



# Northern Ireland Act 1998

## 1998 CHAPTER 47

### PART II

#### LEGISLATIVE POWERS

##### *General*

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

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

#### **6 Legislative competence**

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

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

## **7 Entrenched enactments**

- (1) Subject to subsection (2), the following enactments shall not be modified by an Act of the Assembly or subordinate legislation made, confirmed or approved by a Minister or Northern Ireland department—
- (a) the European Communities Act 1972;
  - (b) the Human Rights Act 1998; and
  - (c) section 43(1) to (6) and (8), section 67, sections 84 to 86, section 95(3) and (4) and section 98.
- (2) Subsection (1) does not prevent an Act of the Assembly or subordinate legislation modifying section 3(3) or (4) or 11(1) of the European Communities Act 1972.
- (3) In this Act “Minister”, unless the context otherwise requires, means the First Minister, the deputy First Minister or a Northern Ireland Minister.

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

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

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

- (b) a provision which deals with a reserved matter.

### *Scrutiny and stages of Bills*

## **9 Scrutiny by Ministers**

- (1) A Minister in charge of a Bill shall, on or before introduction of it in the Assembly, make a statement to the effect that in his view the Bill would be within the legislative competence of the Assembly.
- (2) The statement shall be in writing and shall be published in such manner as the Minister making the statement considers appropriate.

## **10 Scrutiny by Presiding Officer**

- (1) Standing orders shall ensure that a Bill is not introduced in the Assembly if the Presiding Officer decides that any provision of it would not be within the legislative competence of the Assembly.
- (2) Subject to subsection (3)—
  - (a) the Presiding Officer shall consider a Bill both on its introduction and before the Assembly enters on its final stage; and
  - (b) if he considers that the Bill contains—
    - (i) any provision which deals with an excepted matter and is ancillary to other provisions (whether in the Bill or previously enacted) dealing with reserved or transferred matters; or
    - (ii) any provision which deals with a reserved matter,he shall refer it to the Secretary of State; and
  - (c) the Assembly shall not proceed with the Bill or, as the case may be, enter on its final stage unless—
    - (i) the Secretary of State’s consent to the consideration of the Bill by the Assembly is signified; or
    - (ii) the Assembly is informed that in his opinion the Bill does not contain any such provision as is mentioned in paragraph (b)(i) or (ii).
- (3) Subsection (2)(b) and (c) shall not apply—
  - (a) where, in the opinion of the Presiding Officer, each provision of the Bill which deals with an excepted or reserved matter is ancillary to other provisions (whether in the Bill or previously enacted) dealing with transferred matters only; or
  - (b) on the introduction of a Bill, where the Bill has been endorsed with a statement that the Secretary of State has consented to the Assembly considering the Bill.
- (4) In this section and section 14 “final stage”, in relation to a Bill, means the stage in the Assembly’s proceedings at which the Bill falls finally to be passed or rejected.

## **11 Scrutiny by the Judicial Committee**

- (1) The Attorney General for Northern Ireland may refer the question of whether a provision of a Bill would be within the legislative competence of the Assembly to the Judicial Committee for decision.

- (2) Subject to subsection (3), he may make a reference in relation to a provision of a Bill at any time during—
  - (a) the period of four weeks beginning with the passing of the Bill; and
  - (b) the period of four weeks beginning with any subsequent approval of the Bill in accordance with standing orders made by virtue of section 13(6).
- (3) If he notifies the Presiding Officer that he does not intend to make a reference in relation to a provision of a Bill, he shall not make such a reference unless, after the notification, the Bill is approved as mentioned in subsection (2)(b).
- (4) If the Judicial Committee decide that any provision of a Bill would be within the legislative competence of the Assembly, their decision shall be taken as applying also to that provision if contained in the Act when enacted.

## **12 Reconsideration where reference made to ECJ**

- (1) This section applies where—
  - (a) a reference has been made under section 11 in relation to a provision of a Bill;
  - (b) a reference for a preliminary ruling has been made by the Judicial Committee in connection with that reference; and
  - (c) neither of the references has been decided or otherwise disposed of.
- (2) If the Assembly resolves that it wishes to reconsider the Bill—
  - (a) the Presiding Officer shall notify the Attorney General for Northern Ireland and the Attorney General of that fact; and
  - (b) the Attorney General for Northern Ireland shall request the withdrawal of the reference under section 11.
- (3) In this section “reference for a preliminary ruling” means a reference of a question to the European Court of Justice under—
  - (a) Article 177 of the Treaty establishing the European Community;
  - (b) Article 41 of the Treaty establishing the European Coal and Steel Community; or
  - (c) Article 150 of the Treaty establishing the European Atomic Energy Community.

