a requirement for all types of schools to use the same types of admissions criteria.

## **Part 4: Supplemental**

### ***Section 22: Repeal of the 2006 Act***

92. **Section 22** repeals the Northern Ireland Act 2006 in its entirety. Without its repeal, the provisions of Schedule 3 to that Act would have come into immediate effect on 25 November 2006, with the result that the next election of the Northern Ireland Assembly would have been postponed indefinitely.

### ***Section 23: Power to make consequential provision etc***

93. **Section 23** provides for the Secretary of State to make by order any supplementary, incidental or consequential provision and any transitional or saving provision that may be needed as a result of the Act. The power is mainly intended to be used to make any changes that may be needed in consequence of the coming into force of Schedule 2 or 3, and for the transitional or savings provision that might be required as a result of the repeal of the 2000 Act.

### ***Section 24: Parliamentary procedure for orders under section 23***

94. **Section 24** provides for the affirmative resolution procedure, with the possibility of expedition, to apply to instruments made under section 23 if they contain amendments or repeals of Acts or Northern Ireland legislation. Otherwise, the negative resolution procedure applies.

### ***Schedule 1: the Transitional Assembly***

95. **Schedule 1** makes provision relating to the operation of the Transitional Assembly. Paragraph 1(1) provides that the Presiding Officer will have the authority to specify when and where the Transitional Assembly will meet and that the Assembly must meet on 24 November 2006. Paragraph 1(2) provides that the Secretary of State may instead direct the Transitional Assembly to meet at a certain time and place. It is envisaged that paragraph 1(2) will be used only where it appears necessary to ensure the successful operation of the Transitional Assembly.
96. **Paragraph 2(1)** provides that proceedings in the Transitional Assembly will be conducted in accordance with the standing orders (as defined in paragraph 9). Paragraph 2(2) provides that the Secretary of State may direct that proceedings are conducted differently; again it is envisaged that this provision will only be used where necessary to ensure the successful operation of the Transitional Assembly.
97. **Paragraph 3** provides for proceedings in the Transitional Assembly to include the nominations for the offices of First and deputy First Ministers of the Northern Ireland Assembly. Both Ministers would take up office when the Northern Ireland Assembly is restored. Paragraph 3(2) makes clear that the nominations may still take place despite the Northern Ireland Assembly being suspended under the 2000 Act.
98. **Paragraph 4** requires the Transitional Assembly to prepare a draft Ministerial Code before 24 March 2007. It specifies that any draft Code prepared under this paragraph must comply with the requirements set out in subsections (5) to (8) of new section 28A of the 1998 Act and that, if a draft Code has been approved before 24 March 2007 under the process set out in sub-paragraph (3) (that is, with cross-community support) it shall become the statutory Ministerial Code for the Northern Ireland Assembly. Future amendment or replacement of the Code would fall to be made under subsection (3) and (4) of new section 28A of the 1998 Act.
99. **Paragraph 4(5)** places a duty on the Secretary of State to prepare a draft Ministerial Code, in the event of failure on the part of the Transitional Assembly to prepare and approve the draft Ministerial Code before 24 March 2007. Any Code thus prepared

would become the Ministerial Code required by new section 28A of the 1998 Act, until amended or replaced by a Code under subsection (3) and (4) of that section.

