



RESEARCH PAPER 98/76
20 JULY 1998

The Northern Ireland Bill: **Implementing the Belfast** **Agreement**

[Bill No 229]

The *Northern Ireland Bill* was published on Wednesday 15 July. It is due to have its second reading debate in the Commons on Monday 20 July and its remaining stages on the Floor of the House over a number of days before the House rises. The Bill implements various aspects of the Belfast (Good Friday) Agreement (Cm 3883) including permanent provision for a devolved Assembly, initial provision for which was made in the recent *Northern Ireland (Elections) Act 1998*

General background to the political situation in Northern Ireland was given in Research Paper 98/57 *Northern Ireland: Political Developments since 1972*. This Paper deals with developments since the Agreements and contains an overview of the provisions in the Bill. Its companion paper, Research Paper 98/77 *The Northern Ireland Bill: Some Legislative and Operational Aspects of the Assembly* concentrates on operational matters common to all devolved legislatures and sets out the legislative function of the Assembly.

Oonagh Gay

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Summary of main points

In referendums held on 22 May 1998 in Northern Ireland and the Republic of Ireland there were majorities in favour of the *Belfast Agreement*¹ reached on Good Friday 10 April 1998. On 25 June elections were held to the New Northern Ireland Assembly, which had its first meeting on 1 July, David Trimble and Seamus Mallon were elected First and Deputy First Minister respectively.

This Bill implements major elements of the *Agreement*. It sets out the constitutional status of Northern Ireland and repeals the *Government of Ireland Act 1920*. It transfers legislative functions to the Northern Ireland Assembly, and executive functions to the First Minister and Deputy First Minister. once sufficient progress has been made in implementing the *Agreement*. In particular the *Agreement* states that North-South Ministerial Council has to begin its work before the shadow Assembly can take up its full role.

The Assembly will be able to legislate over transferred matters. Excepted and reserved matters will remain with the UK Parliament. Elections to the Assembly are now to be covered under this bill, but there are still to be 108 members elected by the Single Transferable Vote.

The First and Deputy First Minister are elected under a cross community support procedure, which is also to be used for major decisions, including the removal of ministers, where they are considered to no longer have the confidence of the Assembly. There is to be an Executive Committee consisting of the First and Deputy First Minister and a maximum of 10 other Northern Ireland Ministers.

Procedure for the new Assembly is mainly dealt with in Research Paper 98/77 *The Northern Ireland Bill: Some Legislative and Operational Aspects of the Assembly*. However the cross community support procedure is considered in this Paper.

The current system of financing Northern Ireland expenditure is largely reproduced in Part V of the Bill, with the continued existence of the Northern Ireland Consolidated Fund.

Part VI of the Bill merges the various equality commissions in Northern Ireland into a new Equality Commission and imposes a statutory duty on public authorities in Northern Ireland to carry out their functions with due regard to the need to promote equality of opportunity. Discrimination on grounds of religious belief or political opinion will be unlawful. It also establishes a new Northern Ireland Human Rights Commission and winds up the Standing Advisory Commission on Human Rights(SACHR). The new Commission will have power to grant assistance to individuals.

¹ Cm 3883 April 1998

Attendance by Northern Ireland Ministers at the new North-South Ministerial Council and the British-Irish Council is provided for in Part VI, as well as power for the Secretary of State to transfer functions and fund any new North-South implementation bodies. A new Civic Council is to be created for consultative purposes.

Relevant Research Papers include:

98/65	Northern Ireland: The Release of Prisoners under the <i>Northern Ireland (Sentences) Bill</i> Bill 196 of 1997-98	15.06.98
98/57	Northern Ireland: political developments since 1972 National Assembly	11.05.98
98/38	Cabinets, Committees and Elected Mayors (revised edition)	19.03.98
98/27	The <i>Human Rights Bill [HL]</i> , Bill 119 of 1997-98: Some constitutional	13.02.98
98/24	The <i>Human Rights Bill [HL]</i> , Bill 119 of 1997-98	03.02.98
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97/132	<i>Government of Wales Bill</i> : Operational Aspects of the	04.12.97
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I Background

The constitutional and political history of Northern Ireland is covered in Research Paper 98/57, *Northern Ireland: political developments since 1972*, which also set out the terms of the (Good Friday) *Belfast Agreement*². Research Paper 98/65 gives background on the *Northern Ireland (Sentences) Bill* which had its second reading on 10 June 1998 and which sets out the *Agreement's* provisions on release of paramilitary prisoners in legislative form.

The Prime Minister, Tony Blair, visited Northern Ireland in the final days before the referendums and on 14 May spoke of the safeguards contained in the *Belfast Agreement* as follows:

The concerns were of course anticipated and the Agreement contains safeguards:

- any use or threat of violence is completely incompatible with the principle of consent;
- the pledge of office for members of the new Assembly will contain a clear commitment to non-violence and exclusively peaceful means;
- the Assembly, on a cross-community vote, can remove office-holders in whom it does not have confidence because of failure to meet their responsibilities, including those set out in the Pledge of Office;
- the only prisoners whose cases can even be considered by the Independent Review Commission are those belonging to organisations which are observing a total and unequivocal ceasefire, each prisoner's case will be reviewed individually, and those released will only be out on licence, subject to recall;
- all the parties have now committed themselves to the total disarmament of all paramilitary organisations - decommissioning is to be completed within two years of the referendum;
- regular reviews of the implementation of the settlement, by the two governments and the parties, are envisaged. These provide an opportunity to ensure that parties are not picking only those parts of the settlement that they like.

These safeguards are vital. We will make them stick. But the truth is that great emotions are involved and people are still not convinced, even if they want to vote yes. The problem is: I believe that most people would be ready to accept even the hardest parts of the Agreement if they had genuine confidence that the paramilitaries were really ready to give up violence for good. I welcome Sinn Fein's endorsement of the Agreement and all that it implies. This is a historic shift. But after the experiences of the last thirty years, and some recent statements

² Cm 3883

about no decommissioning, it is hardly surprising that for many that confidence is simply not there.

So how can we be sure that acceptance of the agreement by these parties will mean an end to violence and a genuine commitment to exclusively peaceful means, when we know that for example Sinn Fein and the IRA remain inextricably linked, as the weekend's events graphically illustrated.

In particular, how do we test it, judge it, assess it to be real? It is here that people feel that sentiments or intentions are not enough.

People want to know that if these parties are going to benefit from proposals in the Agreement such as accelerated prisoner releases and Ministerial posts, their commitment to democratic non-violent means must be established, in an objective, meaningful and verifiable way. Those who have used the twin tactics of the ballot box and the gun must make a clear choice. There can be no fudge between democracy and terror.

The Agreement is what has to be implemented, in all its parts. In clarifying whether the terms and spirit of the Agreement are being met and whether violence has genuinely been given up for good, there are a range of factors to take into account:

- first and foremost, a clear and unequivocal commitment that there is an end to violence for good on the part of republicans and loyalists alike, and that the so-called war is finished, done with, gone; that, as the Agreement says, non-violence and exclusively peaceful and democratic means are the only means to be used;
- that, again as the Agreement expressly states, the ceasefires are indeed complete and unequivocal: an end to bombings, killings and beatings, claimed or unclaimed; an end to targeting and procurement of weapons; progressive abandonment and dismantling of paramilitary structures actively directing and promoting violence;
- full co-operation with the Independent Commission on decommissioning, to implement the provisions of the Agreement.
- and no other organisations being deliberately used as proxies for violence.

These factors provide evidence upon which to base an overall judgement - a judgement which will necessarily become more rigorous over time. What is more, I have decided that they must be given legislative expression directly and plainly in the legislation to come before Parliament in the coming weeks and months.

We are not setting new preconditions or barriers. On the contrary we want as many people as possible to use the Agreement as their bridge across to an exclusively democratic path. We will encourage them to take this path. But it is surely reasonable that there should be confidence-building measures from these

organisations after all the suffering they have inflicted on the people of Northern Ireland. And we also have a responsibility to provide protection against abuse of the democratic process, and its benefits, by those not genuinely committed to it.

