



RESEARCH PAPER 00/13
7 FEBRUARY 2000

The Northern Ireland Bill

Bill 61 of 1999-2000

This Bill is expected to have all its Commons stages debated on Tuesday 8 February 2000. It provides for the suspension of the Northern Ireland Assembly and the Executive. This Paper summarises the background to the decision to suspend the devolution process in Northern Ireland and provides a brief guide to the Bill.

Oonagh Gay

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Summary of main points

Direct rule has been introduced to Northern Ireland twice since 1972: once, to bring devolved government under the *Government of Ireland Act 1920*, and once to suspend an attempt at devolution in the *Northern Ireland Constitution Act 1973*. Primary legislation for Northern Ireland has been carried out generally by the Order in Council procedure, and direct rule has been continued by order for one year at a time. For further details see Research Paper 98/57.

Devolution to the Northern Ireland Assembly and Executive occurred on December 2 1999, following the Mitchell review of the *Belfast Agreement*. There is a detailed explanation of the devolution scheme in Research Paper 00/6 *Disqualification Bill*. However the failure of decommissioning to occur has led the British Government to plan for direct rule through the introduction of this Bill. The provisions of the Bill will come into effect at a date to be set by the Secretary of State.

The Bill will:

- suspend the operation of the Assembly and Executive
- suspend the operation of the implementation bodies under the North South Ministerial Council
- allow for the restoration of devolution by order
- allow the First Minister, Deputy First Minister, other Ministers and office holders to resume their previous roles without further elections, unless vacancies occur
- allow for devolution to be suspended once more by order, if necessary
- provide for legislation for Northern Ireland to be undertaken by Order In Council

The Bill does not affect the operation of the *Northern Ireland (Sentences) Act 1998* which allows the release of paramilitary prisoners whose organisations are maintaining a ceasefire.

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I Background

The *Northern Ireland (Temporary Provisions) Act 1972* provided for the suspension of the system of devolved government established by the *Government of Ireland Act 1920*. Section 1 suspended the Northern Ireland Government and vested all powers of that Government and of the Governor in the Secretary of State for Northern Ireland, a newly created office. A Schedule to the Act created a Northern Ireland Commission composed of persons ordinarily resident in Northern Ireland and appointed by the Secretary of State and charged with giving him advice on the discharge of his functions.

Section 1 also provided that the Parliament of Northern Ireland should stand prorogued and that the Queen in Council should have the power to legislate in any area where the Northern Ireland Parliament had power to make laws. The Secretary of State was to refer any proposed Order in Council to the Commission for advice unless impractical to do so. Orders in Council are in effect a form of delegated legislation, which are not amendable while under debate at Westminster.

Following the failure of the power-sharing executive and the Sunningdale Agreement in 1974, the Labour Government prorogued the Assembly for four months under an Order in Council made under s27(6) of the *Northern Ireland Constitution Act 1973*. The transfer of executive power from the Northern Ireland Executive to Westminster was carried out under s8(6) of the 1973 Act, which allowed the Secretary of State to make appointments for a six month period, which did not comply with the statutory requirements on Assembly membership and on power sharing. He therefore appointed four junior ministers at the Northern Ireland Office to be heads of the Northern Ireland departments. In theory, these ministers were responsible to the Assembly.

Legislation was clearly necessary to allow for legislation affecting Northern Ireland, and s1 and Schedule 1 of the *Northern Ireland Act 1974* provided for the dissolution of the Assembly and the introduction of direct rule. They provided that in the 'interim period' legislation for Northern Ireland which fell into either the transferred or reserved categories under the 1973 Act could be made by Order in Council.¹ The 'interim period' was the period between the introduction of direct rule and the commencement of the next devolutionary period of government. There were provisions allowing for the 'interim period' to be extended on an annual basis by order subject to the affirmative resolution. Schedule 1 allowed the Secretary of State to take charge of functions of the head of the Northern Ireland departments. The Act also provided for a Constitutional Convention, composed of the Northern Ireland parties.

¹ Transferred matters were those devolved to Northern Ireland, reserved matters were those which had the potential for devolution. See Research Paper 98/76 for details. Although the Act allowed the Order in Council procedure, but did not require it to be used, in practice almost all legislation in these areas was by this procedure, apart from fair employment legislation. See *The Constitution of Northern Ireland* by Brigid Hadfield p 131 for further details

The Assembly set up under the *Northern Ireland Assembly Act 1982* did not possess any legislative powers and had only deliberative functions. There were provisions in the Act enabling the Assembly to present proposals for the resumption of legislative and executive devolution, but the cross community consensus conditions were never met. Following the signing of the Anglo Irish Agreement in 1985 the Assembly was dissolved in June 1986.

II The Belfast Agreement

The *Belfast Agreement*² provided for new institutions and constitutional change to occur simultaneously as follows.

