

*These Notes refer to the Northern Ireland (Miscellaneous Provisions) Act 2006 (c.33)  
which received Royal Assent on 25<sup>th</sup> July 2006*

# **NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) ACT 2006**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Northern Ireland (Miscellaneous Provisions) Act 2006 which received Royal Assent on 25<sup>th</sup> July 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 Act makes provision in relation to the following:
  - registration of electors;
  - Chief Electoral Officer for Northern Ireland (“CEO”);
  - donations for political purposes;
  - devolution of policing and justice;
  - extension of the amnesty period for arms decommissioning;
  - loans to the Northern Ireland Consolidated Fund;
  - single wholesale electricity market;
  - financial assistance for energy purposes;
  - sustainable development;
  - extending certain provisions of the Serious Organised Crime and Police Act 2005 (c.15) (“SOCAP”) to Northern Ireland;

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- health and safety of police officers; and
- duty to fill judicial vacancies.

## **OVERVIEW**

### ***Parts 1 and 2: Registration of electors and the Chief Electoral Officer***

4. The purpose of these Parts of the Act is to give effect to the proposals put forward in a consultation paper published by the Northern Ireland Office on 5<sup>th</sup> August 2005 entitled *Electoral registration in Northern Ireland: Proposals on the future of electoral registration in Northern Ireland*.

5. The Government published its response to the results of this consultation exercise on 24<sup>th</sup> January 2006.

6. The new **electoral registration** scheme replaces the annual Northern Ireland canvass with a system of more extensive continuous updating of the Northern Ireland electoral registers (“the register”) in order to enhance comprehensiveness and remove the need for individual electors to re-register every year. It is intended to combat a downward drift in numbers registered and the possibilities for fraud. It builds on the measures introduced by the Electoral Fraud (Northern Ireland) Act 2002 (c.13).

7. The Act also amends the statutory terms and conditions of the **Chief Electoral Officer for Northern Ireland**, to bring them into line with terms that are now standard for similar appointments. It restricts the office holder’s tenure, so that a CEO is appointed for no more than five years at a time, and may hold office for no more than ten years in total. It also provides clear criteria for dismissal.

### ***Part 3: Donations for political purposes***

8. The purpose of this Part is to give effect to the proposals put forward in a consultation paper entitled *Political donations in Northern Ireland: Proposals on the future of donations to political parties in Northern Ireland*. The paper was published by the Northern Ireland Office on 5<sup>th</sup> August 2005 and the Government published its response to the results of consultation on 24<sup>th</sup> January 2006.

9. The proposed measures on political donations aim to exert more effective control over donations to political parties in Northern Ireland, by aligning the rules for Northern Ireland more closely with those that apply in the rest of the UK under the Political Parties, Elections and Referendums Act 2000 (c.41) (“the 2000 Act”). They are also intended to introduce more transparency into the donations process.

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10. From 1<sup>st</sup> November 2007 the measures will require Northern Ireland parties to submit donations reports to the Electoral Commission. However, to guard against intimidation of legitimate donors, reports submitted before the end of October 2010 (or later, if this period is extended with the approval of Parliament) will remain confidential. The measures will also seek to limit donations from overseas to Northern Ireland parties. But in doing this they will recognise the special position of Ireland in Northern Ireland's political culture by allowing donations from Irish citizens and organisations if they fulfil criteria which will be set out later, in secondary legislation.

***Part 4: Devolution of policing and justice etc.***

11. In the Belfast Agreement of 1998 the British Government said that in principle, and following consultation with the Irish Government, it would be ready to devolve responsibility for policing and justice issues if the Northern Ireland political parties agreed. The 2003 Joint Declaration by the British and Irish Governments ("the Joint Declaration") undertook to address and agree the practicalities of the proposed devolution, with a view to introducing the necessary legislation in the Westminster Parliament at the earliest opportunity.

12. Consequently, responsibility for those policing, justice and associated functions which are designated as "reserved matters" under the Northern Ireland Act 1998 (c.47) ("the 1998 Act") will be transferred, when circumstances are right, to the Northern Ireland Assembly ("the Assembly") and Executive. The British Government and UK Parliament will retain responsibility for "excepted matters" such as defence of the realm, the armed forces and national security.

13. This Act does not itself initiate the devolution process. That will not happen until the Northern Ireland parties have been able to concur on institutional models for devolved functions which the British Government agrees are robust, workable and sustainable. Also, for devolution to occur, other conditions will need to be satisfied. In particular, the Assembly will need to be restored, and a resolution requesting devolution will need to be passed by the Assembly with the support of a majority of the designated Nationalists voting and a majority of the designated Unionists voting (see section 16 of the Act).

14. To help enable the eventual devolution to be carried out by order, without the need for further primary legislation, the Act makes provision allowing the Assembly to put in place various arrangements for Ministerial appointments to a new policing and justice department.

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## ***Part 5: Miscellaneous***

### ***Arms decommissioning: extension of amnesty period***

15. The Act enables the end date for the amnesty period under the Northern Ireland Arms Decommissioning Act 1997 (c.7) to be changed so as to be on or before 27<sup>th</sup> February 2010 (instead of on or before 27<sup>th</sup> February 2007). The amnesty period is the period during which people are immune from prosecution for certain offences (set out in the Schedule to the 1997 Act) if they are acting in accordance with a decommissioning scheme.

### ***Northern Ireland loans limit***

16. The Act amends the Northern Ireland (Loans) Act 1975 (c.83) by increasing from £2000 million to £3000 million the aggregate limit on specified loans for capital purposes to the Northern Ireland Consolidated Fund. It also allows the Secretary of State, by order and with the consent of the Treasury, to further increase the limit by an amount not exceeding £500 million. It removes the limitation on the number of times such an increase may take place but each increase will need to be approved by the Treasury.

