



# Northern Ireland Constitution Act 1973

## 1973 CHAPTER 36

### PART II

#### LEGISLATIVE POWERS AND EXECUTIVE AUTHORITIES

##### *Legislative powers*

#### **4 Measures of Northern Ireland Assembly**

- (1) Laws may be made for Northern Ireland by Measures of the Assembly (in this Act referred to as " Measures ").
- (2) A Measure shall be enacted by being passed by the Assembly and approved by Her Majesty in Council.
- (3) Subject to section 17 below, a Measure shall have the same force and effect as an Act of the Parliament of the United Kingdom.
- (4) This section does not affect the power of the Parliament of the United Kingdom to make laws for Northern Ireland but, subject to the said section 17, a Measure may amend or repeal any provision made by or under any Act of Parliament in so far as it is part of the law of Northern Ireland.
- (5) It is hereby declared for the avoidance of doubt that a Measure is not invalid by reason of any failure to comply with the provisions of section 5, 6, 14 or 18(2), (5) or (6) below ; and no act or omission under any of those provisions shall be called in question in any legal proceedings.

#### **5 Secretary of State's consent for proposed Measures dealing with excepted or reserved matters**

- (1) The consent of the Secretary of State shall be required in accordance with this section in relation to a proposed Measure which contains any provision dealing with an excepted matter or reserved matter; and the Secretary of State shall not give his consent in relation to a proposed Measure which contains any provision dealing with an

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excepted matter unless he considers that the provision is ancillary to other provisions (whether in that Measure or previously enacted) dealing with reserved matters or transferred matters.

(2) Every proposed Measure introduced in the Assembly shall be considered by the Clerk to the Assembly on introduction and if—

- (a) he considers that it contains any provision dealing with an excepted matter or reserved matter ; and
- (b) it has not been endorsed with a statement that the Secretary of State has consented to the Assembly considering the proposed Measure,

then, subject to subsection (4) below, the Clerk shall refer the proposed Measure to the Secretary of State and the Assembly shall not proceed with the Measure unless the Secretary of State's consent to the consideration of the Measure by the Assembly is signified or the Assembly is informed that in his opinion the Measure does not contain any such provision as aforesaid.

(3) Before the Assembly enters on the stage in its proceedings at which a proposed Measure falls finally to be passed or rejected—

- (a) the Clerk to the Assembly shall again consider the proposed Measure; and
- (b) if he considers that it contains any provision dealing with an excepted matter or reserved matter he shall, subject to subsection (4) below, refer it to the Secretary of State,

and the Assembly shall not enter on that stage unless the Secretary of State's consent to the Measure is signified or the Assembly is informed that in his opinion the Measure does not contain any such provision as aforesaid.

(4) Neither subsection (2) nor subsection (3) above shall require the Clerk to the Assembly to refer any proposed Measure to the Secretary of State, or preclude the Assembly from proceeding with a proposed Measure, by reason only that it contains a provision which, in the opinion of the Clerk, is ancillary to other provisions (whether in that Measure or previously enacted) dealing with transferred matters only.

(5) Every proposed Measure passed by the Assembly shall be transmitted to the Secretary of State for submission to Her Majesty in Council but if—

- (a) he considers that it contains any provision dealing with an excepted matter or reserved matter; and
- (b) it has not been referred to him under subsection (3) above (whether by virtue of subsection (4) above or otherwise),

he shall not submit the Measure to Her Majesty in Council unless he consents to the Measure.

(6) If the Secretary of State withholds his consent to a proposed Measure passed by the Assembly he shall refer it back to the Assembly for further consideration; and, if it is modified by the Assembly and again transmitted to him, subsection (5) above shall apply to it as if it were a new proposed Measure transmitted to him after being passed by the Assembly.

(7) For the purposes of this section a provision is ancillary to other provisions if it is a provision which is necessary or expedient for making those other provisions effective or which provides for the enforcement of those other provisions or which is otherwise incidental to, or consequential on, those provisions ; and references in this section to provisions previously enacted are references to provisions contained in, or in any

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instrument made under, another Measure, an Act of the Parliament of the United Kingdom or an Act of the Parliament of Northern Ireland.

## **6 Parliamentary control of Measures dealing with excepted or reserved matters**

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

### *Executive authorities*

## **7 Executive authorities in Northern Ireland**

- (1) The executive power in Northern Ireland shall continue to be vested in Her Majesty.
- (2) As respects transferred matters the Secretary of State shall, as Her Majesty's principal officer in Northern Ireland, exercise on Her Majesty's behalf such prerogative or other executive powers of Her Majesty in relation to Northern Ireland as may be delegated to him by Her Majesty.