- new legislation by both the UK and Irish governments
- a new Northern Ireland Assembly
- a new North/South Ministerial Council
- a new British-Irish Council to bring together representatives from devolved administrations and the two governments, as well as the Isle of Man and Channel Isles
- a new British-Irish Agreement to replace the 1985 *Anglo-Irish Agreement*
- a process for decommissioning weapons held by paramilitary groups
- a programme for the accelerated release of paramilitary prisoners.
- the creation of a Northern Ireland Human Rights Commission and an Equality Commission
- an independent commission to make recommendations for future policing arrangements in Northern Ireland³
- a review of criminal justice⁴

There were no provisions in the Agreement for the suspension of these new institutions and constitutional changes. The constitutional legislation in the United Kingdom and in Ireland has been passed, and further legislation would be necessary to revert to the previous position. Treaties were signed by the British and Irish governments on the British Irish Council, the new British Irish Intergovernmental Council, the Implementation Bodies and the North-South Ministerial Council.⁵ All were necessary to implement the *Belfast Agreement*. Implementation of the treaties took place on 2 December, following establishment of the Northern Ireland Executive.

² Cm 3883 April 1998

³ This Patten Commission reported in September 1999

⁴ See *Review of Criminal Justice in Northern Ireland: Progress Report* from www.nio.gov.uk/990415cz-cjp.htm

⁵ The Treaties were signed on 8 March 1999. The text of these Treaties can be found on the Northern Ireland Office website accessible from www.open.gov.uk

The treaties signed in March 1999 contained a preamble which stated:

‘that it was accepted that ‘all of the institutional and constitutional arrangements – an Assembly in Northern Ireland, a North/South Ministerial Council, implementation bodies, a British Irish Council and a British Irish Intergovernmental Conference and any amendments to British Acts of Parliament and the Constitution of Ireland are interlocking and interdependent...’

However the future of the North/South Ministerial Council was specifically linked to that of the Assembly in the *Belfast Agreement*:

13. It is understood that the North/South Ministerial Council and the Northern Ireland Assembly are mutually inter-dependent and that one cannot successfully function without the other.

The British Irish Council and the British-Irish Intergovernmental Council are established under the British Irish Agreement, which replaced the Anglo Irish Agreement of 1985. This Agreement would appear to remain in force despite the suspension of the Assembly and Executive. Nor is there any provision in the Agreement or the *Northern Ireland (Sentences) Act 1998* to suspend prisoner releases should devolution be suspended. The essential criterion is the maintenance of ceasefires by relevant paramilitary organisations.⁶

The *Belfast Agreement* provided for reviews following implementation. In particular, paragraph 7 stated:

If difficulties arise which require remedial action across the range of institutions, or otherwise require amendment of the British-Irish Agreement or relevant legislation, the process of review will fall to the two Governments in consultation with the parties in the Assembly. Each Government will be responsible for action in its own jurisdiction.

The Irish Government therefore has an explicit role in the review.

III Northern Ireland Act 1998 Provisions

The original version of clause 24 of the *Northern Ireland Bill 1997- 1998* gave the Secretary of State power to dissolve the Assembly and to enable an early general election to be held under certain circumstances; however, as signalled in the *Notes on Clauses*, amendments were anticipated which would bring the Northern Ireland provisions more into line with those for the Scottish Parliament:

⁶ Prisoners already released are on licence and can be recalled if they become involved in terrorism again. Research Paper 98/65 *Northern Ireland (Sentences) Bill* for background

Subsection (4) provides that the Assembly may be dissolved early by Order in Council and fresh elections held if it appears that

- the persons who are the First Minister and deputy First Minister and the Northern Ireland Ministers are not able to carry out their functions;
- that if they were to resign the persons who would be likely to succeed them would not be able to carry out their functions; and
- that it is in the public interest that the Assembly should be dissolved

In making such an Order in Council, her Majesty may take into account any vote or resolution of the Assembly which appears to be relevant. The Order in Council will dissolve the Assembly and set a date for fresh elections.

Following consultation with the parties, the Government is minded to look again at this subsection, and consider whether the Assembly should be able to vote to dissolve itself or be dissolved if it cannot elect a First Minister and deputy First Minister in a specified period. Clause 3 of the Scotland Bill provides for a dissolution if 66% of all the Members vote for it, or if the Parliament is unable to elect a First Minister within a specified time.

Subsection (5) provides that before the Order can be made, a draft must be approved by resolution of each House of Parliament.

When the clause was debated, Lord Dubs, the junior minister, said:⁷

Once again the government amendments in this group reflect the valuable debates we have had on the Bill both here and in another place. New Clause 90 radically restructures the Bill's provisions on extraordinary elections, bringing it more into line with the provisions of the Scotland Bill.

In the Bill as it stands, the Secretary of State may dissolve the Assembly and call fresh elections if she believes the Northern Ireland Ministers are unable to carry out their functions. This was seen as leaving too much power in the hands of the Secretary of State, and planning for failure.

Accordingly, the new clause in Amendment No. 90 leaves the power to call early elections to the Assembly on a majority of two thirds of all members--that is to say, not just those voting. In addition, a fresh election will be triggered if the Assembly fails within six weeks to elect a First Minister and Deputy First Minister.