### ***Single wholesale electricity market***

17. The Act provides that an Order in Council may give effect to any agreement or arrangement between the British and Irish governments on the creation or operation of a single wholesale electricity market in Northern Ireland and Ireland. These proposals for a single wholesale electricity market were developed under the All-Island Energy Market Development Framework, agreed by the British and Irish Governments in 2004. The aim of the proposals is to enhance Northern Ireland's security and diversity of supply; provide greater competition and investment opportunities from a stable market with transparent and equitable trading arrangements; and encourage market efficiencies and economies of scale.

### ***Financial assistance for energy purposes***

18. The Act amends the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) by extending the legislative powers covering the provision of financial assistance to energy projects. Existing Article 61 of that Order, which is focused on the provision of grants to the electricity and gas industries, is being replaced to enable assistance to be given to a wider range of energy-related projects and, in particular, renewable energy. The extended provision will allow use of the new £59 million Environment and Renewable Energy Fund which has been established to support

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renewable energy projects over the next two years. It will also address proposals published on 30<sup>th</sup> June 2004 as *Energy: A Strategic Framework for Northern Ireland*, and specifically the objective of enhancing sustainable energy supply and consumption.

### ***Sustainable development***

19. The Act imposes a statutory duty on all Northern Ireland government departments and district councils to act in the manner which they consider best contributes to sustainable development. It also gives to the Office of the First Minister and deputy First Minister a power to extend the duty, by order, to other public authorities.

### ***Extension of provisions of SOCAP 2005 to Northern Ireland***

20. The Act extends the provisions on investigatory powers in Chapter 1 of Part 2 of the Serious Organised Crime and Police Act 2005 (c.15) to Northern Ireland. It also makes the Director of Public Prosecutions for Northern Ireland an “Investigating Authority” for the purpose of those provisions.

### ***Responsibilities in relation to the health and safety etc. of police***

21. The Act provides a person who holds the office of Chief Constable of the Police Service of Northern Ireland (“PSNI”) with “corporation sole” status, and amends relevant health and safety and other legislation so that any prosecution under that legislation will ordinarily be brought against the Chief Constable in his capacity as office holder, rather than against him personally. This brings Northern Ireland into line with police forces in Great Britain.

### ***Duty to fill judicial vacancies***

22. The Act places a duty on the Prime Minister to fill any vacancy in the office of the Lord Chief Justice or Lord Justice of Appeal (both before and after devolution of justice functions). The provision also places a duty on the Lord Chancellor to fill judicial vacancies at High Court level or below. However, these duties will not apply if the Lord Chief Justice of Northern Ireland agrees that a vacancy in an office (except that of Lord Chief Justice) may remain unfilled.

## **TERRITORIAL EXTENT**

23. The Act’s main impact is on Northern Ireland. However, because many of the enactments on which the Act operates extend to the whole of the UK, as a technical

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matter much of the Act extends to the whole of the UK. The three exceptions are:

- section 25 (sustainable development), which extends to Northern Ireland only,
- amendments made by Schedule 3 (extension to Northern Ireland of provisions of SOCAP 2005), which extend to England and Wales and Northern Ireland only, and
- other provisions amending or repealing enactments which do not extend to the whole of the UK. Those provisions have the same extent as the enactments being amended or repealed.

## **TERRITORIAL APPLICATION: WALES**

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

## **COMMENTARY ON SECTIONS**

### **PART 1: REGISTRATION OF ELECTORS**

#### **Section 1: Power to make provision about anonymous registration**

25. Section 10 of the Electoral Administration Act 2006 (c.22) (referred to in these Notes as “EAA”) provides for an elector, whose safety would be at risk if he or she were identifiable from the electoral registers, to apply to be registered anonymously. This provision of the EAA does not extend to Northern Ireland.

26. Section 84(1) of the Northern Ireland Act 1998 (c.47) enables provision to be made with respect to elections (but not the franchise) and boundaries in respect of district councils in Northern Ireland by Order in Council. Section 1 of this Act modifies section 84(1) to enable anonymous registration to be introduced in Northern Ireland in respect of district, Assembly, European and Parliamentary elections by such an Order. The anonymous registration provisions must correspond or be similar to provisions already contained in the EAA.

27. Section 1 also contains a power to amend primary and secondary legislation where necessary to give effect to the new Northern Ireland anonymous registration provisions. Such a power is needed because the new provisions will need to differ in part from those contained in the EAA in order to take account of the different registration and anti-fraud measures in Northern Ireland.

28. An Order in Council made by virtue of section 1 can only be made after

consultation with the Electoral Commission. It must be laid in draft before, and be approved by, both Houses of Parliament. It has the status of primary legislation for human rights purposes.

29. It is intended that the Order will define the criteria to be applied for eligibility for anonymous registration so that only genuinely vulnerable electors will be eligible. The number of people who will be eligible is not expected to be large.

## **Section 2: Abolition of annual canvass**

30. This section amends the Representation of the People Act 1983 (c.2) (“the 1983 Act”) so as to remove the legal requirement to conduct an annual canvass in Northern Ireland. The last annual canvass will take place during the autumn of 2006.

31. The Chief Electoral Officer for Northern Ireland, as the registration officer for all constituencies in Northern Ireland, has responsibility for maintaining the electoral register for Northern Ireland. Section 2 inserts a new section 10(1A) into the 1983 Act, which sets out the CEO’s duty to conduct periodic canvasses in accordance with new provisions inserted into the 1983 Act by section 3, described below.