100. [Paragraph 4\(6\)](#) sets out the requirements of a draft Ministerial Code prepared by the Secretary of State under sub-paragraph (5) and provides that such a Code must, so far as is practicable, be in the form of the former, non-statutory Ministerial Code which applied to members of the Executive Committee of the Northern Ireland Assembly immediately prior to suspension, but subject to any parts of the draft Code approved by cross-community support in the Transitional Assembly prior to 24 March 2007. In addition this Code must comply with the requirements set out in subsections (5) to (8) of section 28A of the 1998 Act. The Secretary of State would have no discretionary powers to include any provision in a draft Code under sub-paragraph (5) other than those mentioned above.
101. [Paragraph 5](#) requires the Transitional Assembly to prepare draft standing orders for the Northern Ireland Assembly before 24 March 2007. It specifies that if the draft standing orders are approved before that date under the process set out in sub-paragraph (3) (that is, with cross-community support) they shall become standing orders of the Northern Ireland Assembly.
102. [Paragraph 5\(4\)](#) places a duty on the Secretary of State to prepare draft standing orders, in the event of failure on the part of the Transitional Assembly to prepare and approve draft standing orders before 24 March 2007. The standing orders thus prepared would become the standing orders of the Northern Ireland Assembly, until amended or replaced by the Northern Ireland Assembly under section 41 of the 1998 Act.
103. [Paragraph 5\(5\)](#) sets out requirements for any draft standing orders prepared by the Secretary of State under sub-paragraph (4). It provides that these standing orders must, so far as is practicable, be in the form of the former standing orders of the Northern Ireland Assembly immediately prior to suspension, but subject to any amendments to the draft standing orders approved by cross-community support in the Transitional Assembly prior to 24 March 2007. In addition the standing orders must comply with the requirements set out in the 1998 Act (as it is to have effect on or after 26 March 2007) and may include other provisions.
104. [Paragraph 6\(1\)](#) provides that the Transitional Assembly will have a Presiding Officer and no more than three deputy Presiding Officers. Paragraph 6(2) and (3) provides that the Presiding Officer and deputy Presiding Officers of the Transitional Assembly will be those that held those offices in the Assembly established by the Northern Ireland Act 2006 immediately before Schedule 1 came into force.
105. [Paragraph 6\(4\)](#) provides that the Transitional Assembly may elect a person to fill any vacancy in the office of Presiding Officer or deputy Presiding Officer or replace a current office-holder if members believe that he/she is unable, unfit or unwilling to perform his/her functions. Paragraph 6(5) provides that any such election must be by cross-community vote (as defined in paragraph 11). Paragraph 6(6) provides that the Secretary of State may appoint a Presiding Officer or deputy Presiding Officer if a vacancy has arisen and the Transitional Assembly have not appointed someone to fill the vacancy within two weeks. If the Secretary of State believes that a Presiding Officer or deputy Presiding Officer is unfit, unable or unwilling to perform his/her functions, and the Officer has not been replaced by the Transitional Assembly within two weeks, under sub-paragraph (7) the Secretary of State may appoint a person to replace the Officer.
106. [Paragraph 7](#) provides that the Secretary of State must ensure the provision of staff, premises and other facilities, with sub-paragraph (2) providing for the cost of this to be met out of the Consolidated Fund of Northern Ireland. Paragraph 8 provides for any statement made by a member for the purposes of the Transitional Assembly to be privileged from action for defamation, unless proved to have been motivated by malice.

107. **Paragraph 9** deals with the standing orders of the Transitional Assembly (as opposed to the draft standing orders for the Northern Ireland Assembly that paragraph 5 provides for). Paragraph 9(2) provides that the initial standing orders shall be determined by the Secretary of State and notified to the Presiding Officer or any deputy Presiding Officer. Paragraph 9(4) provides that the Transitional Assembly may amend or replace them, but cannot do so without cross-community support (as defined in paragraph 11). Paragraph 9(3) provides that the Secretary of State may add to or amend the standing orders but cannot do so in a manner inconsistent with any amendment made by the Transitional Assembly under paragraph 9(4). Paragraph 9(5) provides that the standing orders may include provisions similar to those of the Northern Ireland Assembly (under section 41 of the 1998 Act) or any direction made by the Secretary of State under paragraph 4 of Schedule 1 to the Northern Ireland Act 2006.
108. **Paragraph 9(6)** provides that the standing orders may include provision under paragraph 5 of Schedule 6 to the 1998 Act (as amended by section 17 of the Act) which deals with any vacancy in the Assembly.
109. **Paragraph 9(7)** also makes clear that any provision made by the standing orders for the purposes of nominating a First and deputy First Minister under paragraph 3, may include provision which is similar to that included in sections 16A to 16C of the 1998 Act (as inserted by section 8 of the Act).
110. **Paragraph 9(8)** provides that the standing orders may cater for any additional nominations that are made under paragraph 3 of Schedule 1 if a nomination made under paragraph 3 ceases to have effect.
111. **Paragraph 10(1)** provides that persons who are members of the Assembly established by the 2006 Act, immediately before Schedule 1 comes into force, will be deemed to have signed the roll of membership in the Transitional Assembly. Similarly, paragraph 10(2) provides that those same members will be deemed to have designated themselves Nationalist, Unionist or Other in the Transitional Assembly in line with their previous designation in the Assembly established by the Northern Ireland Act 2006.
112. **Paragraph 11** provides the definition of “cross-community support” referred to elsewhere in the Schedule.