He also set out on 20 May a personal pledge to its people as follows:³

I pledge to the people of Northern Ireland

- No change in the status of Northern Ireland without the express consent of the people of Northern Ireland.
- Power to take decisions returned to a Northern Ireland Assembly, with accountable North/South co-operation.
- Fairness and equality guaranteed for all.
- Those who use or threaten violence excluded from the Government of Northern Ireland.
- Prisoners kept in unless violence is given up for good.

Whatever the Referendum result, as Prime Minister of the United Kingdom I will continue to work for stability and prosperity for all the people of Northern Ireland.

The referendums on the Belfast Agreement were held in both the Republic and Northern Ireland on 22 May. The full results are set out in an Appendix to this Paper, but the Agreement was endorsed by 71 per cent of those voting on an 81 per cent turnout in Northern Ireland and by 94 per cent in the Republic on a 56 per cent turnout. The Secretary of State for Northern Ireland, in her statement to the House on 1 June 1998 said:⁴

There was a very positive result: 81 per cent. of the people in Northern Ireland voted, and 71 per cent. of them supported the agreement reached on Good Friday, There is no doubt that it was an emphatic endorsement of the agreement from all sections of the community-republicans, loyalists, Unionists and nationalists. Now they want to see the agreement as a whole - every part of it - work.

In their own referendum, the people of the Irish Republic voted by 94 per cent. to endorse the changes to the Irish constitution required to implement the agreement.

³ Northern Ireland Office Press Notice 20.5.98 "Prime Minister's Personal Pledge to People of Northern Ireland"

⁴ HC Deb vol 313 c33-34

By these referendums, the people of Ireland, north and south, have voted overwhelmingly to say yes to the principle of consent; yes to using only peaceful means to resolve political disputes; yes to fairness and equality; and yes to building new relationships based on agreement, not coercion.

The people have spoken. Those who seek to frustrate that - whether by violence or by other means - fly in the face of democracy. Our job now - both as the Government and in this Parliament - is to act as the people wish.

Let me briefly set out for the House the steps that are now being taken. Last Wednesday, I signed an order bringing into force all the remaining provisions of the Northern Ireland (Elections) Act 1998. The elections to the New Northern Ireland Assembly will take place on 25 June, with the nominations closing at 4pm on 3 June, this Wednesday. It would not be right for the Government during the election campaign to seek to influence the people's choice, directly or indirectly, but I hope that, on 25 June, those who voted in the referendum will finish the job by voting in the assembly elections as well.

In the meantime, we will work to implement the agreement. Both the British and the Irish Governments will very soon bring into force schemes under the Northern Ireland Arms Decommissioning Act 1997; I am grateful for the efforts of my predecessor, the noble Lord Mayhew, in establishing that legislation and its amnesty provisions. When that happens, there will then be no practical barrier to a start to decommissioning. We look to all parties to honour the commitment that they made to use any influence that they may have to achieve the decommissioning of all paramilitary weapons within two years.

I shall also present to the House shortly a Bill to implement the provisions of the agreement relating to prisoners. The Government are committed to seeking to enact the appropriate legislation to give effect to new arrangements by the end of June. The Bill, which I know the House will wish to examine carefully, will include the safeguards that are in the agreement and to which my right hon. Friend the Prime Minister drew attention in his speech in Belfast on 14 May. The agreement is to be implemented in all its parts, not cherry-picked.

As the Prime Minister said, we need to be sure that both the terms and the spirit of the agreement are met. The Prime Minister set out a range of factors on which it would be possible to make an overall judgment so that we can be sure that all parties are committed exclusively to peace and democracy and that violence is genuinely given up for good.

There are a range of factors to take into account, as the Prime Minister said:

"first and foremost, a clear and unequivocal commitment that there is an end to violence for good, on the part of republicans and loyalists alike, and that the so-called war is finished, done with, gone; that, as the Agreement says, non-violence and exclusively peaceful and democratic means are the only means to be used;

that, again as the Agreement expressly states, the ceasefires are indeed complete and unequivocal; an end to bombings, killings and beatings, claimed or unclaimed; an end to targeting and procurement of weapons, progressive abandonment and dismantling of paramilitary structures actively directing and promoting violence;

full co-operation with the Independent Commission on decommissioning, to implement the provisions of the Agreement;

and no other organisations being deliberately used as proxies for violence."

As my right hon. Friend the Prime Minister again made clear:

"we are not setting new preconditions or barriers".

However, we will be giving legislative expression to those factors in the Bill relating to prisoners and the Bill to implement the remainder of the agreement which we shall introduce later this Session.

Our aim is to transfer powers to the assembly and to establish the north-south ministerial council, agreed implementation bodies, the British-Irish council and the British-Irish intergovernmental conference at the same time. We are aiming for early 1999.

In the meantime, following the elections, the assembly will meet first in shadow form in July. In the shadow period of the assembly, Members will elect a Presiding Officer, consider Standing Orders, elect a First Minister and Deputy First Minister, examine Northern Ireland departmental structures and arrangements and allocate other ministerial posts.

In the period after the assembly elections, there will also be meetings of the British-Irish council and the north-south ministerial council in shadow form. In the shadow north-south ministerial council, representatives from Northern Ireland and the Irish Government will undertake a work programme in consultation with the Government with a view to identifying and agreeing by 31 October this year areas for north-south co-operation and implementation.

The agreement also provides for a range of measures to promote rights and equality of opportunity in Northern Ireland that the Government will continue to implement.

In response, the Conservative spokesman Andrew MacKay was anxious that decommissioning and renunciation of violence be incorporated in the forthcoming legislation on prisoners and those taking ministerial office⁵.

⁵ c 35

A. Elections to the Assembly

Elections took place on 25 June, under the *Northern Ireland Elections Act 1998*⁶. The government issued guidance on the conduct of government business during the election campaign.⁷

With the use of STV, second and subsequent preference votes were crucial in the election of a number of Assembly members, particularly in the allocation of the fifth and sixth seats in each Parliamentary constituency.⁸ For example, the Womens' Coalition's Jane Morrice was awarded the sixth seat in North Down. There was speculation as to whether voters would award second preference votes to pro Agreement parties, and if so, which? An Irish Times/MRBI poll published on 5 June found that the UUP and the Alliance party had the potential to capitalise on second preference votes.⁹ Sinn Fein failed to obtain agreement from the SDLP for an electoral pact in May. The other main determinant of the outcome was the turnout, at 71 per cent, below the 81 per cent of the referendum on May 22.

Appendix 2 gives the results in detail, by first preferences and constituencies. The number of seats gained per party was as follows;

	Number	%
UUP	28	25.9%
SDLP	24	22.2%
DUP	20	18.5%
SF	18	16.7%
UKUP	.5	.4.6%
Alliance	6	5.6%
Independent Unionists	3	2.8%
PUP	2	1.9%
Womens Coalition	2	1.9%
Total	108	100%

The SDLP gained the highest percentage of first preference votes at 21.96 per cent for the first time in a Northern Ireland election, with the UUP following at 21.26 per cent. The SDLP received 22.22 per cent of the seats and the UUP 25.93 per cent, illustrating the importance of vote transfers and the fact that seats are grouped in constituencies. The commentators Colin Rallings and Michael Thrasher have noted that the DUP candidates got the top position in 7 out of 18 constituencies¹⁰ and have claimed that this illustrates

⁶ for background see Research Paper 98/57 *Northern Ireland: political developments since 1972*

⁷ *Conduct of government Business During the Election Campaign* Dep 98/500 5.6.98

⁸ *Irish Times* 2.6.98 'Vote Transfers to determine who wins in Poll'

⁹ *Irish Times* 5.6.98 'Major Yes Parties can take comfort from Poll'

¹⁰ that is the DUP candidate received the most votes in the first count

how another electoral system such as First Past the Post would have produced very different results.¹¹ Pro Agreement parties won 75 per cent of the vote overall and hold 80 seats.