## **Section 3: Timing of canvass**

32. This section inserts new section 10ZA into the 1983 Act. The new section provides for a canvass to take place in 2010 and every tenth year following 2010. However, the Secretary of State may make an order cancelling the 2010 canvass if the following conditions are met: first, the CEO has made a recommendation by 15<sup>th</sup> April 2010 against a canvass being conducted in that year; and second, the Secretary of State is satisfied that the public interest does not require a canvass. Both the CEO and the Secretary of State, in making their decisions, must have reference to the registration objectives set out in new provisions inserted by section 4. An order cancelling the 2010 canvass may only be made if it is laid in draft before, and approved by, both Houses of Parliament.

33. The section provides that if no canvass is held under the new provisions by the end of 2015, a canvass must be held in 2016.

34. In intervening years (which are all years other than: 2010; every tenth year after 2010; and, if no canvass is held before the end of 2015, 2016) a canvass may be held provided the following conditions are satisfied. The first condition is that the CEO makes a recommendation to the Secretary of State, by 15<sup>th</sup> April of that year, in favour of a canvass being conducted for the purpose of meeting the registration objectives. The second condition is that the Secretary of State is satisfied that the public interest requires a canvass.

#### **Section 4: The relevant registration objectives**

35. Section 4 inserts new section 10ZB into the 1983 Act. This new section sets out the relevant registration objectives. These are the objectives that the CEO must aim to meet in maintaining the electoral register in Northern Ireland. These objectives are to ensure, so far as reasonably practicable, that:

- everyone who is entitled to be registered is on the register;
- no-one who is not entitled to be registered is on the register; and
- all the required information in relation to individuals contained on the register is correct.

36. The “required information” is an individual’s: name; qualifying address; date of birth; national insurance number (or a statement that they do not have one); and signature. However, the section allows for the requirement for a person’s signature to be dispensed with in the event that a CORE (co-ordinated on-line record of electors) scheme, allowing for electronic registration of electors across the United Kingdom, is implemented. CORE schemes are provided for by the EAA.

#### **Section 5: Publication and alteration of registers**

37. This section replaces section 13(1) of the 1983 Act. It retains the current default requirement that a revised and updated register must be published on or before 1st December in a year in which a canvass has been held. For years where no canvass is held in Northern Ireland, it introduces a default requirement that the revised register in Northern Ireland must be published on 1st December.

38. However, whether or not a canvass is held, the Secretary of State has a power to prescribe a later publication date in regulations.

39. In the amendment of section 13 made by this section (and in the amendments made by sections 6 and 7) “prescribed” means prescribed by regulations (see sections 201 and 202 of the 1983 Act).

#### **Section 6: Alteration of registers: pending elections**

40. Currently, a person may only vote in an election if they appear on the register on the date the nominations for candidates for the election close. This can mean that the effective deadline for registration is many weeks before the poll. Section 6 will allow electors to register closer to the date of the poll. This measure is broadly similar to that in section 11 of the EAA, and will allow electors not on the register to apply in time to meet a new “late registration” deadline. This deadline will be set in



regulations made under this section; it is anticipated that it will be set at eleven days before the poll.

41. This later deadline means the CEO will not have sufficient time to make the normal checks on the information provided by the applicant before polling day. In order to ensure this new facility does not increase the risk of fraud the section provides that individuals who apply for “late registration” will have to provide additional material supporting the application and will not be allowed an absent vote. The specific material to be provided will be specified in regulations, but it is intended to be aimed at seeking proof of residence.

42. The CEO must publish a notice specifying any consequent late alterations to the register on the “appropriate publication date”, which is defined in section 13B(5) of the 1983 Act (attracted by subsection (13) of the new section 13BA inserted by the section) as “the sixth or fifth day before the date of the poll, as the registration officer may determine”. This notice is used by polling officers to verify those entitled to vote and can also be used by political parties for canvassing.

43. The section also provides for alterations to the register as a result of a court decision, or a clerical error following a representation to the CEO, to be made up to a prescribed time on the day of poll (whereas currently the deadline is the fifth day before the poll). The CEO must publish a notice forthwith if any such alterations are made. The deadline for any alterations to correct clerical errors that do *not* follow a representation made to the CEO remains the fifth day before the poll, and notice of these alterations must be issued on the appropriate publication date.

### **Section 7: Data collection**

44. This section amends Schedule 2 to the 1983 Act, which details the types of provision which may be contained in regulations as to registration. It enables regulations to be made that give the CEO the power to obtain information from public authorities to help him to meet the relevant registration objectives. This is intended to help the CEO to track changes to the relevant circumstances of individuals on the electoral register (such as their name and address); to identify people who are not on the register but may be entitled to be; and to track the point at which “attainers” (individuals aged 16 or 17) will become eligible to be registered. The CEO will then approach these individuals to invite them to update their entry, or to register.

45. This section makes clear that data can only be provided to the CEO under the regulations for the purpose of assisting him to meet the relevant registration objectives.

46. There are safeguards on the onward transmission of this data. The regulations may only permit the data to be passed to a third party for the purpose of the registration objectives or criminal or civil proceedings. The section also enables the regulations to make it an offence (punishable on summary conviction by a fine of up

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to £5000) to disclose this information in breach of the safeguards.

## **PART 2: THE CHIEF ELECTORAL OFFICER**

### **Section 8: Tenure**

47. This section adjusts the terms of appointment of the CEO. Its provisions state that the appointment can be for a term of up to 5 years and that no person may hold the post for more than 10 years. The section also sets out clear criteria for dismissal in line with similar posts.