Following amendments in the Lords, the provisions on dissolutions for extraordinary elections are now identical to those in the *Scotland Act 1998*, but in Northern Ireland the Secretary of State may also propose a date of election where the Assembly fails to elect a First Minister and Deputy First Minister within six weeks. The provisions on extraordinary elections are set out in s32 of the *Northern Ireland Act 1998*.⁸

⁷ HL Deb vol 593 19 October 1998 c1293

⁸ See Brigid Hadfield in *Edinburgh Law Review* 1999 'The Nature of Devolution in Scotland and Northern Ireland: Key Issues of Responsibility and Control' p3-31 for further detail on this point

Another original provision in clause 43, to allow the Queen in Council to prorogue the Assembly, was also amended in the Lords, with the deletion of clause 43. Lord Dubs said:⁹

Clause 43 concerns the Secretary of State's power to prorogue the Northern Ireland Assembly. The power in the Bill as it stands is unfettered and does not need to be justified, although a draft Order in Council must be approved under the affirmative resolution procedure. Clause 43 reflects provisions in earlier Northern Ireland legislation which were briefly used on occasions--for example, in the summer of 1973.

In discussions with the Northern Ireland parties, there was considerable opposition to the kind of emergency powers represented by this clause. We have already debated the powers to call emergency dissolutions and fresh elections. As a result, the Secretary of State's powers in this field have instead been given to the Assembly.

We see the weight in the criticism of such emergency powers: that they are planning for failure and as a result might paradoxically make failure more likely. The Government are not in the business of planning for failure in Northern Ireland. We believe that the progress we have seen over the past year fully justifies this confidence. The Northern Ireland Bill reflects the Belfast agreement: the greatest success in building bridges across the community in the entire history of Northern Ireland. The agreement already provides for a review of its provisions after four years. If circumstances change dramatically, the power of Westminster to make provisions for Northern Ireland remains unaffected by the Bill. But we believe that the Bill provides the firmest foundation for political development over the years ahead and that the kind of powers included in this clause are therefore unnecessary

There is no explicit provision in the *Northern Ireland Act 1998* to allow for the suspension of devolution and the transfer of devolved powers, whether legislative or executive. However, the UK Parliament retains legislative powers over all devolved legislatures. S5(6) states 'this section does not affect the power of the Parliament of Great Britain to make laws for Northern Ireland.'

IV Implementation of devolution

A summary of attempts to implement the Belfast Agreement to May 1999 is given in Research Paper 99/49 *The Northern Ireland (Location of Victims' Remains) Bill*. Full background on the political situation in Northern Ireland from 1972 is given in Research Paper 98/57 *Northern Ireland :Political Developments since 1972*.

There had been attempts in mid 1999 to secure the implementation of the *Belfast Agreement* following the publication of *The Way Forward* on 2 July 1999 by Tony Blair and Bertie Ahern. This was an attempt to deal with decommissioning, which threatened to disrupt the devolution process. *The Way Forward*¹⁰ promised a new 'Failsafe Clause' as follows:

⁹ HL Deb vol 593 21 October 1998 c1442

¹⁰ 2 July 1999

THE WAY FORWARD

A JOINT STATEMENT BY THE BRITISH AND IRISH GOVERNMENTS

After five days of discussion, the British and Irish Governments have put to all the parties a way forward to establish an inclusive Executive, and to decommission arms. These discussions have been difficult. But as they conclude, the peace process is very much alive, and on track. The Good Friday Agreement presents the best chance of peace and prosperity in decades. It is clear from our discussions that nobody wants to throw that opportunity away.

We believe that both unionist and nationalist opinion will see that our approach meets their concerns, and will support it accordingly.

The way forward is as follows:

1. All parties reaffirm the three principles agreed on 25 June
 - an inclusive Executive exercising devolved powers;
 - decommissioning of all paramilitary arms by May 2000;
 - decommissioning to be carried out in a manner determined by the International Commission on Decommissioning.
2. The d'Hondt procedure to nominate Ministers to be run on 15 July.
3. The Devolution Order to be laid before the British Parliament on 16 July to take effect on 18 July. Within the period specified by the de Chastelain Commission, the Commission will confirm a start to the process of decommissioning, that start to be defined as in their report of 2 July.
4. As described in their report today, the Commission will have urgent discussions with the groups' points of contact. The Commission will specify that actual decommissioning is to start within a specified time. They will report progress in September and December 1999 and in May 2000.
5. A "failsafe" clause: the Governments undertake that, in accordance with the review provisions of the Agreement, if commitments under the Agreement are not met, either in relation to decommissioning or to devolution, they will automatically, and with immediate effect, suspend the operation of the institutions set up by the Agreement. In relation to decommissioning, this action will be taken on receipt of a report at any time that the commitments now being entered into or steps which are automatically laid down by the Commission, are not fulfilled, in accordance with the Good Friday Agreement. The British Government will legislate to this effect.