Under the d'Hondt formula to be used under the *Agreement* for the allocation of positions in the executive the UUP and SDLP are expected to receive 3 posts each, and Sinn Fein and the DUP two posts each. The appointments have not yet been made however.

Under the cross community provisions in the *Agreement* (see below) a block of 30 members is required to have a decision designated as 'key'. Pro-Agreement commentators have predicted that the DUP would need dissidents from the UUP to achieve this figure. David Trimble and Seamus Mallon were jointly elected First Minister and Deputy First Minister on a cross community vote at the Assembly's first meeting on 1 July 1998; Sinn Fein abstained and there were 61 votes in favour out of 88 members voting; there were 24 nationalist votes and 30 unionist votes (representing 52.6 per cent of those unionists voting) in favour.

Lord Alderdice was nominated by the Secretary of State as the Presiding Officer immediately after the elections.¹² Initial Standing Orders were issued by the Secretary of State¹³ together with the matters formally referred to the Assembly in pursuance of its duty to 'participate in preparations to give effect to the agreement reached in the multi-party talks on Northern Ireland' under s1(1) of the *Northern Ireland (Elections) Act 1998*. These matters are:

(1) The steps necessary to establish the internal organisation of the Assembly, including

- the election of a First Minister and Deputy First Minister
- agreement on the number of Ministerial posts and the distribution of responsibilities between those posts;
- the nomination of persons to fill those posts on the basis of the D'Hondt procedure;
- the establishment of related Committees, with Chairs and Deputy Chairs again nominated on the basis of the D'Hondt procedure and members appointed on a broadly proportional basis.

(2) The steps necessary to enable relevant members of the Assembly to participate in inaugural and subsequent meetings of the Shadow British Irish Council and of the Shadow North/South Ministerial Council, including:

¹¹ *Local Government Chronicle* 3.7.98 "Transferring allegiances"

¹² *Northern Ireland Office* Press Notice 19.6.98 'Developments after the Northern Ireland elections'

¹³ responded in an Appendix to Research Paper 98/77 *The Northern Ireland Bill: some legislative and operational Aspects*

- participation with Irish Ministers in the Shadow North/South Ministerial Council, in consultation with HMG, with a view to completing by 31 October the work programme mentioned in the Strand 2 part of the Agreement.
- (3) Agreement on Standing Orders and working practices.
 - (4) Preliminary consultations on the arrangements for establishing a consultative Civic Forum.

The Assembly at its first meeting voted to invite the First and Deputy First Minister to consider and, after consultation, make proposals regarding the matters referred. David Trimble and Seamus Mallon, once elected, made an affirmation subscribing to the Agreement and the commitment to 'observe the spirit of the Pledge of Office'.¹⁴ It also set up a committee to consider standing orders and report by the next meeting on 14 September 1998.¹⁵ A short adjournment debate was held to raise matters of current concern, mainly the decision of the Parades Commission to ban the Drumcree march.

Salary and allowance levels for the shadow Assembly Members and Ministers have been set¹⁶(see RP 98/77 for details). Sinn Fein have stated that their representatives intend to conduct business in Irish in the new Assembly.¹⁷

There has been some uncertainty about the timescale by which the shadow Executive is set up, with suggestions from David Trimble that it might not come into being before Christmas 1998¹⁸. The junior Northern Ireland minister, Paul Murphy, wrote to the parties on 18 June stating that the initial standing orders would make provision for the election of a First Minister and Deputy First Minister at the Assembly's first meeting, and the Secretary of State would refer the selection of the shadow Executive Committee to the Assembly for consideration 'at the appropriate points during its 'shadow' period'.¹⁹

B. Recent Developments

The report of the Victims' Commissioner, Sir Kenneth Bloomfield, *We Will Remember Them*, was published on 13 May and Adam Ingram was appointed minister for victims. Membership of the new independent Commission on Policing was announced on 3 June, and it will be chaired by Chris Patten, former Governor of Hong Kong.²⁰ The terms of reference were set out in Annex A of the *Agreement*.

¹⁴ *Official Report of Debates* p35

¹⁵ The *Official Report of Debates* for the Assembly has been published and is available in the Library

¹⁶ see Research Paper 98/77 for details.

¹⁷ *Times* 18.6.98 'Business in Irish for Sinn Fein'

¹⁸ *Irish Times* 18.6.98 'Mallon challenges 'petulant' Trimble on Agreement' *Irish Times* 22.6.98 'Trimble firmly focused on events beyond Thursday'

¹⁹ *Northern Ireland Office* 19.6.98 'Developments after the Northern Ireland Elections'

²⁰ *Northern Ireland Office* 3.6.98 'Secretary of State announces membership of the Independent Commission on Policing'

The Secretary of State announced the review of criminal justice promised in the *Agreement* on 27 June. The review is to be carried out by a team of government officials, assisted by five independent assessors, and will be completed by the autumn of 1999. The terms of reference for the review were set out in Annex B of the *Agreement*²¹

Decommissioning schemes in Northern Ireland and in the Republic of Ireland came into effect on 30 June 1998 and the Independent International Commission on Decommissioning, chaired by Canadian General John de Chastelain, is authorised to oversee and verify decommissioning. Under the terms of the *Northern Ireland Decommissioning Act 1997* an amnesty will apply for weapons handed in before 22 May 2000.²² The IRA's so-called 'commanding officer' in the Maze prison has been quoted as saying that he could envisage voluntary decommissioning once the Agreement had begun to function.²³ No weapons have yet been handed in. The LVF indicated that it would be approaching the Commission in the next few weeks.²⁴ It declared a ceasefire just before the 22 May referendum. The UDP and the PUP (linked to the UDA and the UVF) have both met the Commission, but have indicated that loyalist paramilitary groups were unlikely to disarm before the IRA had decommissioned. Under the terms of the *Agreement* participants in the Talks promised 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' in the context of the implementation of the overall settlement' (p20).

The *Northern Ireland (Sentences) Bill*²⁵ has passed all its Commons stages and is designed to fulfil the commitments with regard to prisoners set out in the *Framework Agreement*. It is due to complete its Lords stages next week. The Opposition voted against the third reading of the Bill on 18 June, arguing that there was not sufficient linkage between prisoner releases and decommissioning of terrorist weapons and that it did not accurately reflect the terms of the *Agreement*. On report Government tabled amendments²⁶ suggested by David Trimble which reflected more closely the language used by Tony Blair in his speech of 14 May (see above), but argued that the *Belfast Agreement* had to be taken as a whole. On a point of order Peter Robinson complained that Hansard had omitted a sentence of Tony Blair's at Prime Minister's Questions on 6 May:

²¹ *Northern Ireland Office* 29.6.98 'Mowlam launches review of criminal justice'

²² The scheme made under the Act refers to 26 February 1999 as the end of the amnesty period, but a footnote sets out the Government's intention to ask Parliament to extend the period until 22 May 2000 (*Northern Ireland Office* 29.6.98 'Decommissioning Scheme Introduced').

²³ *Times* 18.6.98 'Unionists welcome IRA move on arms'

²⁴ *Times* 12.6.98 'Disarmament threatens Ulster peace consensus'

²⁵ see Research Paper 98/65 *Northern Ireland: The Release of Prisoners under the Northern Ireland (Sentences) Bill* for background

²⁶ for background see speech by Mo Mowlam on Third Reading HC Deb vol 314 c561 18/6/98

Mr. Peter Robinson (Belfast, East): On a point of order, Madam Speaker. On Wednesday 6 May, during Prime Minister's questions, the Leader of the Opposition sought to gain an undertaking from the Prime Minister in relation to the Government's intentions as far as the release of prisoners was concerned. Column 711 of *Hansard* shows that he asked:

“Does he”-

that is, the Prime Minister-

“agree that prisoners should not be released early until the organisations to which they belong have substantially decommissioned their weapons?”- [Official Report, 6 May 1998; Vol. 311, c. 711.]

