

*These Notes refer to the Northern Ireland Act 2006 (c.17)
which received Royal Assent on 8th May 2006*

NORTHERN IRELAND ACT 2006

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Northern Ireland Act 2006 (c.17) which received Royal Assent on 8th May 2006. They have been prepared by the Northern Ireland Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Northern Ireland institutions, including the Northern Ireland Assembly, have been suspended since October 2002. The Government's proposals, incorporated in this Act, involve bringing together Assembly members to participate in a process to select a Northern Ireland Executive, comprising a First Minister, a deputy First Minister and Northern Ireland Ministers. If the process is successful, full restoration of devolved government will take place.
4. The Act makes provision in relation to tasks of the Assembly members ("the Assembly"), the consequences of selecting an Executive, and the consequences of not doing so.
5. The Assembly members' key task will be to elect people to hold the offices of First and deputy First Ministers ("FM/DFM") and to ensure that the remaining Ministerial portfolios are filled. The Secretary of State may also refer other matters to them to support preparations for devolution.
6. If Assembly members are successful in electing the FM/DFM and nominating Northern Ireland Ministers before 25th November 2006 (and if all those elected or nominated affirm the terms of the pledge of office) the Secretary of State will be able to make an order for full restoration of the devolved institutions. The Secretary of State will make the "restoration order" under the Northern Ireland Act 2000 (c.1) ("the 2000 Act"), which provides the statutory basis for the current suspension. The FM/DFM and other Ministers will then take up office and full restoration of the institutions will take place. The 2000 Act will be repealed on the day after the order takes effect. In order to provide for the institutions to operate on a stable basis for a reasonable period, the Act provides that the next Northern Ireland Assembly elections, currently scheduled for May 2007, will be postponed to May 2008.
7. In the event of failure to elect the FM/DFM and nominate Northern Ireland Ministers (and have them affirm the terms of the pledge of office) before 25th November 2006, the Act provides for the immediate indefinite postponement of the May 2007 election (although the Secretary of State would be able to reschedule the election for sometime after this date). The Assembly, as provided for by the Act, would cease to exist on 25th November and the

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Northern Ireland Assembly elected on 26th November 2003 would be dissolved either in May 2007 (the scheduled date of the next Northern Ireland Assembly election), or at an earlier date if the Secretary of State made an order for this purpose. This reflects Government policy that a further election to a body that is not sitting should not be held. The Government's intention is that members of the Northern Ireland Assembly would cease to be paid (under provisions of the 2000 Act rather than under this Act). Direct rule under the 2000 Act would remain in place.

TERRITORIAL EXTENT

8. The practical impact of the Act is on Northern Ireland. However, because the main enactments on which the Act operates extend to the whole of the UK, as a technical matter the Act extends to the whole of the UK.

TERRITORIAL APPLICATION: WALES

9. The Act does not have any special effect on Wales and does not affect the National Assembly for Wales.

OVERVIEW

10. The Act contains 6 sections and 3 Schedules.
11. Section 1 introduces Schedule 1 and makes provision about functions of the Assembly members. Schedule 1 makes further provision about those functions.
12. Section 2 sets out the conditions that must be met before devolved government is fully restored: Ministers must be selected and affirm the terms of the pledge of office. Section 2 also introduces Schedule 2, which sets out the consequences if those conditions are met (see paragraph 6 above) and Schedule 3, which sets out the consequences if the Ministers are not selected or do not affirm the pledge (see paragraph 7 above).
13. Section 3 confers on the Secretary of State power by order to make consequential and transitional provision as a result of the Act. Section 4 sets out the Parliamentary procedure required for an order under section 3.

COMMENTARY ON SECTIONS

Section 1 – Preparations for the restoration of devolved government

14. Section 1 provides the framework for the preparations for devolved government to be undertaken by the Assembly members under the Act. Subsection (1) provides for the Secretary of State to refer to them the election of the First and deputy First Ministers, nominations for Ministerial office, and other matters he thinks fit. Subsection (2) gives effect to Schedule 1, which makes provision in relation to meetings of the Assembly members under the Act.
15. Subsection (3) provides that nothing in the Act will affect section 1 of the 2000 Act – that is, direct rule remains in force until an Executive is ready to take office and a restoration order is made. The only exceptions are listed in subsection (4) and are to accommodate, in particular, paragraphs 2 and 3 of Schedule 2, which provide for full restoration of devolved government and the repeal of the 2000 Act if the Secretary of State is satisfied that the conditions in section 2 are met.

