

NORTHERN IRELAND (STORMONT AGREEMENT AND IMPLEMENTATION PLAN) ACT 2016

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016 (c. 13) which received Royal Assent on 4 May 2016.

- These Explanatory Notes have been produced by the Northern Ireland Office in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
- They seek to explain what each part of the Act will mean in practice; provide background information on the development of policy; and set out information on how the Act will affect existing legislation in this area.
- These notes are best read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act. So where a provision of the Act does not seem to require any explanation or comment, the notes simply say in relation to it that the provision is self-explanatory.

Table of Contents

Subject	Page of these Notes
Overview of the Act	3
Policy background	3
Legal background	3
Territorial extent and application	4
Commentary on provisions of Act	5
Section 1: The Commission	5
Section 2: Exercise of functions	5
Section 3: Legal privileges etc	6
Section 4: Interpretation and supplementary provision	6
Section 5: Conclusion of the Commission's work	6
Section 6 and Schedule 1: Extension of period for appointment of Ministers	7
Section 7: Pledge of office by Ministers	7
Section 8 and Schedule 2: Undertaking by Members of the Legislative Assembly	7
Section 9: Draft budgets	8
Section 10: Regulations	8
Section 11: Short title, commencement and extent	8
Commencement	9
Related documents	9
Annex A - Territorial extent and application	10
Annex B - Hansard References	11

Overview of the Act

- 1 This Act gives effect to a number of commitments contained in 'A Fresh Start: The Stormont Agreement and Implementation Plan' ("the Fresh Start Agreement")¹. These include provisions aimed at ending continued paramilitary activity and measures to promote fiscal transparency.

Policy background

- 2 The Fresh Start Agreement was reached on 17 November 2015 after 10 weeks of cross party talks between the UK Government, the five largest parties of the Northern Ireland Assembly and the Government of Ireland on matters for which they have responsibility, in accordance with the three-stranded approach reflected in the 1998 Belfast Agreement. The Fresh Start Agreement followed a period of political instability in Northern Ireland. This largely stemmed from two disputes within the Northern Ireland Executive: an impasse on implementation of the Stormont House Agreement and the alleged involvement of members of the Provisional IRA in a murder. This had led to a breakdown in relations within the Executive leading to a real risk of the devolved institutions collapsing and a return to direct rule. The aim of the cross-party talks was to secure the implementation of the December 2014 Stormont House Agreement² and deal with the impact of continued paramilitary activity connected with Northern Ireland. The Fresh Start Agreement seeks to make progress towards fulfilling these objectives.
- 3 There are a number of aspects of the Fresh Start Agreement which require UK legislation, including those elements that are contained within this Act. The Northern Ireland (Welfare Reform) Act 2015 gave effect to the commitments in the Agreement on the implementation of welfare reform.

Legal background

- 4 The Independent Reporting Commission will be established in an international treaty between the UK Government and Government of Ireland. Much of the legislation relating to the Commission, including provisions for the functions of the Commission and how it will be structured in order to deliver those functions, is therefore new. However, the following existing primary legislation is relevant to the provisions in this Act:
 - Northern Ireland Act 1998
 - International Organisations Act 1968
- 5 The commentary on the Act explains any additional relevant legal background.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf

² <https://www.gov.uk/government/publications/the-stormont-house-agreement>

Territorial extent and application

- 6 This Act extends to England and Wales, Scotland and Northern Ireland.
- 7 However, the application of an Act (which is about where an Act produces a practical effect) can be narrower than its extent and all of the measures will primarily only be applicable in Northern Ireland.
- 8 The Act covers matters which are devolved as well as matters that are reserved or excepted. A Legislative Consent Motion was passed by the Northern Ireland Assembly on 15 March 2016 in respect of the devolved and transferred matters.

