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Factsheet L8 Legislation Series

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Northern Ireland Legislation

From the establishment of a devolved Parliament in Northern Ireland in 1921 until 1972, legislation on most major domestic issues for Northern Ireland was made in the form of Acts of the Northern Ireland Parliament. In 1972, however, that Parliament was suspended and direct rule from Westminster was substituted. The last Act of the Northern Ireland Parliament was the Agriculture (Abolition of County Committees) Act (NI) 1972, which received the Royal Assent on 28 March 1972. There have subsequently been three devolved Assemblies in Northern Ireland: in 1974, 1982-86 and the current Assembly, which was established in 1998 under the terms of the Northern Ireland Act 1998 but was suspended in 2002. The Assembly of 1974 had legislative powers but the Assembly of 1982-86 had no legislative responsibilities. The new Northern Ireland Assembly had no legislative powers prior to devolution on 2 December 1999. Following devolution, legislative power in most areas was transferred from Westminster to the Assembly and executive power to its power sharing Executive.

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Introduction

A Parliament at Stormont was established in the *Government of Ireland Act 1920* and from 1921 until 1972 legislation on most major domestic issues for Northern Ireland was made in the form of Acts of the Northern Ireland Parliament. In 1972, however, that Parliament was suspended and direct rule from Westminster was substituted. The last Act of the Northern Ireland Parliament was the *Agriculture (Abolition of County Committees) Act (NI) 1972*, which received the Royal Assent on 28 March 1972. The UK Government has undertaken a series of initiatives to ensure that devolution returns to Northern Ireland. Assemblies were established in 1974 and 1982 but direct rule continued until 1999 and was instituted again from October 2002.

During direct rule, the great majority of Northern Ireland's primary legislation was brought into effect by means of Orders in Council and direct rule renewed annually by Order. Orders in Council were laid before Parliament under the affirmative procedure (see Factsheet L7) under Schedule 1 to the *Northern Ireland Act 1974*. This legislation also made provision for urgent or emergency Orders to come into effect immediately subject to approval of Parliament within 40 days. Following the suspension of the new Assembly in 2002, Orders in Council were made under the *Northern Ireland Act 2000* and the same distinction between ordinary Orders in Council and those made under the urgency procedure has been continued. Direct rule was continued for 6 months at a time.

Orders in Council are issued "by and with the advice of Her Majesty's Privy Council" and are usually classified as secondary legislation, although some can be primary legislation, and

It was also possible to legislate for Northern Ireland by means of primary legislation, for example, the *Police (Northern Ireland) Act 2003*. This practice will continue in areas where the power to make legislation is reserved to the UK Parliament under the terms of *the Northern Ireland Act 1998*.

Orders in Council were often preceded by a proposal for a draft Order in Council, which were sometimes accompanied by an explanatory document. This was effectively a consultative stage, which gave interested parties the opportunity to comment on the proposed legislation before it was laid before Parliament. The next stage was the laying of a draft Order before Parliament for subsequent approval by both the House of Commons and House of Lords. Orders could be considered on the floor of the House, in a Committee on Delegated Legislation or by the Northern Ireland Grand Committee.¹

From the late seventies, certain Acts relating to Great Britain have also contained clauses stating that legislation for Northern Ireland parallel to the whole Act (or part of it) that might be issued under it. Such legislation has been subject to the negative resolution procedure (see Factsheet L7) rather than the affirmative procedure

¹ From the start of the 2006-07 parliamentary session, standing committees were renamed public bill committees and delegated legislation standing committees were renamed delegated legislation committees.

normally provided for Orders in Council. These 'parity orders', as they were termed, were given UK SI numbers. In addition, several Acts relating to Northern Ireland were passed as a result of Private Members' Bills, e.g. the *Disabled Persons (Northern Ireland) Act 1989*.

With the restoration of the Assembly, the majority of legislation affecting Northern Ireland only, is expected to be made in the form of Bills passed by the Assembly.

Devolution and the Northern Ireland Assembly²

The Northern Ireland Assembly was established by the *Northern Ireland Act 1998*³. The Act implemented provisions of the Belfast Agreement, also known as the Good Friday Agreement, which was entered into on Friday 10 April 1998 (Cm 3883). One hundred and eight Members were elected from the 18 existing Westminster constituencies. It first met on 1 July 1998 but had no legislative powers prior to devolution on 2 December 1999. Following devolution, legislative power in most areas was transferred from Westminster to the Assembly and executive power to its power sharing Executive. The *Northern Ireland Act 1998* provided for a First Minister, Deputy First Minister and ten ministers appointed under the d' Hondt procedure.⁴ However, because of difficulties in implementing the Good Friday Agreement, no ministers were appointed until 29 November 1999. Powers were finally transferred on 2 December 1999.