### ***Schedule 2: Restoration of Devolved Government on 26 March 2007***

113. **Schedule 2** will come into force automatically on 26 March 2007, unless the Secretary of State has brought Schedule 3 into force before that date (see section 2). Paragraph 2(1) ensures that when a restoration order under section 2(2) comes into force, those who previously held Ministerial office (and certain other offices) at the time of suspension will not resume that office. Paragraph 2(2) and (3) makes clear that those nominated under paragraph 3 of Schedule 1 will hold the offices of First Minister and deputy First Minister when the restoration order comes into force. However, paragraph 2(4) is clear that those Ministers cannot take office until they have affirmed the pledge of office. Paragraph 2(5) requires the other Ministerial offices of the Northern Ireland Assembly to be filled by applying section 18(2) to (6) of the 1998 Act (i.e. the d’Hondt mechanism) on 26 March 2007. When d’Hondt is run, paragraph 2(6) of the Schedule will require that it be the first day on which the Transitional Assembly meets following the election that is used to determine the number of Assembly seats held by members of the parties.
114. **Paragraph 3** provides that the Presiding Officer and deputy Presiding Officers of the Transitional Assembly immediately before restoration shall be deemed to have been elected Presiding Officer and deputy Presiding Officers of the Northern Ireland Assembly (under section 39(1) and (2) of the 1998 Act). This means that the Northern Ireland Assembly need not elect a Presiding Officer or deputy Presiding Officers as its first business, but may choose to replace them at any point.

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115. [Paragraph 4\(1\)](#) provides that the restoration order under section 2(2) may make any other necessary provision required in order to carry forward the preparations for devolution undertaken by the Transitional Assembly members, and treat them as having been undertaken by the Northern Ireland Assembly. For example, it could be used to avoid the need for members to sign the Roll again. [Paragraph 4\(2\)](#) disapplies section 2(3) of the 2000 Act, which provides that the Secretary of State must take account of a review conducted under the 2000 Act. This is to ensure that the restoration order can be made quickly.
116. [Paragraphs 5 and 6](#) provide for modifications to how “d’Hondt” is run for the first time after 26 March 2007, under both section 29(3) of the 1998 Act (relating to Assembly Committees) and paragraph 7(7) of Schedule 1 to the Police (Northern Ireland) Act 2000 (relating to political members of the Northern Ireland Policing Board). In both Acts, the meaning of S is changed so that the day when the Assembly is considered to have first met is deemed to be the first day that the Transitional Assembly meets after the 7 March election.
117. [Paragraph 7](#) provides that section 1(1) and (2) and Schedule 1 shall be repealed when Schedule 2 comes into force. This will ensure that the Transitional Assembly will cease to exist on 26 March 2007.

### ***Schedule 3: Non-Compliance With the St Andrews Agreement Timetable***

118. [Schedule 3](#) makes provision for the situation where an Executive is not formed in accordance with Schedule 2 or, before 25 March 2007, the Secretary of State considers there is no reasonable prospect that it will be formed. [Paragraph 1](#) of Schedule 3 provides for the dissolution of the Northern Ireland Assembly either side of the election provided for in section 3.
119. [Paragraph 2](#) substitutes section 31(2) to (2D) of the 1998 Act. It provides that the next Northern Ireland Assembly election shall not be held until such time as the Secretary of State specifies by order. New section 31(2)(a) provides that, if Schedule 3 comes into force before the election provided for in section 3, then that election will be indefinitely postponed. New section 31(2)(b) provides that, if Schedule 3 comes into force after the election provided for in section 3, then it will be the next election under section 31 of the 1998 Act that will be indefinitely postponed (currently scheduled for May 2011).
120. The date of the rescheduled election, by virtue of new section 31(2A) of the 1998 Act, must be after the date specified under section 31(1) of the 1998 Act (that is, the first Thursday of May 2007 or May 2011).
121. New section 31(2B) to (2D) of the 1998 Act provides for the order to make amendments the Secretary of State considers appropriate and specifies that these may include: amending provisions of Acts (other than the 1998 Act) and of Northern Ireland legislation; making provision modifying the duties of the Chief Electoral Officer for Northern Ireland; and making any supplementary, incidental or consequential provision.
122. [Paragraph 3](#) sets out the provisions of this Act that would be repealed if Schedule 3 came into force: section 1(1) and (2) and Schedule 1, providing for the end of the Transitional Assembly; section 3(1), ensuring that there would be no election; Schedules 2 and 4, ensuring that there would be no immediate restoration and that the 2000 Act would remain in force; and Part 2 (including Schedules 5 to 7) ensuring the repeal of those provisions of the Act that would make amendments to the 1998 Act relating to, amongst other things, changes to the institutions.