A Press Association report of the Prime Minister's response shows that, early in his response, he said:

"The answer to your question is, yes, of course it is the case that both in respect of taking seats in the government of Northern Ireland and the early release of prisoners".

Those words are not contained in the *Hansard* of that day's proceedings. I checked with the video recording unit of the House, and I found that it is the Press Association report and not *Hansard* that is accurate.

The words that are important and significant have been expunged from the record of the House. Clearly, someone acting for, or on behalf of, the Prime Minister has tempered with the record of proceedings in the House. Is it in order for such a serious extraction and deletion from the record of proceedings to take place by the Government, or indeed by any other Member of the House?

The Speaker's Office released a statement on 19 June noting that the editor of *Hansard* had confirmed that changes to the Prime Minister's words had been undertaken by *Hansard* under the normal rule of leaving out nothing that adds to the meaning of what is said., and that there had been no requests from the Prime Minister or anyone acting for him for editing. A letter from the editor giving the verbatim transcript was attached. Madam Speaker made a statement on 22 June 1998.

On 10 July the Secretary of State for Northern Ireland announced her intention to impose a statutory requirement on the public sector to promote equality of opportunity and to create a unified Equality Commission²⁷, following from commitments in the *Agreement* (p16) and in the White Paper *Partnership for Equality*²⁸ issued in March 1998.

²⁷ HC Deb vol 315 10.7.98 665-66w

²⁸ Cm 3890

In the week leading up to 12 July disorder broke out at Drumcree. Three small boys were murdered in an attack described as sectarian by the RUC. David Trimble urged the Portadown Orange Order to disassociate themselves from such attacks by ending their protest.²⁹

II The Bill

The Bill had its first reading on 15 July. In a subsequent press notice the Secretary of State commented.³⁰

"In just twelve weeks since the Good Friday Agreement Northern Ireland has seen huge and genuinely historic change in the form of the election and first meeting of a new Assembly, and the election of the First and Deputy First Ministers. The Government has moved heaven and earth to consult the parties, and to draft and introduce a bill as swiftly as possible so that the Assembly, with north-south bodies, the British-Irish Council, the Human Rights and Equality Commissions and all the other elements of the Agreement can be up and running very early in the new year."

The Bill is due to complete all its Commons stages by the end of 27 July. All the stages will be taken on the floor of the House, as for the *Government of Wales Bill* and the *Scotland Bill*.

The Bill repeals almost all of the *Northern Ireland Constitution Act 1973*, and the whole of the *Northern Ireland Act 1974* and the *Northern Ireland Act 1982*, as well as the *Government of Ireland Act 1920*. The Bill will therefore provide a new framework for the exercise of legislative power in Northern Ireland.

The Explanatory Note given in the Press Release on the Bill is reproduced below:

Part I: preliminary

1. - Clause 1 and 2 appear precisely as they featured in the constitutional issues section of the Agreement. They give effect to the principle of consent, and to the repeal of the Government of Ireland Act 1920, with the affirmation that the present Bill shall have effect notwithstanding previous enactments.

2. Clause 3 provides for initial devolution, with Parliamentary approval, once sufficient progress is made in implementing the Agreement. The provisions on legislative and executive powers will come into effect, and direct rule will end.

Part II: legislative powers

²⁹ *Guardian* 13.7.98 'Splits emerge on consequences of vicious act' for background on the powers of the Parades Commission see Research Paper 98/11 *Public Processions in Northern Ireland*

³⁰ Northern Ireland Office 15.7.98 'Mowlam introduces Bill to Implement Agreement'

3. Clause 6 sets out the legislative competence of the Assembly, reflecting the Agreement and the Scotland Bill. The Assembly may not make laws that are discriminatory or incompatible with rights under the European Convention, or EU law, or that amend the Bill or other Acts of constitutional importance.

4. Clause 6 also prevents the Assembly legislating generally about excepted matters (set out in schedule 2 1 mainly issues of national significance). The Agreement (paragraph 27 of the Strand One section) envisaged the Assembly legislating for reserved matters subject to the Secretary of State's consent and parliamentary control: clauses 7 and 13 in particular achieve this (reserved matters are set out in schedule 3). The Assembly has full authority for matters within the responsibility of Northern Ireland departments (as in para 3 of Strand One) which are transferred matters (defined as those not listed in the two schedules).

5. Because legislation often has necessarily to stray across constitutional boundaries for incidental purposes, however, the Assembly has a limited right to make 'ancillary' excepted or reserved provision (eg creating a criminal offence in housing legislation), subject to the consent of the Secretary of State.

6. The question whether the Assembly has strayed outside its competence is, in accordance with paragraph 28 of the Agreement, for the courts. The Attorney General can refer a proposed Measure in this context to them (clause 10); clauses 69-71 provide for handling of these issues in later litigation. Part III: executive authorities

7. Part III provides for the selection of the First and Deputy First Ministers (clause 14), Ministers (clause 15), and chairman and members of Assembly Committees (clause 22). Transitional provisions will provide for those elected in the shadow phase to step directly into the substantive roles.

8. The part also covers Ministers' functions, in accordance with the Agreement: in principle full authority in the transferred field, subject to restrictions on action that is in conflict with ECHR or EU rights, discriminatory, etc.

9. There are provisions on exclusion from office (clause 23), following the Agreement, and reflecting the Prime Minister's Balmoral. statement.
Part IV: the Northern Ireland Assembly

10. Part IV regulates election to the Assembly, disqualification, aspects of procedure, including the petition of concern mechanism (clause 34); and Assembly pay (clause 38).
Part V: financial provisions

11. Part V makes provision for devolved finance. (The level of funding is, as in Scotland, decided extra-statutorily).

Part VI: human rights and equal opportunities

12. Part VI establishes the Human Rights and Equality Commissions, casts statutory duties in respect of equality on public authorities, and reproduces several other provisions on discrimination of the Constitution Act.

Part VII and VIII: miscellaneous and supplemental (including North-South)

13. Part VII makes provision for participation in Strand Two and Strand Three bodies (clause 66); setting up of initial implementation bodies (clause 68); consultation with the Civic Forum (clause 65); and miscellaneous powers of subordinate legislation (clause 72 and 73).

Northern Ireland Office, 15 July 1998

The Financial Effects of the Bill were given in the Explanatory and Financial Memorandum:

Financial effects of the Bill

Northern Ireland Assembly

The amount required in the year ending 31st March 1999 for expenditure of the New Northern Ireland Assembly is estimated at £9.466 million. Figures of £14 million have been estimated for each year of the next survey period.

Executive support for First and Deputy First Ministers

The amount required for directly supporting Ministers up until 31st March 1999 has been estimated at £244,000. Thereafter figures of £420,000, £435,000 and £450,000 have been estimated to cover the next 3 financial years respectively.

North-South Ministerial Council

The amount required to support the North-South Ministerial Council up until 31st March 1999 has been estimated at £237,000. Thereafter figures of £900,000, £935,000 and £970,000 have been estimated to cover the next 3 financial years respectively.

Consultative Civic forum

The consultative Civic Forum should be established from 1st February 1999 and a figure of £60,000 has been estimated to cover expenditure up to 31st March of next year. Thereafter figures of £370,000, £385,000 and £400,000 have been estimated to cover the next 3 years respectively.

The Northern Ireland Human Rights and Equality Commissions
It is estimated that the costs will be in the region of £750,000.

Effect of the Bill on public service manpower

The provisional estimate is that some 140 staff will be needed to serve the Assembly. These staff will not be civil servants. They will be employed directly by the Northern Ireland Assembly Commission who will determine the exact number of staff required.

It is not anticipated that a significant number of jobs will be created within the existing Northern Ireland departments as a result of the Bill.

Small secretariats will be established to service the North-South Ministerial Council and the British-Irish Intergovernmental Conference respectively.

The Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland have body corporate status and will recruit staff directly.

