

NORTHERN IRELAND ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 1 – Northern Ireland department with policing and justice functions

Part 1

22. This Schedule makes amendments to the 1998 Act in relation to the power of the Northern Ireland Assembly to establish a justice department and the type of ministerial oversight that such a department may have.
23. *Paragraph 2* specifies that this Schedule is to be considered as being contained in Part 3 of the 1998 Act for the purposes of paragraph 22 of Schedule 2 to the 1998 Act. The provisions of the Schedule are an excepted matter under the 1998 Act. This does not affect the ability of the Northern Ireland Assembly to legislate about the department to the extent authorised by those provisions.

Part 2

24. *Paragraph 3* inserts a new subsection (3A) into section 21A of the 1998 Act. This provides for a new ministerial model which the Northern Ireland Assembly can choose for a justice department. New subsection (3A) provides that the department may be in the charge of a minister who has been nominated by one or more members of the Assembly, and whose nomination is then approved by a resolution of the Assembly on a cross-community basis – that is, passed with the support of a majority of the members voting, a majority of designated unionists voting and a majority of designated nationalists voting.
25. *Paragraph 4* inserts a new Part 1A into Schedule 4A to the 1998 Act. New paragraph 3A of Schedule 4A provides for this Part of the Schedule to apply when the new model in section 21A(3A) is adopted.
26. New paragraph 3B of Schedule 4A sets out the chronology of ministerial appointments following an Assembly election. It provides for the post of justice minister to be filled *after* the appointment of the First Minister and deputy First Minister (under section 16A) and the appointment of other ministerial posts (under section 18).
27. New paragraph 3C disapplies section 18 of the 1998 Act in relation to the justice minister. The effect of this is that the justice minister is not selected under the d'Hondt formula and does not count towards the parties' entitlements to ministerial offices for the purposes of the d'Hondt calculation.
28. New paragraph 3D sets out the arrangements for the appointment and replacement of the justice minister. New paragraph 3D(1), (2) and (11) provides for the justice minister to cease to hold office in specified circumstances. New paragraph 3D(1) and (14) provides for a vacant post to be filled by applying the process set out in paragraph 3D(4) to (8).
29. New paragraph 3D(4) provides for the justice minister to be nominated by one or more members of the Assembly. New paragraph 3D(5) provides for the nomination to be

approved by a resolution of the Assembly on a cross-community basis – that is, passed with the support of a majority of the members voting, a majority of designated unionists voting and a majority of designated nationalists voting.

30. New paragraph 3D(6) and (7) provides that once a member of the Northern Ireland Assembly has been nominated, the Assembly has the opportunity to vote on that candidate and, if elected, the individual has the opportunity to take up office before a further nomination may be made. This must take place within a period specified in standing orders. New paragraph 3D(10) prevents the justice minister taking up office until they have affirmed the pledge of office.
31. New paragraph 3D(11)(c) provides for the justice minister to cease to hold office following a resolution of the Assembly. New paragraph 3D(13) provides that a motion for such a resolution may be moved only if it is put forward by the First Minister and deputy First Minister acting jointly or if it is supported by at least 30 members of the Northern Ireland Assembly. New paragraph 3D(12) provides that the resolution must be approved on a cross-community basis – that is passed with the support of a majority of the members voting, a majority of designated unionists voting and a majority of designated nationalists voting.
32. New paragraph 3D(15) and (16) prevents the nomination of any member of a party if that party is excluded from holding ministerial office under section 30(2) or 30A(5) of the 1998 Act.
33. *Paragraph 4(5)* makes clear that paragraphs 2 and 3 of Schedule 12A to the 1998 Act apply in relation to any justice minister appointed under a departmental model provided for in section 21A of the 1998 Act. Under those paragraphs, a minister whose party is excluded by a direction made by the Secretary of State under section 30A(5) is able to resume, immediately, his previous ministerial office if Parliament does not approve the direction.

Part 3

34. As mentioned above, the agreement between the First and deputy First Ministers was that this ministerial model would apply for an initial period but the Assembly would be required to review the arrangements and to put in place permanent arrangements by 1 May 2012. This Part of the Schedule sets out the transitional arrangements that will apply until 1 May 2012 or, if earlier, the point at which the Assembly puts in place permanent arrangements for the department (“the transitional period”). *Paragraphs 6 to 8* apply only if the initial model chosen for the justice department is the one set out in Schedule 1 to this Act.
35. *Paragraph 6* sets aside the provisions of section 18(1)(b) of the 1998 Act when the first justice department is established. The effect of this is to remove the requirement – that would normally obtain when a determination is made under section 17(1) of the 1998 Act following the establishment of a new department – for all Northern Ireland Ministers to cease to hold office at the point that devolution of policing and justice occurs.
36. Section 32(3)(a) of the 1998 Act requires that, following an election, the Secretary of State is obliged to propose a date for a new Assembly election should a new Executive not be formed within seven days of the new Assembly first meeting. *Paragraph 7* provides that during the transitional period the Assembly may, if necessary, keep trying to elect a justice minister beyond the seven day deadline without triggering another Assembly election.
37. *Paragraph 8(1)* provides that the first justice department will be dissolved on 1 May 2012 unless the Assembly, by that date, either has passed a resolution to continue the department on the same basis beyond 1 May 2012 or has put in place alternative future

*These notes refer to the Northern Ireland Act 2009
(c.3) which received Royal Assent on 12 March 2009*

arrangements for the ministerial oversight of that department. *Paragraph 8(2)* provides that any such resolution must be passed with cross-community support.

38. *Paragraph 8(3)* provides that a new Act of the Assembly under paragraph 8(1)(b) may provide for the department to continue operating. The effect of this is to avoid the need to dissolve the department and re-establish it. *Paragraph 8(4) and (5)* enables the Act to switch the ministerial model used to fill that ministerial office.
39. *Paragraph 8(9)* provides that the Assembly may choose to dissolve the department at any time. It may then set up a new department in line with the provisions of the 1998 Act.
40. *Paragraphs 9 and 10* make consequential amendments to sections 21B and 21C of the 1998 Act so that these sections apply only if the departmental model described in section 21A(5A), that is a minister supported by a deputy minister, is chosen for the first justice department at the time the department is established.