### ***Schedule 4: Repeal of the Northern Ireland Act 2000 on 28 March 2007***

123. [Schedule 4](#) provides for the repeal of the 2000 Act, which provides the current legislative basis for suspension of the Northern Ireland Assembly (see also section 2(5)).

Paragraph 2 contains some saving provisions needed as a result of the repeal of the 2000 Act. Paragraph 2(10) makes clear that the inclusion of paragraph 2(1) to (8) is not meant to limit the scope of consequential, transitional or saving provision that may be made by an order under section 23 of the Act.

124. Sub-paragraphs (1) and (2) of paragraph 2 largely replicate subsections (8) to (10) of section 3 of the 2000 Act. Paragraph 2(1) provides that the Northern Ireland Assembly shall not make a determination under section 47 of the 1998 Act (Northern Ireland Assembly salaries and allowances) in respect of any period of suspension, and paragraph 2(2) provides that the Northern Ireland Assembly also cannot annul or revoke any instrument made during suspension.
125. Sub-paragraphs (3) and (4) of paragraph 2 are designed to provide certainty in relation to legislation made during the period of Northern Ireland Assembly suspension. Paragraph 2(3) provides that the restoration order and the repeal of the 2000 Act will not affect the operation (on or after the coming into force of the restoration order) of Orders in Council that were made under paragraph 1(1) of the Schedule to the 2000 Act during suspension (that is, Orders on matters which are the responsibility of the Northern Ireland Assembly under the 1998 Act). Paragraph 2(4) provides that such Orders in Council should be read as Acts of the Northern Ireland Assembly so far as the context permits this (largely replicating paragraph 2(1) of the Schedule to the 2000 Act).
126. [Paragraph 2\(5\) to \(7\)](#) similarly provides that orders and determinations made under sections 6 and 7 of, or paragraph 9 of the Schedule to, the 2000 Act are not affected by the repeal of the 2000 Act. Paragraph 2(6) is intended to ensure that any consequential, transitional or saving provision included in the restoration order continues to operate despite the repeal of section 7(2) of the 2000 Act.
127. [Paragraph 2\(8\)](#) keeps alive the amendment of section 44 of the 1998 Act made by section 9(3) of the 2000 Act. That amendment would otherwise have been repealed as a result of the repeal of the 2000 Act under paragraph 1.
128. [Paragraph 3](#) provides for the repeal of Schedule 3 in its entirety.

#### ***Schedule 5: Executive Selection: Consequential Amendments***

129. [Schedule 5](#) makes consequential amendments in relation to the arrangements for Ministerial appointments provided for in section 8.
130. [Paragraph 2](#) amends section 18 of the 1998 Act to remove the trigger within it to run d'Hondt after an election (because this is superseded by the provisions of the new section 16A) and to bring the definition of "nominating officer" into line with the definition in the Political Parties, Elections and Referendums Act 2000.
131. [Paragraphs 3 to 7](#) make minor consequential amendments to ensure that the cross-references within the 1998 and 2000 Acts reflect the changed arrangements in new sections 16A to 16C.
132. [Paragraphs 8 to 14](#) make consequential amendments to the Northern Ireland (Miscellaneous Provisions) Act 2006, Schedule 2 to which inserted a new Schedule 4A to the 1998 Act.
133. [Paragraph 9](#) modifies section 16A of the 1998 Act by providing that, where the Assembly has established a Department with policing and justice functions in the charge of a Minister elected by resolution of the Assembly, that office is to be filled after the nominations of First and deputy First Minister under new section 16A of the 1998 Act but before the nominations of the Northern Ireland Ministers under section 18 of that Act. Paragraph 11 makes the same provision in relation to circumstances where the Assembly has established such a department in the charge of two Ministers and paragraph 13 does so in relation to circumstances where the Assembly has established such a department with rotation between the Minister and junior Minister. Paragraphs

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10, 12 and 14 make minor consequential amendments to the cross-references within the Schedule.