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- (3) The powers so delegated shall be exercised through the members of the Northern Ireland Executive established by this Act and the Northern Ireland departments.
- (4) A member of the Northern Ireland Executive who is head of a Northern Ireland department shall, in formulating policy with respect to matters within the responsibilities of that department, consult so far as practicable with the consultative committee established in relation to his department under section 25 below, and where such policy is to be implemented by a proposed Measure he shall consult as aforesaid before the proposed Measure is introduced.
- (5) The Ministries of the Government of Northern Ireland existing on the appointed day shall be the Northern Ireland departments for the purposes of this Act (and shall be known as departments instead of Ministries) but provision may be made by Measure for establishing new Northern Ireland departments or dissolving existing ones.
- (6) The Secretary of State as Her Majesty's principal officer in Northern Ireland, the members of the Northern Ireland Executive, any other persons appointed under section 8 below and the Northern Ireland departments are in this Act referred to as Northern Ireland executive authorities.

## **8 The Northern Ireland Executive**

- (1) The Northern Ireland Executive shall consist of—
  - (a) the chief executive member ;
  - (b) the persons who are for the time being heads of the Northern Ireland departments ; and
  - (c) any other person appointed under subsection (3) below to be a member of the Executive.
- (2) The chief executive member shall preside over the Executive and act as Leader of the Assembly.
- (3) The chief executive member and the heads of the Northern Ireland departments shall be appointed by the Secretary of State on behalf of Her Majesty and the Secretary of State may likewise appoint such number of additional persons (if any) as he thinks fit to discharge, whether as members of the Executive or otherwise, such functions as he may determine; but the total number of persons at any time holding appointments under this section shall not exceed twelve.
- (4) Subject to subsections (5) and (6) below, appointments under this section shall be from among persons who are members of the Assembly and shall be such as will in the opinion of the Secretary of State secure that the Executive has the character mentioned in section 2(1)(b) above.
- (5) Two of the persons at any time holding appointments under this section (other than the chief executive member) may be persons who were not appointed from among members of the Assembly but not more than one of them shall be the head of a Northern Ireland department.
- (6) If at any time after the appointed day it appears to the Secretary of State that it is not possible to make an appointment which complies with the requirements of subsection (4) above he may make an appointment which does not comply with those requirements but any person so appointed shall not hold office for more than six months.

- (7) Before making any appointment under this section (otherwise than by virtue of subsection (6)) the Secretary of State shall so far as practicable consult with the parties represented in the Assembly.
- (8) Persons appointed under this section shall hold office at Her Majesty's pleasure; and a person who is required by this section to be appointed from among members of the Assembly shall not continue in office for more than six months after ceasing to be a member of the Assembly.
- (9) A person appointed under this section who is not a member of the Assembly shall be entitled to sit and speak in the Assembly but not to vote.
- (10) Every person appointed under this section shall, on appointment, take the oath or make the affirmation set out in Schedule 4 to this Act.

## **9 Remuneration and pensions of members of Northern Ireland Executive etc.**

- (1) There shall be paid to each person appointed under section 8 above such salary and allowances as may be prescribed by Order in Council; and provision may be made by Order in Council for the payment of pensions to or in respect of persons who have held appointments under that section.
- (2) Any Order in Council under this section may be varied or revoked by a subsequent Order.
- (3) Any salaries or allowances payable by virtue of an Order in Council under this section, and any sums required by any such Order relating to pensions to be paid out of public funds, shall be defrayed out of moneys appropriated for that purpose by Measure.

## **10 Attorney General for Northern Ireland**

- (1) The Attorney General for England and Wales shall by virtue of that office be Attorney General for Northern Ireland also, and he and the Solicitor General shall by virtue of membership of the bar of England and Wales have in Northern Ireland the same rights of audience as members of the bar of Northern Ireland.
- (2) If at any time the office of Attorney General for England and Wales is vacant any functions authorised or required by any enactment or otherwise to be discharged by the Attorney General for Northern Ireland may be discharged by the Solicitor General for England and Wales as his deputy, and any certificate, petition, direction, notice, proceeding or other document, matter or thing whatsoever authorised or required to be given, delivered, served, taken or done to, on or against the Attorney General for Northern Ireland may be given, delivered, served, taken or done to, on or against the Solicitor General for England and Wales.
- (3) The Solicitor General for England and Wales may also act as Attorney General for Northern Ireland as deputy for the Attorney General for England and Wales if the Attorney General is unable to act owing to absence or illness, or if the Attorney General authorises the Solicitor General to act in any particular case.
- (4) The Attorney General for Northern Ireland shall cease to be a member of the Northern Ireland Supreme Court Rules Committee but the members of that Committee shall include, in addition to those mentioned in section 8 of the Northern Ireland Act 1962,

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one practising member of the Bar of Northern Ireland nominated by the Attorney General.

## **11 Agency arrangements between United Kingdom and Northern Ireland departments**

- (1) Arrangements may be made between any department of the Government of the United Kingdom and any Northern Ireland department for any functions of one of them to be discharged by, or by officers of, the other.
- (2) No such arrangements shall affect the responsibility of the department on whose behalf any functions are discharged.
- (3) In this section references to a department of the Government of the United Kingdom include references to any Minister of the Crown and references to a Northern Ireland department include references to the head of a Northern Ireland department ; and this section shall have effect in relation to the Post Office as it has effect in relation to a department of the Government of the United Kingdom.