At the time of writing there have been very few responses to the Bill from political parties. Sinn Fein have stated that the Bill 'must be an accurate interpretation of Good Friday Agreement' with Martin McGuinness claiming 'it is absolutely essential that there is no departure from the agreement reached on Good Friday. The experience since then is that pro-unionist elements within the British establishment have attempted to hollow out key areas in the agreement'.³¹

A. Part I The Constitutional Status of Northern Ireland

Background

The present status of Northern Ireland is explored in Research Paper 98/57. The *Agreement* stated that the status of Northern Ireland would change if 'a majority of people of Northern Ireland' preferred to join the Republic:³²

1. The participants endorse the commitment made by the British and Irish Governments that, in a new British-Irish Agreement replacing the Anglo-Irish Agreement, they will:

(i) recognise the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland;

(ii) recognise that it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise

³¹ *Sinn Fein Press Release* 16.7..98 'Bill must be an accurate interpretation of the Good Friday Agreement' McGuinness'

³² for background see Research Paper 98/65 *Northern Ireland: the Release of Prisoners under the Northern Ireland(Sentences) Bill*

their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland;

(iii) acknowledge that while a substantial section of the people in Northern Ireland share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland, the present wish of a majority of the people of Northern Ireland, freely exercised and legitimate, is to maintain the Union and, accordingly, that Northern Ireland's status as part of the United Kingdom reflects and relies upon that wish; and that it would be wrong to make any change in the status of Northern Ireland save with the consent of a majority of its people;

(iv) affirm that if, in the future, the people of the island of Ireland exercise their right of self-determination on the basis set out in sections (i) and (ii) above to bring about a united Ireland, it will be a binding obligation on both Governments to introduce and support in their respective Parliaments legislation to give effect to that wish;

The *Agreement* set out the draft legislation to be enacted by the British Government:

DRAFT CLAUSES/SCHEDULES FOR INCORPORATION IN BRITISH LEGISLATION

1. (1) It is hereby declared that Northern Ireland in its entirety remains part of the United Kingdom and shall not cease to be so without the consent of a majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance with Schedule 1.

(2) But if the wish expressed by a majority in such a poll is that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland, the Secretary of State shall lay before Parliament such proposals to give effect to that wish as may be agreed between Her Majesty's Government in the United Kingdom and the Government of Ireland.

2. The Government of Ireland Act 1920 is repealed; and this Act shall have effect notwithstanding any other previous enactment.

SCHEDULE 1

POLLS FOR THE PURPOSE OF SECTION 1

1. The Secretary of State may by order direct the holding of a poll for the purposes of section 1 on a date specified in the order.

2. Subject to paragraph 3, the Secretary of State shall exercise the power under paragraph 1 if at any time it appears likely to him that a majority of those voting

would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland.

3. The Secretary of State shall not make an order under paragraph 1 earlier than seven years after the holding of a previous poll under this Schedule.

4. (Remaining paragraphs along the lines of paragraphs 2 and 3 of existing Schedule 1 to 1973 Act.)

Points of interest include the reference to Northern Ireland *in its entirety* presumably making clear that the border is not to be an issue, and the referendum question which offers the choice to join a *united Ireland* and not any other option. The given option could have been framed differently e.g. to join the Republic of Ireland or to form a common state with the Republic of Ireland.

The British Government is therefore committed to introducing legislation to give a new constitutional guarantee to Northern Ireland. The terms of the legislation are familiar; the *Northern Ireland Constitution Act 1973* stated in s1:

Status of Northern Ireland

Status of Northern Ireland as part of United Kingdom	1. It is hereby declared that Northern Ireland remains part of Her Majesty's dominions and of the United Kingdom, and as it is hereby affirmed in no event will Northern Ireland or any part of it cease to be part of Her Majesty's dominions and of the United Kingdom without the consent of the majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance with Schedule 1 to this Act.
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Schedule 1 made provision for polls to be held at intervals of not less than 10 years. A poll was held in March 1973 under the *Northern Ireland (Border Poll) Act 1972* (see p.14), but none has been held since.

The 1985 Anglo Irish Agreement had an explicit commitment that the status of Northern Ireland would change only with the consent of the majority of the people of Northern Ireland(Article 1). This Agreement therefore acknowledged the real possibility of a change. The Anglo Irish Agreement is to be superseded by the *Belfast Agreement*.

Section 1 of the 1973 Act had stated that Northern Ireland *would* not cease to be part of the United Kingdom without the consent of the majority of the people of Northern Ireland but it had not explicitly stated that the status of Northern Ireland would change if the majority expressed that wish in the appropriate statutory form. As part of the *Belfast Agreement* the draft legislation for the UK sets out an explicit commitment to introduce proposals to Parliament to give effect to a united Ireland if a majority of Northern Ireland people voted

for that option. It is simply a majority of those voting which is required, not prescribed a majority of the entire electorate as in the referendums in Scotland and Wales in 1979.³³

The only Act which is explicitly to be repealed under the *Belfast Agreement* is the *Government of Ireland Act 1920*. Very little of this Act now remains on the statute book, but s1(2) sets out the boundaries of Northern Ireland, and s.75 declares the sovereignty of the Westminster Parliament over the province.³⁴ Although the 1920 Act defines the boundaries of Northern Ireland, the *Ireland (Confirmation of Agreement) Act 1925*³⁵ stated that the extent of Northern Ireland was as fixed by the 1920 Act³⁶, and the effect of that 1925 international agreement between the UK and the Irish Free State is not dependent on the 1920 Act remaining in force. S75 is a declaratory provision, and its repeal is not considered by constitutional experts to affect the sovereignty of the Westminster Parliaments over devolved legislatures. The British Government have included within the *Scotland Bill* (which introduces a Scottish Parliament) a provision that 'this section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland'³⁷ and similar provision is made in this Bill.

The status of the Act of Union was not explicitly dealt with in the *Belfast Agreement*. Article 2 of Annex A stated that the new legislation would have effect 'notwithstanding any other previous enactment'. This wording has been subject to differing interpretation. Bertie Ahern, Taoiseach of the Republic, commented on 26 April at a rally to mark the 1916 Easter Rising that the 1800 Act of Union had effectively been brought to an end between 1920 and 1921 and that the Belfast Agreement made this clear³⁸. In a speech to the Dail on April 21 he said "Any British territorial claim of sovereignty, made without reference to consent, going back to the Government of Ireland Act 1920, the Act of Union or for that matter to 1170, will be superseded in the British Act and becomes irrelevant for the future. The principle of consent is paramount." Gerry Adams, for Sinn Fein, stated that in effect the Act of Union would be repealed by the forthcoming British legislation.³⁹ David Trimble has said that the Act "will not be repealed expressly or impliedly. The Agreement as a whole and the draft changes in the British legislation in Annex A...introduce nothing that would repeal any part of the Act

³³ See Research Paper 97//61 *The Referendum (Scotland and Wales) Bill*

³⁴ S75 currently reads 'notwithstanding anything contained in this Act, the supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters and things in Ireland and every part thereof' As originally enacted it stated 'notwithstanding the establishment of the Parliament of Northern Ireland' and was presumably meant to convey the authority of Westminster over a subordinate legislature. It was amended with the dissolution of Stormont in 1973 and the *Northern Ireland Constitution Act 1973* s4(4) stated 'this section does not affect the power of the Parliament of the United Kingdom to make laws for Northern Ireland.'

³⁵ For background and text on the 1925 agreement see *The Constitution of Northern Ireland* (1933) by Arthur Quekett

³⁶ The then Irish Free State also ratified the 1925 agreement in its *Treaty (Confirmation of Amending Agreement) Act 1925*

³⁷ Clause 27(7)

³⁸ *Irish Times* 27.4.98 "Britain 'ruled out of the equation in the North'

³⁹ Sinn Fein website 'Address by Sinn Fein President Gerry Adams' 10.5.98

of Union”.⁴⁰ He has stated that the principle of consent relates to the future status of Northern Ireland and “this does not mean that constitutionally Northern Ireland's position within the United Kingdom rests only on past, and present, consent.”