The *Northern Ireland Bill*¹¹ was introduced into the Commons on 13 July. The *Explanatory Notes* stated that the bill was 'intended to give effect to the 'Failsafe clause' in the joint statement on political advance in Northern Ireland that was made on 2 July.'¹²

The Bill provided for the suspension of the legislative and executive power of the Assembly and the executive in Clause 1 if the Decommissioning Commission reported to the Secretary of State that there had been a failure to meet a decommissioning obligation or to meet the

¹¹ Bill 136 of 1998-99

¹² A background note with further detail on the Bill is available from the Parliament and Constitution Centre

requirements set out in paragraph 5 of the *Way Forward* (which is reproduced in the bill as Schedule 2 and renamed the Joint Statement).¹³

On 15 July an attempt to nominate the power-sharing executive failed as the UUP, DUP and the Alliance decided not to nominate any members.¹⁴ Seamus Mallon offered his resignation as Deputy First Minister designate. The Bill was not enacted following this failure.

A. The Mitchell Review

The UK and Irish governments announced a formal review of the *Belfast Agreement* on July 20, as provided for in the *Agreement*, with the participation of Senator Mitchell:¹⁵

The Review will take as its starting point the three principles that were agreed by all the pro-Agreement parties on the 25th of June, that is an inclusive Executive exercising devolved powers, decommissioning of all paramilitary weapons by May 2000 and decommissioning to be carried out in a manner determined by the International Commission on Decommissioning.

And the Review will then go on to determine how to overcome the difficulties which exist in the practical implementation of these principles, difficulties with which you will all be familiar. This will be its only focus: the Review is of limited focus, limited to determining how those agreed principles, which everyone has accepted, are then carried forward.

The Review process, which has commenced with our meeting today, will be taken forward in discussions with parties by Senator Mitchell this week, we'll break for August, and we'll resume in early September with the aim of reaching a speedy conclusion.

Following weeks of inconclusive talks the IRA made a statement on 17 November which said:

The IRA is committed unequivocally to the search for freedom, justice and peace in Ireland...Following the establishment of the institutions agreed on Good Friday last year, the IRA leadership will appoint a representative to enter into discussions with General John de Chastelain and the Independent Commission on Decommissioning.

On 22 November Peter Mandelson, the new Secretary of State for Northern Ireland,¹⁶ announced the results of the Mitchell review to the Commons:

¹³ The rest of the Bill bears similarities to the *Northern Ireland Bill* in 1999-2000, in providing for a return to direct rule if necessary

¹⁴ The Alliance Party did not nominate due to the lack of political consensus on the establishment of the Executive

¹⁵ *NIO Press Notice 20.7.99* 'The Prime Minister, the Taoiseach and Senator Mitchell'

¹⁶ He was appointed on 11 October 1999

The [Mitchell] review has not produced a single text like the Good Friday agreement. Instead, it has concentrated on building trust and confidence by means of a number of important steps forward rather than waiting for one giant leap that might never be made.

As a result, last week saw a series of statements by the Decommissioning Commission headed by General de Chastelain, by the parties, by the IRA, by the British and Irish Governments, and by the senator. None of these was in itself decisive. But cumulatively, I believe that these statements, together with the further steps that are planned, have created the conditions in which the agreement can now be fully implemented.

I draw the House's attention in particular to Mitchell's belief that

"a basis now exists for devolution to occur, for the institutions to be established and for decommissioning to take place as soon as possible";

to the assumption of a more active, assertive role by the Decommissioning Commission in circumstances which it recognises will be transformed by the full implementation of the agreement; to Sinn Fein's acceptance that decommissioning is an essential part of the peace process, to be brought about under the aegis of the Decommissioning Commission in accordance with the agreement, and to its acknowledgement that conflict must be a thing of the past; to the Ulster Unionist party's recognition of the legitimacy of the peaceful pursuit of nationalist aspirations, and its commitment to the principles of inclusivity, equality and mutual respect; and lastly, to the IRA's acknowledgement of the Sinn Fein leadership, and their willingness to appoint someone as an authorised representative to enter into discussions with the Decommissioning Commission.

Mr Mandelson said that he would call an Assembly meeting on 29 November to nominate ministers to the Executive.¹⁷

On 25 November Mr Mandelson made a speech in Northern Ireland where he promised to suspend the executive 'without delay' if IRA disarmament did not occur.¹⁸

On 27 November the Ulster Unionist Council approved the entry into the Executive by 58 per to 42 per cent. As part of the package, David Trimble offered the Council's President a post dated resignation letter as First Minister, should the IRA not commence decommissioning by February. The contents of the letter are not publicly known. The terms of the motion carried by the Council also provided for a reconvening of the Council in February to take a final decision on participation.¹⁹

¹⁷ HC Deb vol 339 c 345-359

¹⁸ Text of speech by Peter Mandelson at Victoria College Belfast 25 November 1999

¹⁹ *Daily Telegraph* 29 November 1999 'Opposition defeated by leader's secret aces'

B. Devolution

Devolution took place as follows:

- Ministers were appointed by the d'Hondt procedure on 29 November 1999. There were changes to Assembly standing orders to allow Seamus Mallon to withdraw his offer of resignation as Deputy First Minister designate.
- Parliament debated the draft Devolution order on 30 November,²⁰ appointing a day for the transfer of powers.
- On the appointed day, 2 December, powers were transferred to the Northern Ireland Ministers; the British-Irish Agreement (annexed to the *Belfast Agreement*) came into force; changes to Articles 2 and 3 of the Irish Constitution, and the British constitutional changes in sections 1 and 2 of the *Northern Ireland Act* took effect and the North-South Ministerial Council, the British Irish Council and the British Irish Intergovernmental Conference were established. The six implementation bodies, agreed on 18 December 1998, were established and the 1985 Anglo-Irish Agreement ceased to have effect.