Commentary on provisions of Act

Section 1: The Commission

- 9 Sections 1 to 5 give effect to the treaty between the UK Government and the Government of Ireland which establishes the Independent Reporting Commission ("the Commission"). The overarching objective of the Commission (reflected in subsection (1) of section 2) is to promote progress towards ending paramilitary activity connected with Northern Ireland. Its functions, as described in paragraph 5.1 of the [Fresh Start Agreement](#), are to:
- Report annually on progress towards ending continuing paramilitary activity connected with Northern Ireland (or on such further occasions as required);
 - Report on the implementation of the relevant measures of the three administrations [i.e. the UK Government, the Government of Ireland, and the Northern Ireland Executive]; and
 - Consult the UK Government and relevant law enforcement agencies and, in Northern Ireland, the Executive, the Police Service of Northern Ireland ("the PSNI"), statutory agencies, local councils, communities and civic society organisations.
- 10 Section 1 enables the First Minister and deputy First Minister jointly to nominate two of the four Commissioners. The other two are nominated by the UK Government and Government of Ireland, respectively. Section 1 also provides for the Commission to have the legal capacities of a body corporate and allows for the Secretary of State to provide appropriate resources for the Commission to carry out its functions.

Section 2: Exercise of functions

- 11 Subsection (3) places a statutory duty on the Commission not to do anything in carrying out its functions which is might put at risk the national security of Ireland or the UK, the lives or safety of individuals, the prevention, investigation or detection of crime, or any legal proceedings, including proceedings which the Commission considers are likely to be brought in future. Similar statutory duties were placed on the Independent Monitoring Commission (the "IMC") which considered the activities of paramilitary groups and was established under the Northern Ireland (Monitoring Commission etc.) Act 2003. The duties placed on the IMC have been expanded in relation to the new Commission to ensure the prevention, investigation or detection of crime is not prejudiced. This has been included to cover cases where, for example, the work of the Police Service of Northern Ireland to prevent crime does not lead to a prosecution and therefore may not be covered by the Commission's duty to avoid having a prejudicial effect on legal proceedings.
- 12 Subsections (5) to (8) require the Secretary of State to provide and publish guidance for the Commission in relation to information, the disclosure of which might (a) prejudice the national security interests of the United Kingdom, or (b) put at risk the life or safety of any person.

Section 3: Legal privileges etc

- 13 Section 3 provides for the Commission to have certain privileges and immunities.
- 14 Subsection (1) provides for the Commission to have immunity from suit and legal process. This means that it will not be subject to legal claims or legal process, including civil claims and judicial review.
- 15 Subsection (2) provides for the Commission's official archives and premises to be inviolable in the same way as inviolability is accorded to a diplomatic mission as set out in the Vienna Convention on Diplomatic Relations 1961. This means, for example, that the Commission's premises cannot be subject to search or requisition.
- 16 However, there may be instances where the Commission decides it is appropriate to waive these immunities in a particular case. For instance, if a staff member wanted to make a claim to an employment tribunal, the Commission could choose to waive its immunity from legal process to allow the staff member to pursue the claim. Subsections (1) and (2) therefore allow the Commission to waive these protections.
- 17 Subsection (3) enables the Secretary of State to make regulations to confer further privileges on the Commission, in addition to those conferred by subsections (1) and (2), provided that they are listed in Part 1 of Schedule 1 to the International Organisations Act 1968 ("the 1968 Act"). Subsection (3) also permits the Secretary of State to make regulations to confer on Commissioners, staff of the Commission (including relevant other persons such as agents of the Commission), and members of their families who form part of their household, the privileges and immunities set out in Parts 2, 3 and 5 of Schedule 1 to the 1968 Act with any modifications required. The Secretary of State can also make provision in the regulations for the waiver of these privileges and immunities. These regulations are subject to the negative procedure.
- 18 Similar provision to that contained in subsection (3) was made in respect of the Independent Commission for the Location of Victims' Remains and the Independent Monitoring Commission (see section 2(1) of the Northern Ireland (Location of Victims Remains) Act 1999 and section 1(2) of the Northern Ireland (Monitoring Commission etc.) Act 2003 respectively).