### ***Schedule 6: Department With Policing and Justice Functions: Nominations Etc of Ministers***

134. [Schedule 6](#) amends Schedule 2 to the Northern Ireland (Miscellaneous Provisions) Act 2006 which inserts new Schedule 4A (department with policing and justice functions) to the Northern Ireland Act 1998.
135. Responsibility for policing and justice matters in Northern Ireland has been reserved to Westminster since the introduction of direct rule in 1972, but the Government has a longstanding commitment to devolve it when circumstances are right to do so. Schedule 4A to the 1998 Act adds three further possible models for a department with policing and justice functions to that already permitted under the 1998 Act. Schedule 6 to the Act amends Schedule 4A, making identical changes to all three of these additional models as follows.
136. New paragraphs 3(3A), 7(3A) and 11(3A) of Schedule 4A to the 1998 Act provide that a member of the Assembly who is a member of a political party cannot be nominated by the First Minister and deputy First Minister to a ministerial post in a department with policing and justice functions without the consent of the nominating officer of the member's political party.
137. New paragraphs 3(9)(d), 7(9)(d) and 11(9)(d) of Schedule 4A to the 1998 Act provide that a Minister of the department with policing and justice functions shall cease to hold office if he is dismissed by the nominating officer of his own party. (Before this change, such a Minister could be dismissed only by the First Minister and deputy First Minister).
138. New paragraphs 3(10A) to (10C), 7(10A) to (10C) and 11(11A) to (11D) of Schedule 4A to the 1998 Act provide that, in circumstances where a Minister ceases to hold office and the appointment of a successor alters the number of ministerial posts held by a political party, thereby distorting the balance achieved by the d'Hondt process, all other Ministers shall cease to hold office and the d'Hondt process shall be run anew. The exception to this rule is in circumstances where a party dismisses its own Minister and declines to nominate a replacement or the nominated replacement does not take up office.
139. New paragraphs 3(14), 7(14) and 11(15) of Schedule 4A to the 1998 Act apply the definition of "nominating officer" set out in section 18(13) of the Northern Ireland Act 1998 (as substituted by paragraph 2(3) of Schedule 5 to the Act) to these provisions.

### ***Schedule 7: Minor and Consequential Amendments Relating to Part 2***

140. [Schedule 7](#) makes a number of minor and consequential amendments to the 1998 and 2000 Acts made necessary by the new and amended sections contained in Part 2 of this Act.

### ***Schedule 8: Reconstitution of District Policing Partnerships***

141. This Schedule sets out revised arrangements for the reconstitution of District Policing Partnerships (DPPs), which it is intended to use in the event that Sinn Fein should decide to support the policing institutions in Northern Ireland before the next local government election. These provisions will be brought into force by a commencement order on a date to be determined by the Secretary of State.
142. [Paragraph 2](#) places a requirement on the Northern Ireland Policing Board to review the membership of each DPP. The Board must consider the political membership, and in particular the balance of political parties prevailing on the date of coming into force of this Schedule. This review must be completed within fifteen days. On completion of the review the Board is required to submit a report of its findings to the Secretary of State

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and any report on a DPP should also be sent to the district council which established that DPP. The Board must also publish a list of the DPPs which it considers should be reconstituted, because the political members of the DPP do not reflect, so far as practicable, the balance of the parties prevailing among the members of the relevant council.

143. Paragraphs 3 and 4 set out the subsequent arrangements for the reconstitution of those DPPs affected by the Board's review. These paragraphs provide for the appointment of new political members and new independent members for those particular DPPs.
144. Paragraph 5 makes supplementary provision. In particular, it enables the Secretary of State to take action if a district council fails to comply with the requirement to reconstitute its DPP.

***Schedule 9: District Policing Partnerships: Belfast Subgroups***

145. This Schedule amends section 19 of and Schedule 1 to the Police (Northern Ireland) Act 2003, bringing Schedule 3A to the Police (Northern Ireland) Act 2000 (Belfast sub-groups) into line with the changes made relating to DPPs by the District Policing Partnership (Northern Ireland) Order 2005.