Under the d'Hondt (mathematical) procedure, the parties were due to be represented in the power-sharing Executive as follows:

UUP 3 SDLP 3 DUP 2 SF 2

The D'Hondt procedure was run on 29 November and the ministries were allocated as follows:

Minister of Agriculture and Rural Development	Ms Brid Rodgers SDLP
Minister of Culture, Arts and Leisure	Mr Michael McGimpsey UUP
Minister of Education	Mr Martin McGuinness MP SF
Minister of Enterprise, Trade and Investment	Sir Reg Empey UUP
Minister of the Environment	Mr Sam Foster UUP
Minister of Finance and Personnel	Mr Mark Durkan SDLP
Minister of Health, Social Services and Public Safety	Ms Bairbre de Brún SF
Minister of Higher and Further Education, Training and Employment	Dr Sean Farren SDLP
Minister for Regional Development	Mr Peter Robinson MP DUP
Minister for Social Development	Mr Nigel Dodds DUP

These posts are in addition to the posts of First Minister, held by David Trimble(UUP), and Deputy First Minister held by Seamus Mallon (SDLP). Powers were formally devolved to Northern Ireland on 2 December 1999. Junior ministers have also been appointed. Mr

²⁰ HC Deb vol 340 c 253-276

Trimble has indicated his intention to resign if decommissioning has not begun by February 2000.²¹

The current state of the parties represented in the Assembly is as follows;

	Party	Seats	
	UUP	Ulster Unionist Party	28
	SDLP	Social Democratic and Labour Party	24
	DUP	Democratic Unionist Party	20
	SF	Sinn Fein	18
	Alliance	The Alliance Party	6
*	NIUP	Northern Ireland Unionist Party	3
**	UUAP	United Unionist Assembly Party	3
	NIWC	Northern Ireland Women's Coalition	2
	PUP	Progressive Unionist Party	2
	UKUP	UK Unionist Party	1
+	Ind Unionist	Independent Unionist	1

* Elected as UK Unionist Party, resigned and formed Northern Ireland Unionist Party with effect from 15 January 1999.

** Elected as Independent Candidates, formed United Unionist Assembly Party with effect from 21 September 1998

+ Mr Roger Hutchinson was expelled from the Northern Ireland Unionist Party (NIUP) with effect from 2 December 1999.

C. Decommissioning

The *Belfast Agreement* stated as follows:

3. All participants accordingly reaffirm their commitment to the total disarmament of all paramilitary organisations. They also confirm their intention to continue to work constructively and in good faith with the Independent Commission, and to use any influence they may have, to achieve the decommissioning of all paramilitary arms within two years following endorsement in referendums North and South of the agreement and in the context of the implementation of the overall settlement.

The Mitchell Commission of January 1996²² advocated an independent commission to verify decommissioning but which would not expose individuals to prosecution. It stated: 'information obtained as a result of the decommissioning process should be inadmissible as evidence in courts of law in either jurisdiction' (para 48). In August 1997 the British and

²¹ *Sunday Telegraph* 28 November 1999 'Trimble wins over his party-just'

²² *Report of the International Body* 22 January 1996. Background is given in Research Paper 98/57

Irish Governments signed the agreement establishing the International Commission on Decommissioning and General John de Chastelain was appointed Chairman.²³

Both Governments have issued decommissioning schemes which were announced on 29 June 1998.²⁴ Under the *Northern Ireland Arms Decommissioning Act 1997*, passed by the Major Government,²⁵ decommissioning schemes can be set up and anyone acting in accordance with a decommissioning scheme can hand in arms and explosives and benefit from an amnesty in respect of the offences set out in the schedule to the 1997 Act; the Act set the amnesty period for one year, but provided the power for it to be renewed by order, one year at a time, for up to five years. The *Northern Ireland Arms Decommissioning Act 1997 (Amnesty Period) Order 1999* has now extended the period until 24 February 2000.²⁶ Similar legislation was passed in the Republic of Ireland.²⁷

The scheme allows weapons to be decommissioned either through the provision of information to the Independent International Commission on Decommissioning so that it can collect and destroy the arms, or by the destruction of the arms by those who possess them. Other options are available, such as handing weapons over to the Commission to destroy. However proper verification is essential to the implementation of the scheme. So far only the Loyalist Volunteer Force have begun decommissioning on 18 December 1998. The Commission verified and destroyed guns and explosives.