48. Subsection (6) deals with the position of an incumbent when the provision comes into force. For the incumbent the five and ten year periods run from the date of commencement of the section, rather than from the date of appointment.

### **Section 9: Annual reports**

49. This section imposes a statutory duty on the CEO to prepare and present an annual report to the Secretary of State on how he has discharged his functions in the year to which the report relates. The report will also include an assessment of the extent to which the relevant registration objectives have been met (see section 4 of the Act for the relevant registration objectives).

50. The report must be made by a date to be set by the Secretary of State, and the Secretary of State must lay a copy of the report before Parliament.

## **PART 3: DONATIONS FOR POLITICAL PURPOSES**

### **Section 10: Introduction**

51. Currently, donations to political parties are regulated by the Political Parties, Elections and Referendums Act 2000 (c.41). Donations to political parties registered in Great Britain or Northern Ireland are regulated under Part 4 of that Act. Under that Part, political parties may only accept donations from permissible donors, and must declare the source of any donation over £5,000 to the Electoral Commission. The effect of the “permissible donor” system is to prohibit overseas donations. The system relies for its effectiveness on transparency of donations to parties.

52. In Northern Ireland there has been concern that donors would not want their details made public because of the potential for intimidation. Therefore, in February 2001 an order was made under Chapter 4 of Part 4 of the 2000 Act providing that, in

relation to Northern Ireland political parties, the requirements of Part 4 were to be disapplied for four years. The order also disapplied the provisions of Schedule 7 to the 2000 Act in relation to “regulated donees” in Northern Ireland.

53. A further order extending the disapplication was made in the spring of 2005 (Political Parties, Elections and Referendums Act 2000 (Disapplication of Part IV for Northern Ireland Parties etc.) Order 2005 (SI 2005/299) (“the Disapplication Order”)) and is due to expire on 14<sup>th</sup> February 2007.

54. The Government announced on 24<sup>th</sup> January 2006, following consultation, that it intended to: introduce more transparency into the donations process by requiring Northern Ireland parties to submit reports to the Electoral Commission; guard against intimidation by maintaining the confidentiality of legitimate donors; and limit donations to Northern Ireland parties from overseas, whilst recognising the special position of Ireland in relation to Northern Ireland’s political culture. This Part of the Act therefore aligns controls in Northern Ireland more closely with those in England, Wales and Scotland. It provides for a transitional stage, under which Northern Ireland parties and regulated donees will continue to be exempt from Part 4 until the end of October 2007. After that, they will be required to comply with most of Part 4. However, initially they need not make their donation reports public; instead the Electoral Commission will check privately for compliance with Part 4. Also, Northern Ireland parties and regulated donees will continue to be able to receive donations from individuals and bodies entitled to donate to Irish political parties under the law of Ireland.

#### **Section 11: Part 4 of the 2000 Act: the final disapplication period**

55. This section extends the disapplication of Part 4 of the 2000 Act in relation to Northern Ireland until 31<sup>st</sup> October 2007, but otherwise replicates the provisions of the Disapplication Order. The order is overtaken by the section.

56. The section also repeals the provisions of the 2000 Act that allowed disapplication of the Part 4 controls in Northern Ireland. Hence the period ending on 31<sup>st</sup> October 2007 will be the last period of disapplication and is known as the “final disapplication period”.

#### **Section 12: Extension of categories of permissible donors**

57. When the final disapplication period ends, Northern Ireland parties and Northern Ireland regulated donees will no longer be exempt from the prohibition on accepting overseas donations generally. They will, however, still be able to accept donations from Irish citizens and other Irish bodies who can currently donate to Irish parties, in recognition of the special place Ireland occupies in the political life of Northern Ireland. Section 12 inserts new sections 71A to 71C into the 2000 Act in

order to achieve this.

58. New section 71A specifies the “Northern Ireland recipients” who will be able to receive these donations (Northern Ireland parties and Northern Ireland regulated donees). New section 71B provides for the two additional categories of permissible donors in respect of Northern Ireland recipients: citizens of Ireland and bodies (companies, trade unions, clubs etc) that are permitted under Irish law to donate to political parties in Ireland. These donors will have to meet prescribed conditions to be eligible to donate.

59. The power to prescribe conditions in relation to Irish donors will have a dual purpose: to allow the donations controls to keep pace with any changes to Irish law, without the need for further primary legislation; and to ensure that criteria can be set that allow the Electoral Commission to check that donations from Irish donors are permissible (see Schedule 1 regarding the Commission’s duty to verify donation reports).

60. New section 71C will prevent Northern Ireland parties from making donations to parties or regulated donees in Great Britain. This will maintain the existing position, and will mean that the section does not affect donations controls in Great Britain.

### **Section 13: Supplementary provisions**

61. Section 13 makes supplementary provision in relation to section 12, including provision to prevent Northern Ireland parties from making donations to candidates standing for election in Great Britain. This reflects the current position.

### **Section 14: Modifications during prescribed period**

62. This section provides that the modifications of the 2000 Act set out in Schedule 1 to the Act apply to Northern Ireland recipients during the “prescribed period”. The prescribed period is initially from 1<sup>st</sup> November 2007 until 31<sup>st</sup> October 2010, but the section gives the Secretary of State a power to extend it by order by up to two years at a time.

63. After the prescribed period has expired, the 2000 Act provisions will apply to Northern Ireland without the modifications. The effect of the modifications is explained below.