Section 4: Interpretation and supplementary provision

- 19 This section sets out the key terminology used for sections 1 to 5.
- 20 It also gives the Secretary of State a power to make regulations that enable the treaty with the Government of Ireland on paramilitary activity to be given full effect. This might include, for example, provision about accounts and audit and provision about decision making and quorum. Regulations under this section are subject to the affirmative procedure.

Section 5: Conclusion of the Commission's work

- 21 Section 5 provides the Secretary of State with powers to wind up the Commission. Before making any regulations to wind up the Commission, subsection (2) requires the Secretary of State to consult with the First Minister and deputy First Minister in Northern Ireland, the Minister of Justice and Equality in the Government of Ireland, (or with such other Minister in that Government as the Secretary of State considers appropriate), with the First Minister and deputy First Minister, and with any other person Secretary of State considers appropriate. These regulations may make provision relating to the destruction of information held by the Commission once it has ceased to operate. Regulations under this section are subject to the affirmative procedure.

Section 6 and Schedule 1: Extension of period for appointment of Ministers

- 22 Currently, Northern Ireland Executive Ministerial positions must be allocated within seven calendar days following the first meeting of the Assembly after an election. Section 6 extends the time available to allocate Ministerial positions from seven calendar days to 14 calendar days after the Assembly first sits following an election. This will allow Northern Ireland parties more time to agree a Programme for Government prior to the allocation of Ministerial positions. The change puts into effect the provisions in paragraph 61 of the December 2014 Stormont House Agreement and is aimed at promoting a more bipartisan approach to the Programme for Government.
- 23 Subsection 2 (that inserts Schedule 1) is a transitional provision. As a result of subsection (1), the First Minister and deputy First Minister and other Ministerial offices will be appointed within a period of 14 days beginning with the first meeting of the Assembly. However, following the reduction in the number of Northern Ireland departments under the Northern Ireland Departments Act 2016, it is possible that there will be a reduction in the number of Ministers to be appointed to the Executive. The transitional provision in Schedule 1 ensures that the 14 day period for appointment of Ministerial offices is not shortened to 7 days by virtue of a reduction in Ministerial offices which takes effect during that 14 day period.

Section 7: Pledge of office by Ministers

- 24 Section 7 amends the existing pledge of office, as set out in Schedule 4 to the Northern Ireland Act 1998, which all Ministers are required to affirm before taking up Ministerial office. Under this provision, all Northern Ireland Executive Ministers are required to make seven new commitments as part of the pledge, and therein, as conditions of taking Ministerial office. These commitments are self-explanatory and relate to the commitments set out in paragraph 2.6 of Section A of the '*A Fresh Start: the Stormont Agreement and Implementation Plan*' on ending paramilitarism.

Section 8 and Schedule 2: Undertaking by Members of the Legislative Assembly

- 25 Section 8(1) inserts new section 40A into the Northern Ireland Act 1998. This establishes a new undertaking that members of the Assembly must take before taking their seat in the Northern Ireland Assembly. This provides that they cannot participate in any proceedings of the Assembly, or have any of the other rights or privileges members of the Assembly accrue when they take their Assembly seat, until they have made the undertaking. Subsection (1) sets out the wording of the undertaking which relates to the commitments set out in paragraph 2.7 of Section A of '*A Fresh Start: the Stormont Agreement and Implementation Plan*' on ending paramilitarism.
- 26 Subsections (2) to (4) of section 40A deal with the procedure for a member of the Assembly giving the undertaking. Subsections (2) and (3) set out that this procedure shall be provided by the Assembly in its standing orders, but that the procedure should not include any time bar after which the member cannot make the undertaking.
- 27 Section 8(2) sets out the relationship between the new section 40A and section 77 of the Northern Ireland Act 1998.
- 28 Section 8(3) and Schedule 2 provide transitional provision, setting out the process by which members elected at the 2016 election will give the undertaking. This is required from a timing perspective, to ensure that a process is in place in time for members elected in 2016.