D. Paramilitary Prisoners

Paramilitary prisoners have been released following the *Northern Ireland (Sentences) Act 1998*.²⁸ An attempt by Michelle Williamson²⁹ to challenge the decision of the then Secretary of State, Mo Mowlam, that the IRA ceasefire had not broken down, failed in the High Court in November 1999.³⁰

²³ *Anglo Irish Agreement on the establishment of the Independent International Commission on Decommissioning* 26 August 1997 Dep/3 5372

²⁴ *Northern Ireland Office PN* 29 June 1998 'Decommissioning Schemes Introduced'. The British scheme is non statutory but both schemes are designed to be consistent with each other. See Adam Ingram, then junior NIO minister, during the debate on the 1997 Order in the second standing committee on delegated legislation 11 March 1998

²⁵ Royal Assent was granted on 27 February 1997

²⁶ S1 1999 no 454. The Order revoked the 1998 Order which had extended the amnesty period until 27 February 1999. The Opposition supported the Order during the debate on its passage in the Commons (HC Deb 22 February 1999 vol 326 c 131-152)

²⁷ *Decommissioning Act 1997*

²⁸ For background to the 1998 Act see Research Paper 98/65 *Northern Ireland: The Release of Prisoners under the Northern Ireland (Sentences) Bill*

²⁹ Her parents were killed in the 1993 Shankill Road bombing

³⁰ *Scotsman* 20 November 1999 'Mowlam's decision on ceasefire 'was lawful'

According to a recent parliamentary answer, a total of 302 prisoners had been released by the week commencing 21 November 1999.³¹ Another recent parliamentary answer gave the information that of 299 prisoners released by November, 6 had been prosecuted for offences committed since their release, but none of these was terrorist related.³²

E. Recent Developments

On 5 December the IRA announced that it had begun direct talks with the Decommissioning Commission.³³

On 8 December the Loyalist UFF announced that it would be appointing representatives to the Decommissioning Commission, but that it would not disarm before the IRA.³⁴

On 10 December General de Chastelain reported to the British and Irish governments on progress, stating that his initial contacts with loyalist and republican paramilitary groups ‘provide the basis for an assessment that devolution will occur’.³⁵

On 13 December 1999 the first meeting of the North-South Ministerial Council was held in Armagh.

On 17 December 1999 the first meetings of the British Irish Council and British Irish Intergovernmental Council was held in London.³⁶ The next British Irish Council meeting is due in June 2000.

On 19 January the Secretary of State made a statement on the Patten report.³⁷ There was considerable anger from Unionists over the decision to accept recommendations changing the name of the RUC.

On 26 January the *Disqualifications Bill* passed its Commons stages. This Bill enables members of the Oireactas to sit in the Commons and in the Northern Ireland Assembly, but members of the Irish government are disqualified from ministerial office in Northern Ireland.³⁸

³¹ HL Deb vol 607 1 December 1999 cWA47

³² HC Deb vol 337 2 November 1999 c134w

³³ *Times* 6 December 1999 ‘Unnamed IRA go-between in arms talks’

³⁴ *Belfast Telegraph* 9 December 1999 ‘Countdown to arms report’

³⁵ *Financial Times* 11 December 1999 ‘de Chastelain finds basis for terrorist weapons deal’

³⁶ For background on the British Irish Council see Research Note 00/7 from the Scottish Parliamentary Information Centre

³⁷ *Independent Commission for Policing in Northern Ireland* ‘A New Beginning: Policing in Northern Ireland’ September 1999

³⁸ See Research Paper 00/6 *Disqualification Bill* for further details

Proposals to allow the two Sinn Fein MPs to use Commons facilities were made in a letter from Peter Mandelson to political parties in January.³⁹ However, no motion to allow the use of facilities has yet been tabled.

On 28 January 2000 Seamus Mallon was reported as having urged the republican movement to make a choice between democracy and terror.⁴⁰

On 3 February Peter Mandelson announced in the Commons that he would be introducing legislation to suspend the Assembly and Executive. He commented on the failure to achieve decommissioning:

With the appointment of contact persons by the IRA and the UFF in December 1999, all the main paramilitary groups on ceasefire are now engaged with the commission. That is a significant advance. The commission's report points to a number of other positive factors. The ceasefires remain in place. The silence of the guns and the unequivocal support of the IRA and the other paramilitary groups for the political process have played a vital part in recent political advances. The assurance, repeated this week, that there is no threat to the peace process from the IRA is important and will be welcomed.

However, the report also stated that there has not yet been any decommissioning of arms by a major paramilitary group. If this continues, it is totally unacceptable. Notably in the case of the IRA, it has to be clear that decommissioning is going to happen. The commission believes that its conclusion in its report of 10 December--that recent events gave the basis for an assessment that decommissioning will happen--remains well founded. But it needs further evidence to substantiate that conclusion. In particular, it needs definite information about when decommissioning will actually start.

Over the past few days, my right hon. Friend the Prime Minister and I have had intensive discussions with the Irish Government and the main parties. Even as I speak, those discussions are continuing. The decommissioning body has been kept closely in touch with those discussions and it has informed me that it is ready at any time to report further in the event of concrete results emerging from those discussions. If the commission provides a further report, which renders out of date the information that I am giving the House now, I will, of course, make a further statement.