### *Relations with Republic of Ireland*

## **12 Consultation, agreements and arrangements with Republic of Ireland**

- (1) A Northern Ireland executive authority may—
  - (a) consult on any matter with any authority of the Republic of Ireland;
  - (b) enter into agreements or arrangements with any authority of the Republic of Ireland in respect of any transferred matter.
- (2) It is hereby declared that provision may be made by Measure for giving effect to any agreement or arrangement made under subsection (1) above, including provision for transferring to any authority designated by or constituted under the agreement or arrangement any function which would otherwise be exercisable by any authority in Northern Ireland or for transferring to an authority in Northern Ireland any functions which would otherwise be exercisable by any authority elsewhere.
- (3) Subsection (2) above does not affect the operation of sections 5 and 6 above in relation to the enactment of any Measure.

### *Financial provisions*

## **13 Consolidated Fund of Northern Ireland**

- (1) The Consolidated Fund of Northern Ireland shall continue to exist but there shall cease to be an Exchequer of Northern Ireland separate from the Consolidated Fund.
- (2) Subject to any provision made by or under any Act of the Parliament of the United Kingdom or of Northern Ireland or any Measure charging any sums on the Consolidated Fund of Northern Ireland, all sums forming part of that Fund shall be appropriated to the public service of Northern Ireland by Measure and shall not be applied for any purpose for which they are not so appropriated.
- (3) Except as otherwise provided by Act of the Parliament of Northern Ireland or by Measure, the accounts of the Consolidated Fund of Northern Ireland shall be audited

by the Comptroller and Auditor-General for Northern Ireland in the manner provided by the Exchequer and Audit Act (Northern Ireland) 1921.

- (4) Subsection (2) above is without prejudice to any appropriation made by Order in Council under section 1(3) of the Northern Ireland (Temporary Provisions) Act 1972; and if part of a financial year falls before and part after the appointed day the accounts and reports mentioned in section 3 of the Northern Ireland (Financial Provisions) Act 1972 shall be prepared separately in relation to each part and that section (which requires those accounts and reports to be laid before the House of Commons) shall apply to the accounts and reports relating to the part before the appointed day as it applies to the accounts and reports relating to a financial year ending before the appointed day.

#### **14 Proceedings in Assembly for imposing charge on public funds or for imposing taxation**

No vote, resolution or Measure shall be passed by the Assembly for—

- (a) charging any sum on the Consolidated Fund of Northern Ireland or appropriating any sum out of that Fund or increasing the sums so charged or appropriated;
- (b) releasing or compounding any debt owed to the Crown ; or
- (c) imposing or increasing any tax,

except in pursuance of a recommendation from the Head of the Department of Finance for Northern Ireland signified to the Assembly by him or by a member of the Northern Ireland Executive authorised by him for that purpose.

#### **15 Payment to Northern Ireland of share of United Kingdom taxes**

- (1) Subject to subsection (4) below, there shall in respect of each year be charged on and paid out of the Consolidated Fund of the United Kingdom into the Consolidated Fund of Northern Ireland a sum equal to the Northern Ireland share of United Kingdom taxes.
- (2) The Northern Ireland share of United Kingdom taxes in respect of each year shall be determined by the Treasury; and that share shall be such amount as, in the opinion of the Treasury, represents the proceeds for that year of the taxes payable into the Consolidated Fund of the United Kingdom which are properly attributable to Northern Ireland after deducting the cost of collection and other appropriate costs.
- (3) The Treasury may make regulations with respect to the method by which the proceeds of the taxes, and the costs, mentioned in subsection (2) above are to be attributed to Northern Ireland; and any determination under that subsection shall be made in accordance with those regulations.
- (4) The Treasury may by order direct that there shall be deducted from the sum payable under subsection (1) above in respect of any year such sum as may be specified in the order by way of contribution towards the expenses falling on the Consolidated Fund of the United Kingdom in respect of that year which relate to excepted matters and reserved matters.
- (5) The sums payable under subsection (1) above shall be paid at such times and in such manner as the Treasury may determine, and payments may be made on account of sums subsequently so payable.

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- (6) The power to make regulations or orders under this section shall be exercisable by statutory instrument and—
- (a) any regulations under subsection (3) shall be subject to annulment in pursuance of a resolution of the House of Commons;
  - (b) no order shall be made under subsection (4) unless a draft of it has been approved by the House of Commons.

## **16 Grants to Northern Ireland out of moneys provided by Parliament**

- (1) The Secretary of State may from time to time pay out of moneys provided by Parliament into the Consolidated Fund of Northern Ireland such sums by way of grant as he may with the consent of the Treasury determine and may, in connection with any such payment, impose such conditions as he may with the like consent determine.
- (2) No further payments shall be made under section 26(7) of the Finance Act 1967 or under or by virtue of section 67 of the Finance Act 1971 (payments towards certain expenditure in Northern Ireland).