## **Section 15: Power to make provision in connection with permissible donors**

64. This section gives the Secretary of State the power to make an order modifying legislation connected with permissible donors or donations for political purposes. The power may only be used after consultation with the Electoral Commission, and any order made under the power is subject to the affirmative resolution procedure in both Houses of Parliament.

## **Schedule 1: Modifications of the 2000 Act**

65. Schedule 1 contains provision setting out the basis on which the Electoral Commission will operate in relation to donation reports submitted by Northern Ireland recipients during the prescribed period.

66. Paragraph 1 of the Schedule inserts new sections 71D and 71E in Chapter 6 of Part 4 of the 2000 Act (Chapter 6 of Part 4 is inserted by section 12). Section 71D places a duty on the Commission to verify information contained in donation reports submitted by Northern Ireland recipients. The new section provides that the steps that the Commission must take in this regard will be prescribed in an order made by the Secretary of State (see new section 71A(4) inserted by section 12).

67. Section 71E(1) places a duty of confidentiality on the Electoral Commission in relation to the information contained in reports received from Northern Ireland recipients. A member or employee of the Commission may disclose the information received only in certain exceptional cases. These are:

- for the purpose of verifying information contained in donation reports (the bodies to whom such disclosure can be made must be prescribed by order – see new section 71A(4));
- for the purposes of any civil or criminal proceedings;
- if the Commission believes, on reasonable grounds, that a donation accepted by a party should have been dealt with under section 56(2) of the 2000 Act, which provides for the return of impermissible donations.

68. Section 71E provides that disclosure of the information contained in donation reports (other than in these cases) constitutes an offence. Paragraph 2 of Schedule 1 provides for the offence to be punishable on summary conviction in England and Wales by a maximum of 51 weeks' imprisonment, and in Northern Ireland and Scotland by a maximum of 6 months' imprisonment.

69. An order made under the power contained in section 15(1)(b) can make further provision in relation to the prescribed period. Matters that might be dealt with in the orders include:

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- a requirement for the Electoral Commission to check a specified proportion of the declared donations on each donation report;
- the documentation that the Commission must require from recipients in order to verify that accepted donations have been made by permissible donors;
- the procedure that will be followed by the Commission in requesting that information, including the time limit for the recipient of the donation to comply;
- the steps that the Commission must take in relation to publication should the recipient fail to comply.

#### **Schedule 4: Minor and consequential amendments**

##### ***Part 1: Registration of electors***

70. Schedule 4 makes minor and consequential amendments to the Electoral Law Act (Northern Ireland) 1962 (c.14) (N.I.), the 1983 Act, the Elected Authorities (Northern Ireland) Act 1989 (c.3), and the EAA in relation to the registration of electors, including registration-related appeals.

71. Paragraph 5 of Part 1 of Schedule 4 replaces section 58 of the 1983 Act, which deals with Northern Ireland appeals against determinations by the CEO. The current version of section 58 simply applies the equivalent provisions for England and Wales to Northern Ireland, with a few minor modifications. But, as a result of the amendments made by the Act, the modifications would need to be more complicated. The new section 58 therefore sets out the position for Northern Ireland in full.

##### ***Part 2: The Chief Electoral Officer***

72. Part 2 of Schedule 4 makes minor amendments to the Electoral Law Act (Northern Ireland) 1962 (c.14 (N.I.)) relating to the changes made by sections 8 and 9 to the terms of appointment of the CEO.

#### **PART 4: DEVOLUTION OF POLICING AND JUSTICE ETC.**

##### **Section 16: Conditions for devolving policing and justice matters**

73. Section 16 amends section 4 of the 1998 Act to make the devolution of policing and justice contingent upon a motion to that effect being tabled by the First Minister and deputy First Minister acting jointly, and passed with the support in the

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Assembly of a majority both of designated Nationalists and designated Unionists. (Devolution of other matters will continue to require the passing of a resolution with cross-community support.)

74. The amendments reflect the Government's view that the support of a majority of both sections of the community in Northern Ireland would be essential for the devolution of policing and justice functions to succeed. The substantive amendment – new section 4(2A) – is made by subsection (3) of the section: the other subsections make drafting amendments pursuant to that.

### **Section 17: Department with policing and justice functions**

75. This section inserts a new section 21A into the 1998 Act along with an accompanying new Schedule 4A (which is set out in Schedule 2 to the Act). It applies where an Act of the Assembly establishes a new department responsible for devolved policing and justice functions. (Devolved policing and justice functions are defined in section 21A(8).) Where such a department is established, an Act of the Assembly may provide for the department to be headed by a single elected Northern Ireland Minister, or by two elected Northern Ireland Ministers acting jointly. Alternatively, the Act may provide for the department to be headed by one elected Minister supported by an elected junior Minister, and for those persons to rotate at intervals.

76. This section is additional to existing provision in the 1998 Act which provides for separate departments to be established, and headed up by a single Northern Ireland Minister. The 1998 Act would already allow for a new department for policing and criminal justice to be established under the control of a single Minister appointed via the d'Hondt process.

77. The overall purpose is to ensure that policing and justice functions can be devolved to any possible departmental structure agreed by the Northern Ireland parties. The range of possible departmental structures was discussed in the Joint Declaration of 2003.