## **13 Stages of Bills**

- (1) Standing orders shall include provision—
  - (a) for general debate on a Bill with an opportunity for members to vote on its general principles;
  - (b) for the consideration of, and an opportunity for members to vote on, the details of a Bill; and
  - (c) for a final stage at which a Bill can be passed or rejected but not amended.
- (2) Standing orders may, in relation to different types of Bill, modify provisions made in pursuance of subsection (1)(a) or (b).
- (3) Standing orders—
  - (a) shall include provision for establishing such a committee as is mentioned in paragraph 11 of Strand One of the Belfast Agreement;

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- (b) may include provision for the details of a Bill to be considered by the committee in such circumstances as may be specified in the orders.
- (4) Standing orders shall include provision—
- (a) requiring the Presiding Officer to send a copy of each Bill, as soon as reasonably practicable after introduction, to the Northern Ireland Human Rights Commission; and
  - (b) enabling the Assembly to ask the Commission, where the Assembly thinks fit, to advise whether a Bill is compatible with human rights (including the Convention rights).
- (5) Standing orders shall provide for an opportunity for the reconsideration of a Bill after its passing if (and only if)—
- (a) the Judicial Committee decide that any provision of the Bill would not be within the legislative competence of the Assembly;
  - (b) a reference made in relation to a provision of the Bill under section 11 has been withdrawn following a request for withdrawal under section 12;
  - (c) a decision is made in relation to the Bill under section 14(4) or (5); or
  - (d) a motion under section 15(1) is passed by either House of Parliament.
- (6) Standing orders shall, in particular, ensure that any Bill amended on reconsideration is subject to a final stage at which it can be approved or rejected but not amended.
- (7) References in subsection (5) and other provisions of this Act to the passing of a Bill shall, in the case of a Bill which has been amended on reconsideration, be read as references to the approval of the Bill.

### *Royal Assent*

## **14 Submission by Secretary of State**

- (1) It shall be the Secretary of State who submits Bills for Royal Assent.
- (2) The Secretary of State shall not submit a Bill for Royal Assent at any time when—
- (a) the Attorney General for Northern Ireland is entitled to make a reference in relation to a provision of the Bill under section 11; or
  - (b) any such reference has been made but has not been decided or otherwise disposed of by the Judicial Committee.
- (3) If—
- (a) the Judicial Committee have decided that any provision of a Bill would not be within the legislative competence of the Assembly; or
  - (b) a reference made in relation to a provision of the Bill under section 11 has been withdrawn following a request for withdrawal under section 12,
- the Secretary of State shall not submit the Bill in its unamended form for Royal Assent.
- (4) The Secretary of State may, unless he consents to it, decide not to submit for Royal Assent a Bill containing a provision—
- (a) which the Secretary of State considers deals with an excepted matter and is ancillary to other provisions (whether in the Bill or previously enacted) dealing with reserved or transferred matters; or
  - (b) which the Secretary of State considers deals with a reserved matter,

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if the Bill has not been referred to him under subsection (2) of section 10 (whether by virtue of subsection (3)(a) of that section or otherwise) before the Assembly enters on its final stage.

- (5) The Secretary of State may decide not to submit for Royal Assent a Bill which contains a provision which he considers—
- (a) would be incompatible with any international obligations, with the interests of defence or national security or with the protection of public safety or public order; or
  - (b) would have an adverse effect on the operation of the single market in goods and services within the United Kingdom.

## **15 Parliamentary control where consent given**

- (1) Subject to subsections (2) and (3), a Bill to which the Secretary of State has consented under this Part shall not be submitted by him for Royal Assent unless he has first laid it before Parliament and either—
- (a) the period of 20 days beginning with the date on which it is laid has expired without notice having been given in either House of a motion that the Bill shall not be submitted for Royal Assent; or
  - (b) if notice of such a motion is given within that period, the motion has been rejected or withdrawn.
- (2) Subsection (1) shall not apply to a Bill if the Secretary of State considers that it contains no provision which deals with an excepted or reserved matter except a provision which is ancillary to other provisions (whether in the Bill or previously enacted) dealing with transferred matters only.
- (3) Subsection (1) shall not apply to a Bill if the Secretary of State considers that by reason of urgency it should be submitted for Royal Assent without first being laid before Parliament.
- (4) Any Bill submitted by virtue of subsection (3) shall, if given Royal Assent, be laid before Parliament by the Secretary of State after Royal Assent, and if—
- (a) within the period of 20 days beginning with the date on which it is laid notice is given in either House of a motion praying that the Act of the Assembly shall cease to have effect; and
  - (b) that motion is carried,
- Her Majesty may by Order in Council repeal that Act with effect from such date as may be specified in the Order.
- (5) An Order in Council under subsection (4) may make such consequential and transitional provisions and such savings in connection with the repeal as appear to Her Majesty to be necessary or expedient.
- (6) Any notice of motion for the purposes of subsection (1) or (4) must be signed by not less than 20 members of the House in which it is given; and the period mentioned in that subsection shall be computed, in relation to each House, by reference only to days on which that House sits.