Section 9: Draft budgets

- 29 This provision seeks to introduce more transparency into the budgetary process by providing for the Minister of Finance and Personnel to lay a statement before the Assembly, at least 14 days in advance of laying a draft budget. The statement will specify the amount of UK funding for the financial year as notified by the Secretary of State.
- 30 New subsection (1B), in section 64 of the Northern Ireland Act 1998, requires a further statement to be laid alongside the draft budget showing that the amount of UK funding required by the draft budget will not exceed the amount available and set out in the first statement.
- 31 New subsections (1C) to (1E) provide for circumstances where the Secretary of State notifies the Minister that the amount of UK funding has been revised for that year. The Minister must lay a statement before the Assembly, within 4 months of the notification, showing the revisions to the expenditure proposals where changes are required as a result of the notification, which must not exceed the revised amount of UK funding for that year.

Section 10: Regulations

- 32 This provision is self-explanatory.

Section 11: Short title, commencement and extent

- 33 This provision is self-explanatory.

Commencement

34 Sections 6, 7, 8, 10, 11 and schedules 1 and 2 came into force at Royal Assent. Section 9 comes into force 2 months after Royal Assent. All other provisions will be brought into force by way of regulations and there may be different days appointed for different purposes.

Related documents

35 The following documents are relevant to the Act and can be read at the stated locations:

- The Fresh Start Agreement <https://www.gov.uk/government/news/a-fresh-start-for-northern-ireland>
- The Stormont House Agreement https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf

Annex A - Territorial extent and application

36 This Act extends to England and Wales, Scotland and Northern Ireland. This Act primarily applies to Northern Ireland. None of the sections or schedules in this Act applies exclusively to England or to England and Wales. The extent and application of the provisions are summarised in the table below.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Section 1	No	No	No	Yes	N/A	N/A	N/A	Yes, NI in relation to section 1(4).
Section 2	No	No	No	Yes	N/A	N/A	N/A	No
Section 3	No	No	No	Yes	N/A	N/A	N/A	No
Section 4	No	No	No	Yes	N/A	N/A	N/A	No
Section 5	No	No	No	Yes	N/A	N/A	N/A	No
Section 6	No	No	No	Yes	N/A	N/A	N/A	No
Section 7	No	No	No	Yes	N/A	N/A	N/A	No
Section 8	No	No	No	Yes	N/A	N/A	N/A	No
Section 9	No	No	No	Yes	N/A	N/A	N/A	Yes, NI
Section 10	No	No	No	Yes	N/A	N/A	N/A	No
Section 11	No	No	No	Yes	N/A	N/A	N/A	No
Schedule 1	No	No	No	Yes	N/A	N/A	N/A	No
Schedule 2	No	No	No	Yes	N/A	N/A	N/A	No

Annex B - Hansard References

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

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	10 February 2016	Vol. 605 Col. 1580
Second Reading	22 February 2016	Vol. 606 Col. 69
Committee of the whole House	10 March 2016	Vol. 607 Col. 466
Third Reading	10 March 2016	Vol. 607 Col.519
<i>House of Lords</i>		
Introduction	10 March 2016	Vol. 769 Col. 1522
Second Reading	12 April 2016	Vol. 771 Col. 222
Committee of the whole House	21 April 2016	Vol. 771 Col. 768
Report	26 April 2016	Vol. 771 Col. 1120
Third Reading	28 April 2016	Vol. 771 Col. 1303
Royal Assent	4 May 2016	House of Commons Vol. 609 Col. 185
		House of Lords Vol. 771 Col. 1417

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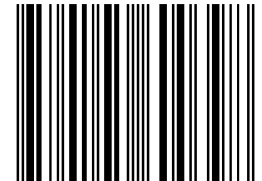
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