### ***Schedule 2: new Schedule 4A to the 1998 Act: Department with policing and justice functions***

78. The new Schedule 4A to the 1998 Act sets out the procedures that will apply where one of the departmental structures provided for by new section 21A is adopted. Part 1 of the Schedule provides for the model where a single elected Minister is in charge of the department; Part 2 provides for the case in which two Ministers in charge act jointly; and Part 3 for the rotational model. The Schedule requires, in each case, that the First Minister and deputy First Minister nominate the member or members of the Assembly to head up the department. The nomination must be approved by a resolution of the Assembly passed with the support of a majority of members voting, a majority of designated Nationalists voting and a majority of designated Unionists voting - see paragraphs 3(4), 7(4) and 11(4) of the Schedule. It

is possible in any of these cases for the First Minister or deputy First Minister to be nominated.

79. Parts 1, 2 and 3 of the Schedule make provision for what happens if one of the Ministers ceases to hold office, requiring the nomination process to begin again. They also deal with how the nomination and appointment of Ministers under each scheme will affect the nomination and appointment of Ministers to other Northern Ireland departments under section 18 of the 1998 Act.

80. Part 4 of new Schedule 4A enables further modifications to be made by Order in Council, under the affirmative resolution procedure, in consequence of one of the new departmental structures being adopted. For example, in the event of one of the structures being adopted, it would be necessary to make modifications to Schedule 12A to the 1998 Act.

#### **Section 18: Power of Assembly to call for witnesses and documents**

81. This section amends section 44 of the 1998 Act, which deals with the Assembly's power to call witnesses and require the production of documents. The amendment prevents the Assembly from calling (current or former) Ministers of the Crown or civil servants to give evidence or to produce documents in relation to:

- the discharge of functions devolved by an Order in Council under section 4 of the 1998 Act during the period before they were devolved;
- the discharge of statutory functions transferred from a Minister of the Crown to a Northern Ireland department or Minister during the period before they were transferred. (This would cover, for example, functions transferred under the new section 86A of the 1998 Act inserted by section 19.)

82. Section 44 already makes similar provision in relation to the discharge of any functions during the period before devolution on the "appointed day" (i.e. 2 December 1999) or during a period of suspension. The change is designed to be consistent with the existing principle that the Assembly should have competence only in relation to transferred matters.

#### **Section 19: Provision for transfer of functions relating to extradition etc.**

83. This section inserts a new section 86A (provision for transfer of functions relating to extradition etc.) into the 1998 Act. Its purpose is to enable amendments to be made by Order in Council to legislation relevant to extradition. The relevant legislation is the Crime (International Co-operation) Act 2003 (c.32) and the Extradition Act 2003 (c.41). The power is available only for the purpose of transferring to Northern Ireland departments or Ministers functions under those Acts



that are exercisable by Ministers of the Crown in relation to Northern Ireland.

### **Section 20: Provision for entrenching enactments**

84. This section inserts a new section 86B (provision for entrenching enactments) into the 1998 Act. This enables an Order in Council to amend section 7 of the 1998 Act, so as to “entrench” additional enactments, or to provide that entrenchments should cease to have effect. An Order under this section would require affirmative resolution approval. An enactment entrenched under this power could not be amended by the Assembly, but could nevertheless be a transferred matter. The power enables Acts and individual provisions of Acts, in particular, to be entrenched.

85. During suspension, the power could be used to entrench amendments made to enactments relating to matters which are already transferred. For example, it could be used to entrench an amendment to create a policing precept to give the Assembly the power to provide an enhanced level of expenditure on policing by raising money for policing from the Northern Ireland regional rate.

## **PART 5: MISCELLANEOUS**

### **Section 21: Arms decommissioning: extension of amnesty period**

86. This section amends the Northern Ireland Arms Decommissioning Act 1997 (c.7) to the effect that the latest permitted end date of an amnesty period during which paramilitary arms may be decommissioned is extended from 27<sup>th</sup> February 2007 to 27<sup>th</sup> February 2010.

### **Section 22: Loans to Consolidated Fund of Northern Ireland: increase of limits**

87. This section amends the Northern Ireland (Loans) Act 1975 (c.83) to the effect that the limits on loans specified in that Act are increased. It came into effect on Royal Assent. It amends the 1975 Act to increase the maximum loans limit to £3000 million from £2000 million. It further provides the Secretary of State with a power, by order and with the consent of the Treasury, to increase the loans limit by a maximum of £500 million at any time: under the amendments there will be no limit to the number of times such an increase may be made, although the consent of the Treasury will be needed on each occasion this order-making power is exercised.

### **Section 23: Single wholesale electricity market**

88. This section enables Her Majesty, by Order in Council, to give legal effect to any agreement or arrangement between the British and Irish Governments on the creation of a single wholesale electricity market in Northern Ireland and Ireland. It came into force on Royal Assent. A copy of any such agreement or arrangement would be presented to Parliament by the Secretary of State. In order to give full effect to any such agreement or arrangement once it becomes agreed between the two

Governments, subsection (2) of the section provides that an Order in Council may, in particular, provide for the amendment or repeal of legislation as necessary, grant powers to bodies or persons including the power to make subordinate legislation, and create offences.

89. Subsection (2)(c) provides for the creation of Northern Ireland offences required for the regulation of the market. Such offences may, for example, cover restrictions on the disclosure of commercially sensitive market information without consent. It may also be necessary to provide for a new offence of carrying out the functions of operator of the market without the benefit of a licence or exemption, so as to ensure that a market operator would be subject to appropriate regulation. Subsection (3) provides that the Order creating an offence must set out the mode of trial and punishment of offenders, and specifies the maximum penalties that any such offence could attract. These are broadly in line with the maximum penalties provided for in the existing electricity legislation in Northern Ireland, for example in the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) and the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)).