The drafting of Article 2 of Annex A appears to imply the continued existence of past enactments in its use of the term 'notwithstanding'. The explicit repeal, in the same provision, of the 1920 Act could raise a presumption that the statutory intention is to treat the 1920 Act differently from 'any other previous enactments' such as the Act of Union. The legal doctrine of implied repeal is explained in an extract from *Constitutional and Administrative Law*⁴¹

If the legislature wishes to alter a law previously enacted, it is convenient if the new Act expressly repeals the old law or states the extent to which the old law is amended. Suppose that this is not done, and a new Act is passed which conflicts with an older Act but does not expressly repeal it. There now appear to be two inconsistent statutes on the statute book. How is the apparent conflict to be resolved? And by whom?

The doctrine of implied repeal

It is for the courts to resolve this conflict because it is their duty to decide the law which applies to a given situation. Where two Acts conflict with each other, the courts apply the Act which is later in time, and any earlier Act inconsistent with the later Act is taken to have been repealed by implication. If two inconsistent Acts be passed at different times, the last must be obeyed, and if obedience cannot be observed without derogating from the first, it is the first which must give way... Every Act is made either for the purpose of making a change in the law or for the purpose of better declaring the law, and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactment. This doctrine is found in all legal systems, but in Britain its operation is sometimes considered to have special constitutional significance.

Before 1919, many public and private Acts of Parliament empowered public authorities to acquire land compulsorily and laid down many differing rules of compensation. In 1919, the Acquisition of Land (Assessment of Compensation) Act was passed to provide a uniform code of rules for assessing the compensation to be paid in future. Section 7(1) provided that: The provisions of the Act or order by which the land is authorised to be acquired, or of any Act incorporated therewith, shall, in relation to the matters dealt with in this Act, have effect subject to this Act, and so far as inconsistent with this Act those provisions shall cease to have or shall not have effect.' The Housing Act 1925 sought to alter the 1919 rules of compensation by reducing the compensation payable in respect of slum-housing. In *Vauxhall Estates Ltd v Liverpool Corpn*, it was held that the provisions of the 1925 Act must prevail over the 1919 Act so far as they were

⁴⁰ *Irish Times* 18.5.98 "At long last Dublin recognises British territorial sovereignty"

⁴¹ A.W. Bradley K.D.Ewing (12th ed 1997) pp65-6

inconsistent with it. The court rejected the ingenious argument of counsel for the slum-owners that s 7(1) (and especially the words 'or shall not have effect') had tied the hands of future Parliaments so that the later Parliament could not (short of express repeal) legislate inconsistently with the 1919 Act. In a similar case, *Ellen Street Estates Ltd v Minister of Health*, Maugham LJ said: 'The Legislature cannot, according to our constitution, bind itself as to the form of subsequent legislation, and it is impossible for Parliament to enact that in a subsequent statute dealing with the same subject-matter there can be no implied repeal. If in a subsequent Act Parliament chooses to make it plain that the earlier statute is being to some extent repealed, effect must be given to that intention just because it is the will of Parliament.'

The correctness of these two decisions is not in doubt, for there were very weak grounds for suggesting that in 1919 Parliament had been attempting to bind its successors. But Maugham LJ went far beyond the actual situation in saying that Parliament could not bind itself as to the contents of subsequent legislation. He would have been closer to the facts of the case had he said that Parliament could not bind itself as to the contents of subsequent legislation. However, these cases, which illustrate the doctrine of repeal by implication, have been used to support a broad constitutional argument that Parliament may never bind its successors.

Some constitutional experts have cast doubt on the application of the traditional unlimited scope of Parliamentary sovereignty over the Acts of Union in relation to Scotland⁴² and Ireland.⁴³ Professor Brigid Hadfield has also argued that the UK Parliament has accepted that in order to change Article 1 of the Act of Union both legislation and the consent of those directly affected would be required.⁴⁴ David Trimble has also drawn attention to the words of Lord Wilberforce in 1966 when he declined to subscribe to the view that the Acts of Union had been impliedly repealed by the *Irish Free State(Consequential Provisions) Act 1922* saying: 'In strict law there may be no difference in status, or as regards the liability to be repealed, as between one Act of Parliament and another, but I confess to some reluctance to holding that an Act of such constitutional significance as the Union with Ireland Act is subject to the doctrine of implied repeal'.⁴⁵ Nevertheless the Committee of Privileges in the Lords concluded that the relevant provisions of the Act of Union providing for the election of representative peers to sit in the Lords had ceased to be effective on the passage of the

⁴² This argument in relation to Scotland is known as the 'born unfree argument'; that the new British Parliament entered upon its life by virtue of the Union; its powers were therefore limited by the guarantees in the Treaty which guarantees had been enacted by the separate Parliament of England and Scotland before the united Parliament came into existence.

⁴³ See, for example, *Constitutional Law in Northern Ireland* (1968) by Harry Calvert who considered that 'in purely formal terms it is accurate to describe the legislation of 1922 culminating in the events of 1949 as being a cession of metropolitan territory by the United Kingdom Parliament contrary to the Acts of Union' (p 19). This is considered in Research Paper 96/82 *The Constitution: Principles and Development*

⁴⁴ *Public Law* 1983: 'Learning from the Indians? The Constitutional Guarantee Revisited'

⁴⁵ HL 53 session 1966 *Report by the Committee of Privileges on the Petition of the Irish Peers* Viscount Dilhorne considered in his opinion that the relevant Article had been impliedly repealed in 1922.

1922 Act.⁴⁶ Article 5 of the Act of Union (which had joined together the Churches of Ireland and of England) had already been superseded by the *Irish Church Act 1869*.⁴⁷ S71 of that Act preserved the Acts of Union intact 'except in so far as it relates to the union of the Churches of England and Ireland'.

Clause 35 of the *Scotland Bill* states that the *Union of Scotland Act 1706* and the *Union with England Act 1707* "shall have effect subject to this Act". The Notes on Clauses to the *Scotland Bill* explain: "this clause is intended to make clear that it is Parliament's intention that the provisions in the Bill should be given effect notwithstanding anything in the Acts of Union. This sends a clear signal that, in so far as there may be any inconsistencies, the provisions in the Bill are to take priority. However, this interpretation may be open to dispute from Scottish constitutional lawyers."⁴⁸

Presumably if legislation were to be brought forward to allow Northern Ireland to be incorporated into the Republic it would be at that stage that the continued existence of the Act of Union would come under question; its status is not under question simply because a more explicit version of the 1973 consent provisions (which itself supplemented earlier guarantees in *Ireland Act 1949*) is to be enacted. Constitutional theory in so far as inconsistent would, as in the 1920s, have to give way to practical realities (especially if buttressed by clear expressions of consent in referendums). However, as in all such cases, it is impossible to predict how the courts would respond if presented with a direct challenge to any new 'cession' legislation on Act of Union grounds.⁴⁹ For the future, the Act of Union would not in itself prevent the cession of Northern Ireland, just as it did not prevent the creation of the Irish Free State.

The Bill:

Clause 1 sets out the status of Northern Ireland in the precise terminology given in the *Belfast Agreement*⁵⁰ that is that there will be no change unless a majority of the people in Northern Ireland so vote in a poll held under **Schedule 1**. As under the *Agreement* polls are to be held whenever the Secretary of State considers that a majority for change exists, and at no less than 7 year intervals. Once again, the wording of the Schedule is taken directly from the draft clauses/schedules in the *Agreement* the Secretary of State has power to make provision on the franchise, the question to be asked and the conduct of the poll, including the creation of criminal offences.