The Assembly was suspended again from midnight on 14 October 2002, under the terms of the Northern Ireland Act 2000. The UK Government, working with the Irish Government and the Northern Ireland parties, made a number of attempts to restore devolution since that date. Assembly elections took place on 26 November 2003 but the Assembly did not convene as it remained suspended.

These attempts continued after the 2003 elections, The *Northern Ireland Act 2006*, the *Northern Ireland (St Andrews Agreement) Act 2006* and the *Northern Ireland (St Andrews Agreement) (No 2) Act 2007* led to fresh elections on 7 March 2007 and a new deadline for the formation of a power-sharing executive on 8 May 2007. Restoration of the Assembly took place on 8 May and the parties that are represented in the Executive are the Democratic Unionist Party, Sinn Fein, the Ulster Unionist Party and the Social Democratic and Labour Party. Now that devolution is restored, the Assembly has taken over its legislative role once more. The Assembly held their first meeting in their chamber on 10 September 2007.

Subsequently the *Northern Ireland Act 2009* was passed devolving the responsibilities of policing and justice back to the Assembly. These areas were identified by the original Northern Ireland Act 1998 as 'reserved' and so could be devolved at a later date.

In addition, following restoration of the Assembly the Secretary of State for Northern

² http://www.parliament.uk/works/notes_on_parliament_and_constitution.cfm#devolution

³ The Act as passed can be accessed from the OPSI website at:

<http://www.opsi.gov.uk/acts/acts1998/19980047.htm>

⁴ The d'Hondt method is a method for allocating seats in party-list proportional representation named after Belgian mathematician Victor d'Hondt.

Ireland issued a written ministerial statement regarding an intergovernmental agreement with Ireland which stated:

“The conditions laid out in legislation for the restoration of the devolved institutions in Northern Ireland have now been met. In this historic context, it is fitting that these commitments are formalised promptly with the Irish Government and the Government welcome this opportunity to provide a shared understanding of these arrangements across these islands. This agreement was laid before Parliament as a Command Paper (Cm 7078) on Wednesday 18 April.”⁵

Northern Ireland business in the House of Commons

There remain eighteen Members of Parliament representing Northern Irish constituencies at Westminster. The UK Parliament retains the right to debate Northern Irish matters and legislate on Northern Irish matters (not just those devolved to the Assembly). Furthermore, Orders in Council can be made for certain reserved matters under section 85 of the *Northern Ireland Act 1998*.

Northern Ireland business in the House of Commons is conducted in a number of ways.

Questions

Oral questions to the Secretary of State and Northern Ireland Ministers occur approximately every fourth Wednesday. In addition, questions to the Northern Ireland Office may be and are asked by Members with constituencies anywhere in the United Kingdom.

Another way in which Northern Irish business is discussed in the House of Commons is through the work of the Northern Ireland Grand Committee. The Committee consists of all 18 Members representing constituencies in Northern Ireland and not more than 25 other Members nominated by the Committee of Selection. The quorum of the Committee is 10.

Grand Committee

The Grand Committee is able to sit outside Westminster in Northern Ireland on two occasions each session, and the timing of those sittings is specified when a motion (made by a Minister) for the Committee to sit outside Westminster is made.

The Committee can take oral questions – this is in addition to that in the House. Only members of the Committee may table questions, with ten sitting days notice, with no more than one question per Member per specified day for taking of questions. All questions tabled must specify that they are for answer in the Grand Committee. On a Committee Question Time day, questions are taken at the beginning of the sitting and will last 30 minutes. There is no system of Written Questions in the Grand Committee but any oral questions not reached are printed as written replies in the Official Report of the Committee’s sitting.

A government Minister can make statements in the Grand Committee on a matter

⁵ HC Deb 9 May 2007 c14WS. <http://www.official-documents.gov.uk/document/cm70/7078/7078.asp>

relating to Northern Ireland, whether a member of the House or not. This provision includes the Prime Minister and the Deputy Prime Minister. The Chairman has the discretion as to the length of proceedings. Statements may be made either at the commencement of the sitting or, if a question day, after questions; if a short debate day, after the short debate.