90. An Order in Council to be made under this provision would be subject to the affirmative resolution procedure.

#### **Section 24: Financial assistance for energy purposes**

91. This section enables financial assistance for specified energy purposes to be provided. The section substitutes a new Article 61 of the Energy (Northern Ireland) Order 2003. Funding may be provided for the purposes described in paragraph (2) of the Article, if the department is of the opinion that the form and amount of the assistance to be given is reasonable in all the circumstances. References in the Article to the department are to the Department of Enterprise, Trade and Investment.

92. The specified purposes for which funding may be given include: securing a diverse and viable long-term energy supply; promoting efficiency and economy in the generation and supply of energy; promoting the development of renewable energy sources or technologies for such energy production and related matters; promoting research and development; limiting or reducing energy-related greenhouse gas emissions; and other purposes which may be prescribed by regulations.

93. Paragraph (4) of the Article provides that funding may be given in such form and subject to such conditions as the department considers appropriate. Paragraph (5) sets out examples of the form in which funding may be provided (such as by way of grants, loans or indemnities or by way of investment). Paragraph (6) gives examples of the conditions to which the giving of assistance may be made subject. These include conditions as to repayment and conditions requiring payments to be made to the department. For example, the recipient of assistance may be required to pay to the department a proportion of the income it receives from the use by it of the assistance;

such payments need not be capped at the level of the assistance given.

### **Section 25: Sustainable development**

94. This section places a statutory duty on Northern Ireland departments and district councils to carry out their functions in a way which contributes to sustainable development. In fulfilling their statutory duty, Northern Ireland departments must have regard to the Northern Ireland Sustainable Development Strategy “First Steps to Sustainability” and any other guidance on sustainable development issued by the Department of the Environment. District councils must also have regard to the Strategy and to any guidance on sustainable development issued by any Northern Ireland department.

95. Subsection (3)(c) gives the Office of the First Minister and deputy First Minister a power to extend the list of public bodies to which the statutory duty applies. Such power would be exercisable by order which would need to be laid in draft before and approved by resolution of the Northern Ireland Assembly.

### **Section 26: Extension to Northern Ireland of provisions of SOCAP 2005**

96. This section extends to Northern Ireland certain provisions of the Serious Organised Crime and Police Act 2005 (c.15) which apply in Great Britain – namely, sections 60 to 67, 69 and 70. The purpose is to provide powers of compulsion of witnesses and document production in investigations undertaken in Northern Ireland by police and Revenue and Customs officers. Schedule 3 to the Act sets out amendments of SOCAP made in connection with the extension of these provisions to Northern Ireland.

### **Schedule 3: Extension to Northern Ireland of provisions of SOCAP 2005**

97. Paragraph 2 of Schedule 3 provides that the Director of Public Prosecutions for Northern Ireland is an “Investigating Authority” within the meaning of section 60 of SOCAP, as is already, for example, the Director of Public Prosecutions for England and Wales. Paragraph 3 sets out the offences in Northern Ireland law to which the powers will apply. These correspond to the offences within Great Britain to which the British powers apply. For example, the powers will apply to section 17 of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.)) (which deals with false accounting) as SOCAP currently applies to section 17 of the Theft Act 1968 (c.60).

98. Paragraph 4 provides that where these provisions apply to Northern Ireland, they take effect as if paragraph (b) of section 62(2) of SOCAP were omitted. This omission ensures that a member of staff of the Serious Organised Crime Agency is not one of the types of person who may be authorised by an Investigating Authority to issue disclosure notices in Northern Ireland or who may search premises in Northern Ireland under a search warrant issued under section 66 of SOCAP. Paragraphs (a) and (c) of section 62(2) enable a police officer or a Revenue and Customs officer to be

authorised to issue disclosure notices or search premises in this way.

99. Paragraph 7 of Schedule 3 makes provision in Northern Ireland for the power of an Investigating Authority to apply for a warrant to enter and search premises and seize documents. This will be by making a complaint on oath to a lay magistrate who will decide whether a warrant should be granted.

### **Section 27: Responsibilities in relation to the health and safety etc. of police**

100. This section provides a person who holds the office of Chief Constable of the Police Service of Northern Ireland with “corporation sole” status, and came into force on Royal Assent. Like section 158 of SOCAP in relation to Great Britain, this section amends relevant health and safety legislation in relation to Northern Ireland so that any prosecution will ordinarily be brought against the office of Chief Constable rather than against the individual incumbent. An effect of the provision is that the office of Chief Constable, rather than the individual who temporarily holds it, would be legally responsible for relevant breaches of the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9)).

101. However, the section also creates exceptions for cases where it can be shown that the Chief Constable bore some degree of personal responsibility for the breach – for example, where he consented to the commission of any offence or the commission was attributable to his personal neglect. In these circumstances, the individual Chief Constable could be guilty of the offence in the usual way and would be liable to be proceeded against.

102. Subsections (2) and (3) of the section make the Chief Constable of the PSNI into a corporation sole for the purposes of Articles 72A and 169A of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)). Those Articles concern rights not to suffer detriments and not to be unfairly dismissed in connection with health and safety issues. Subsections (4) to (6) make provision for Northern Ireland corresponding to section 158(5) to (7) of SOCAP. For example, the effect of the amendments is backdated to 1 July 1998 for the purpose of any legal proceedings begun on or after commencement of this section.