⁴⁶ *Petition of the Earl of Antrim*[1967] 1 AC 691 [1966] 3WLR 1141HL

⁴⁷ The passage of the 1869 Act was challenged in *ex parte Canon Selwyn* (1872) 36 JP 54 where the applicant sought unsuccessfully to challenge the validity of the Royal Assent on the ground that its terms conflicted with the Coronation Oath and Act of Settlement

⁴⁸ See Research Paper 98/3 *the Scotland Bill: Some Constitutional and Representational Aspects* for a further discussion

⁴⁹ as suggested in the Scottish context in *McCormick v Lord Advocate* on which see Research paper 96/82 *The Constitution: Principles and Development*

⁵⁰ DRAFT CLAUSES/SCHEDULES FOR INCORPORATION INTO BRITISH LEGISLATION see above for text

Clause 2 repeals the *Government of Ireland Act 1920*, noting in the terms of the *Agreement* that ‘this Act shall have effect notwithstanding any previous enactment’. The *Act of Union* does not receive an explicit mention in the Bill, and there is nothing equivalent to Clause 35 of the *Scotland Bill* - that the Acts of Union have effect subject to the new legislation.

Clause 5(6) of the Bill provides that the legislative powers of the new Assembly will ‘not affect the power of the Parliament of the United Kingdom to make laws for Northern Ireland’, using language almost identical to that found in Clause 27(7) of the *Scotland Bill* and s4 of the *Northern Ireland Constitution Act 1973*.

B. Part I Devolution -The New Northern Ireland Assembly

Background

As in 1973 legislation setting up the new Assembly came in two stages; firstly a Bill to govern the electoral arrangements and then a more substantial Bill setting out the functions of the Assembly and the constitutional status of Northern Ireland. The 1973 legislation consisted of the *Northern Ireland Assembly Act* passed 3 May and the *Northern Ireland Constitution Act*, passed 18 July. The elections to the Assembly had taken place on 28 June and the first meeting took place on 31 July. The *Northern Ireland (Elections) Act 1998* was passed on 7 May 1998 and elections took place on 25 June. The first meeting was on 1 July.

Under the terms of the *Agreement* the Assembly is to exercise full legislative and executive authority for those areas within the responsibility of the Northern Ireland Government Departments. There are six departments as follows: education, environment, agriculture, economic development, health and social services and finance. These broad subjects roughly correspond to the areas to be devolved in Wales and Scotland and those outlined in the *Northern Ireland Constitution Act 1973*. This is less extensive than those devolved to the Stormont Parliament under the *Government of Ireland Act 1920*. One contentious area is likely to be abortion law, which has been reserved to Westminster in the *Scotland Bill*, but the *Abortion Act 1967* has never been extended to Northern Ireland. The *Belfast Agreement* also stated that the British government was ready in principle to devolve responsibility for policing and justice issues in the context of the full implementation of the *Agreement*. (p23)

The 1973 Assembly

The Assembly which met under the *Northern Ireland Assembly Act 1973* had 78 members, with between 5 and 8 members returned for each of the 12 parliamentary constituencies by single transferable vote (STV). The *Northern Ireland Constitution Act* set out the functions of the Assembly and created three categories for legislative powers with identical names to those in the 1920 Act: excepted, reserved and transferred. Schedule 2 of the 1973 Act lists excepted matters including the Crown, foreign affairs, army etc. but also the franchise,

prosecutions, appointment of magistrates and non Supreme Court judges, and special anti-terrorist powers. Law and order powers were 'reserved' powers which were excluded at the time from the normal legislative competence of the Assembly, but in respect of which the Assembly could legislate with the agreement of the United Kingdom Parliament. All other powers were transferred⁵¹, but s.2 of the 1973 Act made the formation of a broadly-based Executive a pre-condition for the devolution of legislative power to the new Assembly.

The 1973 Act established a Northern Ireland Executive consisting mainly of the political heads of the Northern Ireland parties, and presided over by a 'Chief executive member' who was also leader of the Assembly. The members of the Executive were to be appointed by the Secretary of State for Northern Ireland largely from among the existing members of the Assembly, and the Executive to be chosen was required to be widely accepted through the community having regard to the support it commanded in the Assembly (s.2.1(b)). The Secretary of State, having formed the Executive, remained responsible for excluded and reserved powers.

Assembly laws were to be known as 'Measures' and were to be enacted by being passed by the Assembly and approved by the Queen in Council (s4) They were to be subject to an anti-discrimination provision in s.17(1). S.19 also prohibited unlawful discrimination by public authorities, including the Northern Ireland Executive. Members of the Executive were to make an oath or affirmation under s.8 to uphold the laws of Northern Ireland.

The Assembly was required under s.25 to establish consultative committees to advise and assist each Department head in the formulation of policy, and the committees were to reflect the balance of parties in the Assembly.

On 1 January 1974 the Government devolved to the Assembly legislative responsibility for all transferred matters and the Northern Ireland Executive, composed of 6 Official Unionists, 4 SDLP and 1 Alliance, began to function. However Unionist reaction against the Sunningdale Agreement of December 1973, culminating in the Ulster Workers Council strike, forced the Unionist members of the Executive to resign and the Assembly to be prorogued, returning executive power to Westminster. *The Northern Ireland Act 1974* dissolved the Assembly and re-introduced direct rule, providing for Northern Ireland legislation in the devolved areas to be made under Orders in Council.

Under s.1 and 2 of the *1982 Northern Ireland Act* the Assembly could submit to the Secretary of State proposals to resume some or all of legislative and executive devolution under the 1973 Act, provided that the proposals had the support of 70 per cent of the Assembly or the Secretary of State was satisfied of widespread acceptance across the community.⁵² In the event, the SDLP and Nationalist parties took no part in the 1982

⁵¹ The first devolution order listed the powers transferred - health and social services, housing, education, environment and agriculture

⁵² S1(4). There were no specific provisions designed to assess cross community support and members of the Assembly were not required to give their community identity. The preceding White Paper Cmnd

Assembly so the majority was never likely to be achieved. However, the Assembly was given deliberative powers by the 1982 Act via committees which scrutinised the six Northern Ireland departments. These committees did not have a formal power to summon Ministers or officials or have access as of right to departmental papers. The membership of the committees was to reflect as far as practicable, the 'balance of parties in the Assembly' (s4(2)). In the 1982 elections Sinn Fein contested seats for the first time to this type of body; both it and the SDLP had campaigned on an abstentionist ticket. Allocation of appointments to the committees was made to reflect the balance of parties actually taking up their seats in the Assembly. The Assembly was dissolved in June 1986 following Unionist opposition to the Anglo Irish Agreement. The Boundary Commission for Northern Ireland have continued to report on the boundaries for Assembly constituencies, but it will be now abolished with the repeal of the 1973 and 1982 Acts in this Bill.

The Bill -The Devolution Process

Clause 3 gives the Secretary of State power to lay a devolution order transferring legislative and executive power under Parts II and III of the Bill if it appears to the Secretary of State 'that sufficient progress has been made in implementing the Belfast Agreement'. The order will be subject to affirmative resolution of both Houses. **Clause 73** allows for Orders in Council to transfer functions exercisable by a UK or Northern Ireland authority.

The New Northern Ireland Assembly will be the term used for the Assembly in its shadow existence, but once devolution comes into effect under Clause 3 it will become known as the Northern Ireland Assembly, by **Clause 4(5)**.

C. Legislative powers

As with the *Northern Ireland Constitution Act 1973* there are to be three categories of legislative powers; reserved, excepted and transferred. **Schedule 2** specifies excepted matters as follows:

8541 had stated that 'in forming a judgement on this the Government would only consider a proposal to command sufficiently widespread acceptance if it appeared to be acceptable to both sides of the community'. However s2(2) stated that devolution would not occur unless each House of Parliament had passed a draft of the relevant order stating the provisions were likely to command widespread acceptance throughout the community.'