Even at this very late stage, it is right that we and all the parties continue to see whether there is a basis on which the institutions can continue to operate and decommissioning start. The institutions, though, can work only on the basis of cross-community confidence. Without clarity over decommissioning, I have no doubt that this confidence will ebb quickly. All the parties must have certainty that all aspects of the Good Friday agreement are being implemented, without some being forgotten and others overlooked.

If it becomes clear that, because of a loss of confidence, the institutions cannot be sustained, the Government have to be ready to put on hold the operation of those

³⁹ Background to the parliamentary oath is given in a forthcoming Research Paper *The Parliamentary Oath*

⁴⁰ *Guardian* 29 January 2000 'Mallon tells IRA: choose arms or elections'

institutions. Nobody who is genuinely committed to the peace process will relish this prospect. However, our purpose if it comes to this will be to preserve them from collapse and to create the time and space in which to rebuild the confidence required to sustain them.

I shall therefore publish a Bill tomorrow to enable us to institute such a pause should one prove necessary despite our best efforts.

This will only be the case if the current unsatisfactory state of affairs is not changed clearly for the better.

We shall invite the House to consider the Bill early next week, with a view to royal assent later in the week unless events between now and then clearly make that unnecessary. In the meantime, we shall redouble our efforts, with the Irish Government and the main parties, to resolve the present difficulties.

Even at this late stage, I believe it remains possible to rebuild confidence in the institutions, to enable devolution and the other institutions to continue, and to ensure that decommissioning starts. But, I stress, those three things are interdependent. We cannot partially implement the Good Friday agreement. It is all or it is nothing.⁴¹

The Conservative spokesman, Andrew Mackay supported the Secretary of State, but proposed that the *Disqualifications Bill* be dropped as inappropriate. Peter Mandelson said that the bill was not linked (c1313). He went on to comment on the deadline for decommissioning as follows (c1123):

...there is only one deadline for decommissioning in the Good Friday agreement. It is not January, it is not February, it is not March; it is May--to be precise, 22 May of this year. Nobody is trying to impose new deadlines for people to meet. Nobody--not the Unionists, not the Government--is trying to rewrite the Good Friday agreement. All that we are seeking is the full implementation of the agreement that we had.

He also made clear that the *Belfast Agreement* as a whole was not being suspended:

We will not be suspending the Good Friday agreement; therefore, we are not going to put into reverse all those gains and all those changes that have flowed from its implementation. We will be suspending, if we need to--and only if we need to as a last resort--the operation of the political institutions, for what I hope will be a very short period of time (c1125).

⁴¹ HC Deb vol 343 3 February 2000 c 1311-2

V *Northern Ireland Bill*⁴²

The Bill was published on 4 February. If passed, it will come into force when the Secretary of State appoints. It deals with both the suspension and possible restoration of the Assembly and the Executive. It also in effect suspends the implementation bodies until restoration of devolution and will affect the work of the British Irish Council. It does not suspend other aspects of the *Belfast Agreement*. Much of the drafting of the Bill is taken from the *Northern Ireland Bill*⁴³ introduced in July 1999, but not enacted (see above).

A. Suspension

Clause 1 provides for the suspension of the Assembly as follows:

- 1--(1) While this section is in force, the Northern Ireland Assembly is suspended and the following provisions of this section have effect.
- (2) No Act is to be passed by the Assembly.
- (3) Neither the Assembly nor any committee of the Assembly is to hold a meeting or conduct any business.
- (4) No person is to continue to hold office or be elected, nominated or appointed as a Minister or junior Minister, or as a chairman or deputy chairman of a statutory committee.
- (5) The functions conferred by section 52 or 53 of the Northern Ireland Act 1998 (North-South Ministerial Council and British-Irish Council) are not to be exercised.
- (6) The functions conferred by section 54 of that Act (British-Irish Intergovernmental Conference) are not to be exercised.
- (7) No functions are to be conferred under section 55(2)(b) of that Act (implementation bodies).
- (8) The Schedule to this Act makes further provision in connection with that made by this section.

Under direct rule, legislation for Northern Ireland will once again be undertaken by Orders in Council. There has been criticism in the past that this procedure allows insufficient scrutiny. The references to s52, 53, 54 of the 1998 Act are related to appointments to those bodies from the Northern Ireland Executive and for the suspension of the implementation bodies which were to operate under the North South Ministerial Council.

Clause 5 allows for the functions of the implementation bodies to be transferred to the Northern Ireland departments where necessary, for the period of suspension,

As set out in the *Explanatory Notes*, the **Schedule** attempts to recreate the provisions of direct rule. There are provisions to extend the use of the Order in Council procedure for legislation for a six month period at a time:

⁴² Bill 61 of 1999-2000

⁴³ Bill 136 1998-9

Schedule

17 The Schedule to the Bill sets out how the functions of the Assembly and its Ministers and the Northern Ireland Departments will be discharged during a period of suspension. These are mostly technical provisions and are generally designed to return the operation of Northern Ireland matters to the way they were handled immediately prior to the devolution of power.