### **Section 28: Duty to fill judicial vacancies**

103. Section 12 of the Judicature (Northern Ireland) Act 1978 (c.23) (“the 1978 Act”) provides for the appointment of the Lord Chief Justice of Northern Ireland, Lords Justices of Appeal and High Court judges by Her Majesty the Queen. Subsection (1) of section 28 amends section 12 of the 1978 Act so that appointments to the office of Lord Chief Justice or Lord Justice of Appeal are to be made on the recommendation of the Prime Minister and appointments to the office of High Court judge are to be made on the recommendation of the Lord Chancellor. This subsection also places a duty on the Prime Minister to make a recommendation to fill any

vacancy in the office of Lord Chief Justice or Lord Justice of Appeal (except that, while the Lord Chief Justice agrees, the Prime Minister may leave a vacancy in the office of Lord Justice of Appeal unfilled). Subsection (3) of section 28 places a corresponding duty on the Lord Chancellor in relation to the office of High Court judge.

104. On devolution of justice to the Northern Ireland Assembly, section 12 of the 1978 Act is to be replaced by virtue of section 4 of the Justice (Northern Ireland) Act 2002 (c. 26) (as amended by the Justice (Northern Ireland) Act 2004 (c.4)) to set out the post-devolution arrangements for senior judicial appointments. Subsection (2) of section 28 amends section 12 of the 1978 as substituted by section 4 of the 2002 Act (as amended) to place a duty on the Prime Minister to fill any vacancy in the office of Lord Chief Justice or Lord Justice of Appeal (except that, while the Lord Chief Justice agrees, the Prime Minister may leave a vacancy in the office of Lord Justice of Appeal unfilled).

105. Section 5 of the 2002 Act provides for judicial offices listed in Schedule 1 to that Act (High Court judge and below) to be appointed or recommended for appointment by the First Minister and deputy First Minister, acting jointly following selection by the Judicial Appointments Commission for Northern Ireland on devolution of justice. Section 5 of the 2002 Act was amended by paragraph 3 of Schedule 1 to the 2004 Act to allow the establishment of the Commission prior to devolution and consequently transferred functions of the First Minister and the deputy First Minister in relation to the Commission to the Lord Chancellor. The Commission was established in June 2005.

106. Subsection (3) of section 28 amends section 5 of the 2002 Act (as amended). It places a duty on the Lord Chancellor to fill any vacancy in a listed judicial office. But while the Lord Chief Justice agrees, the Lord Chancellor may leave any vacancy in an office unfilled.

## **PART 6: SUPPLEMENTARY**

### **Section 30: Minor and consequential amendments etc.**

107. This section introduces Schedules 4 and 5, which contain minor and consequential amendments, repeals and revocations. Part 3 of Schedule 4 includes provision amending Schedules 2 and 3 to the 1998 Act to permit devolution of functions relating to co-operation between the PSNI and An Garda Síochána.

108. The section also allows the Secretary of State to make further supplementary, consequential and transitional provision in connection with the provisions of Part 1 (registration of electors). In particular, it is envisaged that this power may be used to provide for Part 1 provisions to apply with modifications during any transitional period when other relevant Part 1 or EAA provisions have yet to come into force.

*These Notes refer to the Northern Ireland (Miscellaneous Provisions) Act 2006 (c.33)  
which received Royal Assent on 25<sup>th</sup> July 2006*

## **COMMENCEMENT**

109. By virtue of section 31, the following sections will enter into force on Royal Assent:

- section 1 (power to make provision about anonymous registration);
- section 10 (introductory section in relation to donations for political purposes);
- sections 22 to 24, 27 and 28 (miscellaneous sections dealing with loans to the Northern Ireland consolidated fund, energy, health and safety etc. of police, and judicial vacancies);
- sections 29, 30(3) to (6) and 31 to 33 (various supplementary technical provisions).

110. In Part 3 (donations for political purposes), section 11 (Part 4 of the Political Parties, Elections and Referendums Act 2000: the final disapplication period) and section 15 (power to make provision in connection with permissible donors) will come into force two months after Royal Assent. Sections 12 to 14 (extension of categories of permissible donors and modifications during the prescribed period) and Schedule 1 (modifications of 2000 Act) will come into force on 1<sup>st</sup> November 2007.

111. The Act's other provisions will be brought into force by order made by the Secretary of State.

## **HANSARD REFERENCES**

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

<b>Stage</b>	<b>Date</b>	<b>Hansard reference</b>
<i>House of Commons</i>		
Introduction	16 <sup>th</sup> February 2006	Vol 442 Col 1579
Second Reading	13 <sup>th</sup> March 2006	Vol 443 Cols 1166-1247
Committee	19 <sup>th</sup> April, 20 <sup>th</sup> April, 25 <sup>th</sup> April 2006	Vol 445 Cols 131-199 Vol 445 Cols 257-330 Hansard Standing Committee B
Report and Third Reading	17 <sup>th</sup> May 2006	Vol 446 Cols 1011-1100
Commons Consideration	25 <sup>th</sup> July 2006	Vol 449 Cols 765-784
<i>House of Lords</i>		

*These Notes refer to the Northern Ireland (Miscellaneous Provisions) Act 2006 (c.33)  
which received Royal Assent on 25<sup>th</sup> July 2006*

Introduction	18 <sup>th</sup> May 2006	Vol 682 Col 377
Second Reading	7 <sup>th</sup> June 2006	Vol 682 Cols 1353-1378
Committee	22 <sup>nd</sup> June 2006	Vol 683 Cols 115-160GC
Report	13 <sup>th</sup> July 2006	Vol 684 Cols 871-900
Third Reading	19 <sup>th</sup> July 2006	Vol 684 Cols 1287-1297
Lords Consideration	25 <sup>th</sup> July 2006	Vol 684 Cols 1736-1744

**Royal Assent** – 25<sup>th</sup> July House of Lords Hansard Vol 684 Col 1744  
2006 House of Commons Hansard Vol 449 Col 837

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