Section 2 – Selection of persons to be Ministers on restoration of devolved government

16. Section 2 sets out three conditions for the restoration of devolved government in Northern Ireland. Subsection (1) provides that Schedule 2 will have effect if the Secretary of State is satisfied that each of the three conditions has been met and has notified the presiding officer (or a deputy) before 25th November 2006 that he intends to make a restoration order on a specified date.
17. Subsection (2) sets out condition 1, election of a First Minister and a deputy First Minister. Subsection (3) sets out condition 2, nominations for the other Ministerial offices (i.e. Northern Ireland Ministers). Subsection (4) sets out condition 3, which is that those elected or nominated affirm the pledge of office (within the terms of the Northern Ireland Act 1998 (c.47) (“the 1998 Act”)).
18. Subsection (5) makes clear that Schedule 3 (which provides for the indefinite postponement of the May 2007 Northern Ireland Assembly election and possible early dissolution of the current Northern Ireland Assembly) will have effect if the Secretary of State does not make the subsection (1) notification to the presiding officer (or deputy) before 25th November 2006.
19. Subsection (6) clarifies that the “Ministerial offices” referred to in subsection (3) are those Northern Ireland Ministerial offices that existed immediately prior to the suspension of the Northern Ireland Assembly in October 2002. Subsection (7) ensures that there is no conflict between the requirement that the Assembly members participate in preparations for devolution under this Act, and the 2000 Act, under which the Northern Ireland Assembly is currently suspended.

Sections 3 and 4 – Power to make consequential provision etc.

20. Section 3 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. Section 4 provides that the power is exercisable by affirmative resolution statutory instrument, with the possibility of expedition, for orders containing amendments or repeals of Acts or Northern Ireland legislation. Otherwise, it is exercisable by negative resolution procedure.
21. This power is mainly intended to be used to make—
 - any changes that may be needed in consequence of the amendments made by Schedules 2 and 3, and
 - any transitional or saving provision that may be required as a result of the repeal of the 2000 Act.

Sections 5 and 6 – Interpretation and short title

22. Section 5 contains interpretation provisions and section 6 provides that the short title is “Northern Ireland Act 2006”.

Schedule 1 – The Assembly

23. Schedule 1 establishes and confers functions on the Assembly for the purposes of the Act. Paragraph 1 provides that the Assembly members are the existing members of the Northern Ireland Assembly.

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24. Paragraph 2 provides for the Secretary of State to direct when and where meetings are to be held (it is intended they will all be held in Parliament Buildings, Belfast).
25. Paragraph 3(1)(a) provides for the Secretary of State to appoint a presiding officer and no more than 3 deputies; alternatively, under paragraph 3(1)(b) he may authorise the Assembly members themselves to elect a presiding officer (and again no more than 3 deputies). Under paragraph 3(2) an appointment under paragraph 3(1)(a) may be followed by an authorisation to elect under paragraph 3(1)(b). Under paragraph 3(3), the Secretary of State may appoint, or authorise the Assembly to elect, a presiding or deputy presiding officer if the office is vacant or if he believes that the incumbent is unable, unfit or unwilling to perform the functions of the post.
26. Paragraph 4 provides for proceedings to be conducted in accordance with directions given by the Secretary of State. It is intended that the directions will provide for standing orders, which will be similar to the standing orders that were in operation during full devolution, but with some differences to reflect the particular duties mentioned in this Act.
27. Paragraph 5 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 paid out of the Consolidated Fund of Northern Ireland.
28. Paragraph 6 provides for any statement made by a member for the purposes of the Assembly to be privileged from action for defamation, unless proved to have been motivated by malice.

Schedule 2 – Selection of Ministers

29. Section 2(1) provides for Schedule 2 to take effect if the Secretary of State is satisfied that the conditions of selecting an Executive and having that Executive affirm the pledge of office have been met and he has made the necessary notification to the presiding officer or a deputy presiding officer before 25th November 2006.
30. Under paragraph 2 of Schedule 2, the Secretary of State is then obliged to make a restoration order under section 2(2) of the 2000 Act, the effect of which is to restore devolved government (and accordingly end direct rule). This order must be made on the date specified in the notification to the presiding or deputy presiding officer under section 2(1), and must come into force the following day. Paragraph 2(3) ensures that when such a restoration order comes into force, those who previously held Ministerial office (and certain other offices) at the time of suspension will not resume that office. Instead, paragraph 2(4) makes clear that those elected or nominated under section 2 of the Act will hold the offices of First Minister and deputy First Minister and the other Ministerial offices. Paragraph 2(5) provides that those who have affirmed the pledge of office under section 2 of the Act will be deemed to have done so under the 1998 Act when the restoration order comes into force. Paragraph 2(6) and (7) makes similar transitional provision in relation to the presiding and deputy presiding officers.
31. Paragraph 2(8) provides that the restoration order may make any other necessary provision required in order to carry forward the preparations for devolution undertaken by the Assembly members, and treat them as having been undertaken by the “full-devolution” Northern Ireland Assembly. For example, it could be used to avoid the need for members to sign the Roll again. Paragraph 2(9) disapplies certain procedural requirements of the 2000 Act, so that the restoration order can be made quickly. (It disapplies section 2(3) of the 2000 Act, which provides that the Secretary of State must take account of a review conducted