18 *Paragraph 1* enables legislation that would normally be made by the Northern Ireland Assembly to be passed by Order in Council for the first six months of any suspension period. *Sub-paragraph (4)* allows the Secretary of State to increase that period in extensions of not more than six months at a time. Any order to extend the period would be subject to affirmative resolution by both Houses of Parliament.

19 *Paragraph 2* sets out the Parliamentary controls that apply to Orders in Council under paragraph 1. Each Order in Council has to be debated and approved by Parliament either before it comes into force, or within 40 days of it being made. *Paragraph 3* ensures that such Orders are included within references to Assembly legislation.

20 Under *Paragraph 4* the functions of the First and deputy First Ministers fall to the Secretary of State to exercise and the functions of Northern Ireland Ministers to their Departments. Ministers in the Northern Ireland Office will assume responsibility for and control of the Northern Ireland Departments during the suspension period, under the direction of the Secretary of State. *Paragraph 4(1)(d)* temporarily removes the legislative obligation on the First and deputy First Ministers to set up a consultative Civic Forum in Northern Ireland.

21 The remainder of *Paragraph 4*, and *Paragraph 7*, consist of technical provisions to ensure that the Secretary of State can take full responsibility and control of the functions of Northern Ireland Departments. They also provide that anything that would have needed to be put to the Assembly can be dealt with while the Assembly is suspended.

22. *Paragraph 5* ensures that during a suspension period, the legislative provisions which would otherwise be triggered to fill vacancies occasioned by the First Minister and deputy First Minister and other office holders ceasing to hold office under Clause 1 do not operate.

23 *Paragraph 8* suspends the Assembly Commission; its functions are exercisable by the Secretary of State. It also provides, under *sub-paragraph (3)* for any expenditure incurred by him as a result to be paid for by money provided by Parliament.

24 Under *Paragraph 9* the Secretary of State takes responsibility for Assembly salaries, pensions and other payments for the duration of the suspension period.

Clause 6 enables the Secretary of State to make modifications of enactments by order ‘as appear to him to be necessary or expedient’. In general the affirmative resolution procedure is to be used, but there is provision in **Clause 7** for the urgency procedure where necessary.

B. Restoration of Devolution

Clause 2 allows the Secretary of State to restore devolution by order (the restoration order) as described in the *Explanatory Notes*:

Clause 2: Ending the period of suspension

8 The Clause sets out the conditions that must be fulfilled before the Secretary of State can end the suspension of the Northern Ireland Assembly.

9 Under *Subsection (1)* the Secretary of State has to initiate a 'Review' under the Validation, Implementation and Review section of the Belfast Agreement. The relevant text from the Agreement is as follows:

"If difficulties arise which require remedial action across the range of institutions, or otherwise require amendment of the British-Irish Agreement or relevant legislation, the process of review will fall to the two Governments in consultation with the parties in the Assembly. Each Government will be responsible for action in its own jurisdiction."

(para 7 of Validation, Implementation and Review, Belfast Agreement (Cm 3883))

10 To end the suspension of the Assembly and institutions the Secretary of State can make an Order (a Restoration Order) under *Subsection (2)* that makes Clause 1 of the Bill (dealing with the practicalities of suspension) cease to have effect. However, before he makes such an Order, he has to take into account the result of the Review that has been undertaken. Any expenses associated with the review which fall to be met by the United Kingdom will be paid by the Secretary of State.

Clause 3: Effect of Restoration

11 The clause provides for the automatic re-appointment of Ministers and chairmen and deputy chairmen of committees to their previous positions after a Restoration Order has been made, provided they remain eligible to hold office.

12 If such a position is vacant after the suspension of the Assembly has been lifted, replacements will need to be appointed. *Subsections (3) to (5)* allow for the joint election of new First and deputy First Ministers under the relevant parts of section 16 of the Northern Ireland Act 1998. Under that Act the First and deputy First Ministers must stand for election as a pair of candidates, one each from the two traditions, and must be elected as a pair. *Subsection (7)* allows for the appointment of Ministers and Committee chairmen and deputy chairmen using the d'Hondt formula that allocates positions according to party strengths in the Assembly.

The restoration order is subject to the affirmative resolution procedure under Clause 7.

This clause attempts to ensure that office holders may retain their original posts, once the Assembly is restored. There has been speculation that the First Minister, David Trimble, would not gain sufficient Unionist votes in the Assembly to be re-elected to that position. However the Bill also provides for vacancies to be filled according to procedures in the *Northern Ireland Act 1998*.

C. Further Suspensions

The opportunity is taken in the Bill to allow for further suspensions by order, under **Clause 4**, as set out in the *Explanatory Notes*:

13 Revocation of a Restoration Order made under Clause 2, has the effect, under Clause 4, of bringing Clause 1 of the Bill into force again, so suspending the operation of the Assembly and the holding of the offices referred to in Clause 1.