Bills relating exclusively to Northern Ireland can be referred to the Northern Ireland Grand Committee for consideration prior to their second reading if a motion to that effect is made by a Minister (or, in the case of a Private Members' Bill, by the Member in charge of the Bill). The Committee will consider the Bill 'in relation to its principle' for a maximum of two and a half hours over one or more days and, if approved, the House of Commons will formally give the Bill its second reading. This procedure is rare and unlikely to be used when devolution is in force.

The Committee may also consider a Bill at a later date for up to a further one and half-hours on one or more days after its report stage. This, in effect, constitutes its third reading debate although the Commons will again give a formal third reading to the Bill.

The Northern Ireland Grand Committee may also consider statutory instruments (see Factsheet L7) for up to two and a half hours. The motion before the committee will be that an SI (or draft) be revoked, annulled, not made, approved, to take note or that an Order in Council be not submitted to Her Majesty in Council.

A Minister of the Crown, without notice, can extend the time limit to three hours.

The Committee can debate specified matters, or legislative proposals, that relate exclusively to Northern Ireland. In this case, a legislative proposal means a proposal for a draft Order in Council relating exclusively to Northern Ireland.

Short debates

Short debates lasting 30 minutes, on a subject relating to Northern Ireland, may be raised by members of the Committee with ten sitting days notice. These debates will begin at the commencement of the sittings or, if this is also a question day, after questions. During a short debate, the Member who raised the subject and the replying minister may speak for 5 minutes: other Members of the Committee for 3 minutes. The Chairman has the power to order Members to resume their seats if the time limits are exceeded.

The Northern Ireland Grand Committee has, in recent years, met up to six times each session; including sittings away from Westminster (no more than two sittings each session). Sittings of the Grand Committee may be determined by a motion (made by a Minister) to sit on specified days and at specified times. In practice, the Committee will usually meet in the afternoon at 2.30pm or 4.00pm.

Details of the times, location, dates of sittings and the agenda of the Grand Committee can be found in the Northern Ireland Committee Order Book, which Members may obtain from the Vote Office. These details are also published in the General Committee section of the Weekly Information Bulletin.

Northern Ireland Affairs Committee

The Northern Ireland Affairs Select Committee is appointed by the House and has a maximum of 13 Members with a quorum of 4. The Committee is empowered to examine the expenditure, administration and policy of the Northern Ireland Office and the administration of the Crown Solicitor's Office. The Committee can take evidence in Northern Ireland and, in recent years, has done so in Belfast and Londonderry.

A sub-committee of the Northern Ireland Select Committee has also been established, with the following terms of reference:

In order to undertake more scrutiny of previously devolved issues the Committee has set up a sub-committee mainly to undertake inquiries into matters that previously fell within the remit of the Northern Assembly.

It is chaired by Tony Clarke and all members of the Committee are eligible to participate. The Committee website indicates its current areas of activity.⁶

⁶ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/northern-ireland->

Tracing Acts of the Assembly and Orders in Council

Documentation produced by the Northern Ireland Assembly can be accessed from its homepage

<http://www.niassembly.gov.uk/>

All Northern Ireland Orders in Council for the session with dates of their debate are cumulatively listed in each issue of the *Weekly Information Bulletin*.

The Stationery Office publishes a Chronological Table of the Statutes for Northern Ireland covering the legislation to December 2004 as well as an Index and tables. The Index to the Statutes cross-refers from subject to those Acts and Statutory Instruments still in force and further details of this process can be found in Factsheet L12.

Recent Northern Ireland legislation is available on the Internet from the Office of Public Sector Information (OPSI) website at:

http://www.opsi.gov.uk/legislation/northernireland/ni_legislation.htm

Orders in Council are available from the OPSI website dating from 1987. Statutory Rules are available from 1998.

In addition, the UK Statute Law database provides revised texts of Northern Ireland legislation as well as other legislation in the United Kingdom. The database can be accessed from:

<http://www.statutelaw.gov.uk/>

Further reading

Gordon Anthony and John Morison, Here, There and (Maybe) Here Again: The Story of Law Making for Northern Ireland in Devolution, Law Making and the Constitution edited by Robert Hazell and Richard Rawlings (Imprint Academic 2005)

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Factsheet L8 Northern Ireland Legislation

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