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under the 2000 Act; and section 7(4) to (7) of the 2000 Act, which requires the restoration order to be made using the affirmative resolution procedure (or an urgency procedure)).

32. Paragraph 3(1) provides for the 2000 Act to be repealed automatically on the day after the restoration order takes effect. Sub-paragraphs (2) to (9) of paragraph 3 contain some saving provisions needed as a result of the repeal of the 2000 Act. Sub-paragraph (11) of paragraph 3 makes clear that the inclusion of sub-paragraphs (2) to (9) is not meant to limit the scope of consequential, transitional or saving provision that may be made by an order under section 3.
33. Sub-paragraphs (2) to (4) of paragraph 3 largely replicate subsections (8) to (10) of section 3 of the 2000 Act. Paragraph 3(2) 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 3(3) provides that the Northern Ireland Assembly also cannot annul or revoke any instrument made during suspension.
34. Paragraph 3(4) to (6) is designed to provide certainty in relation to legislation made during the period of Northern Ireland Assembly suspension. Paragraph 3(4) 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 3(5) 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 3(1) of the Schedule to the 2000 Act). Paragraph 3(6) and (8) similarly provides that orders and determinations made under section 6 of, or paragraph 9 of the Schedule to, the 2000 Act are not affected by the repeal of the 2000 Act. Paragraph 3(7) is intended to ensure that any consequential, transitional or saving provision included in the restoration order made by virtue of paragraph 2 of Schedule 2 continues to operate despite the repeal of section 7(2) of the 2000 Act (see, in particular, paragraph 2(8) of Schedule 2 to the Act).
35. Paragraph 3(9) 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 3(1).
36. Paragraph 4 amends section 31 of the 1998 Act in order to provide for the postponement of the next Northern Ireland Assembly election by one year. Under paragraph 4 the election will take place on the first Thursday of May 2008 (rather than the first Thursday of May 2007) in order to allow the Northern Ireland Assembly a stable period of operation under full restoration.
37. Paragraph 5 provides for section 1(1) and (2) and Schedules 1 and 3 to the Act to be repealed when the restoration order comes into force.

Schedule 3 – No selection of Ministers

38. Section 2(5) provides for Schedule 3 to take effect if the Secretary of State has not made the necessary notification of restoration to the presiding or deputy presiding officer before 25th November 2006.
39. Paragraph 2 substitutes section 31(2) 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

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by order. 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).

40. 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 this 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.
41. Paragraph 3 amends section 31 of the 1998 Act to provide for the current Northern Ireland Assembly – that is the Assembly elected at the poll on 26th November 2003 – to be dissolved on 3rd May 2007 or on an earlier date specified in an order made by the Secretary of State.
42. Paragraph 4 provides for section 1(1) and (2) and Schedules 1 and 2 to the Act to be repealed on 25th November 2006.

COMMENCEMENT

43. The Act came into force on Royal Assent. However, Schedules 2 and 3 will have effect if (and only if) the requirements set out respectively in section 2(1) and (5) are met.

HANSARD REFERENCES

44. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard reference
<i>House of Commons</i>		
Introduction	20 April 2006	Vol. 445 Col. 256
Second Reading	26 April 2006	Vol. 445 Cols 597-677
Committee	27 April 2006	Vol. 445 Cols 737-807
Third Reading	27 April 2006	Vol. 445 Cols 807-809
<i>House of Lords</i>		
Introduction	27 April 2006	Vol. 681 Col. 386
Second Reading	2 May 2006	Vol. 681 Cols 417-440
Committee	8 May 2006	Vol. 681 Cols 717-733
Report and Third Reading	8 May 2006	Vol. 681 Col. 766

Royal Assent – 8 May 2006

House of Lords Hansard Vol. 681 Col. 766

House of Commons Hansard Vol. 446 Col. 95

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