SCHEDULE 2

EXCEPTED MATTERS

1. The Crown, including the succession to the Crown and a regency, but not-
 - (a) functions of the First Minister and deputy First Minister, the Northern Ireland Ministers or the Northern Ireland departments, or functions in relation to Northern Ireland of any Minister of the Crown;
 - (b) property belonging to Her Majesty in right of the Crown or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;
 - (c) the foreshore or the sea bed or subsoil or their natural resources so far as vested in Her Majesty in right of the Crown.
2. The Parliament of the United Kingdom; parliamentary elections, including the franchise; disqualifications for membership of that Parliament.
3. International relations, including treaties, the making of peace or war and neutrality, and connected matters but not-
 - (a) the surrender of fugitive offenders between Northern Ireland and Ireland;
 - (b) the exercise of legislative powers so far as required for giving effect to any agreement or arrangement made-
 - (i) in pursuance of section 66; or
 - (ii) by, or in relation to the activities of, any body which is the subject of an order under section 68;
 - (c) the exercise of legislative powers for any of the purposes mentioned in section 2(2)(a) or (b) of the European Communities Act 1972, or for purposes similar to those of any of sections 5 to 12 of, or any paragraph of Schedule 4 to, that Act.
4. The defence of the realm; the armed forces of the Crown but not any matter within paragraph 9 of Schedule 3 to this Act; the Ministry of Defence Police.
5. Control of nuclear, biological and chemical weapons and other weapons of mass destruction.
6. Dignities and titles of honour.
7. Treason but not powers of arrest or criminal procedure.
8. Nationality; immigration; aliens as such.
9. Taxes under any law applying to the United Kingdom as a whole, existing Northern Ireland taxes and taxes substantially of the same character as any of those taxes. In this paragraph "existing Northern Ireland taxes" means any of the

following taxes levied in Northern Ireland before the appointed day, that is to say, inheritance tax, stamp duty, general betting duty, pool betting duty, duty on gaming machine licences and duty on licences in respect of mechanically-propelled vehicles.

10. The appointment and removal of judges of the Supreme Court of Judicature of Northern Ireland, county court judges, recorders, resident magistrates, justices of the peace, members of juvenile court panels, coroners, the Chief and other Social Security Commissioners for Northern Ireland, the Chief and other Child Support Commissioners for Northern Ireland and the President and other members of the Lands Tribunal for Northern Ireland.

11. The appointment and office of the Director and deputy Director of Public Prosecutions for Northern Ireland.

12. Elections, including the franchise, in respect of the Northern Ireland Assembly, the European Parliament and district councils; the registration of political parties.

13. Coinage, legal tender and bank notes.

14. The National Savings Bank.

15. National security (including the Security Service, the Secret Intelligence Service and the Government Communications Headquarters); special powers and other provisions for dealing with terrorism or subversion.

16. Any matter for which provision is made by this Act or the Northern Ireland Constitution Act 1973, but not-

(a) matters in respect of which it is stated by this Act or that Act that provision may be made by Act of the Assembly; or

(b) matters specified in Schedule 3 to this Act; and this paragraph shall not be taken to apply to any matter by reason only that provision is made in respect of it by an Order in Council under this Act or an order under section 68.

This list is almost exactly the same as appeared in the *Northern Ireland Constitution Act 1973* for excepted matters, and is intended to reflect matters of UK importance as well as subjects which have proved contentious in the past, such as the appointment of judges and the franchise, as well as special powers for dealing with terrorism.

Schedule 3 sets out reserved matters :

- (a) the criminal law, including the creation of offences and penalties;
- (b) the prevention and detection of crime and powers of arrest and detention in connection with crime or criminal proceedings;
- (c) prosecutions;

(d) the treatment of offenders (including children and young persons, and mental health patients, involved in crime);

(e) the surrender of fugitive offenders between Northern Ireland and Ireland;

(f) compensation out of public funds for victims of crime.

Sub-paragraph (d) includes, in particular, prisons and other institutions for the treatment or detention of persons mentioned in that sub-paragraph.

9. The maintenance of public order, including the conferring of powers, authorities, privileges or immunities for that purpose on constables, members of the armed forces of the Crown and other persons, but not any matter within paragraph 15 of Schedule 2.

10. The establishment, organisation and control of the Royal Ulster Constabulary and of any other police force (other than the Ministry of Defence Police); the Police Authority for Northern Ireland; traffic wardens.

11. Firearms and explosives.

12. Civil defence.

13. The Emergency Powers Act (Northern Ireland) 1926 or any enactment for similar purposes.

14. All matters, other than those specified in paragraph 10 of Schedule 2, relating to the Supreme Court of Judicature of Northern Ireland, county courts, courts of summary jurisdiction (including magistrates' courts and juvenile courts) and coroners, including procedure, evidence, appeals, juries, costs, legal aid and the registration, execution and enforcement of judgments and orders but not-

(a) bankruptcy, insolvency, the winding up of corporate and unincorporated bodies or the making of arrangements or compositions with creditors;

(b) the regulation of the profession of solicitors.

15. All matters (including procedure and appeals) relating to-

(a) the Chief and other Social Security Commissioners for Northern Ireland; or

(b) the Chief and other Child Support Commissioners for Northern Ireland, but not any matter within paragraph 10 of Schedule 2.

16. Trade with any place outside the United Kingdom but not-

(a) the furtherance of the trade of Northern Ireland or the protection of traders in Northern Ireland against fraud;

(b) services in connection with, or the regulation of, the quality, insurance, transport, marketing or identification of agricultural or food products, including livestock;

(c) the prevention of disease or the control of weeds and pests;

(d) aerodromes and harbours.

17. The matters dealt with by the following provisions of the Pension Schemes Act 1993-

(a) section 6(1), (2)(a)(i), (iii) and (iv) and (b), (3), (4) and (8) (registration of occupational and personal pension schemes);

(b) section 145 (Pensions Ombudsman).

18. Regulation of the following-

(a) building societies;

(b) banking;

(c) friendly societies and the other societies to which the Friendly Societies Act 1974 applies.

19. Regulation of the following-

(a) investment business, the official listing of securities and offers of unlisted securities;

(b) the transfer of securities;

(c) insider dealing.

20. The subject-matter of the Money Laundering Regulations 1993, but in relation to any type of business.

21. Regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers.

22. Trade marks, service marks and design, copyright, patent and topography rights.

23. Units of measurement and United Kingdom primary standards.

24. Telecommunications.

25. Wireless telegraphy, and the provision of programme services (within the meaning of the Broadcasting Act 1990).

26. The National Lottery (except in so far as any matter within Schedule 2 is concerned).

27. Xenotransplantation.

28. Surrogacy arrangements, within the meaning of the Surrogacy Arrangements Act 1985, including the subject-matter of that Act.

29. The subject-matter of the Human Fertilisation and Embryology Act 1990.

30. Human genetics.

31. Consumer safety.

32. The making and revision of plans under section 3(5) of the Environmental Protection Act 1990 (emission limits); the environmental protection technology scheme for research and development in the United Kingdom.

33. The subject-matter of-

(a) the Data Protection Act 1984; and

(b) Council Directive 95/46/EC (protection of individuals with regard to the processing of personal data and free movement of such data).

34. Nuclear installations.

35. Regulation of activities in outer space.

36. Oaths and declarations (including all undertakings and affirmations, by whatever name) other than those within section 63(3).

This list of reserved powers is more lengthy than in the 1973 Act, but covers similar areas, with the addition of new topics such as the National Lottery, data protection consumer safety and human genetics, but not specifically abortion, which is a reserved matter in the *Scotland Bill*. Under reserved areas the Crown is specified, and the Constitution is not specifically mentioned. Although the term the Constitution is given in the *Scotland Bill* more recent versions of the Bill specify within it only matters relating to the Crown and honours. The Parades Commission and the *Public Processions (Northern Ireland) Act 1998* will continue to be reserved matters. There is some potential for rolling devolution since reserved powers can be transferred to the Assembly in future, but such transfers are dependent on cross community support **Clause 4(2)** enables the Secretary of State to lay orders making a reserved matter a transferred matter and vice versa provided that there is cross-community Assembly assent. There is a possibility therefore, presumably after a period of settled existence, for the Assembly to acquire new powers, for example over law and order. There is no provision for the Assembly to acquire powers over excepted matters.

Transferred matters are everything not excepted or reserved, thus following the design of both the *Scotland Bill* (without the excepted category) and the *Northern Ireland Constitution Act 1973*.(**Clause 4(1)**)

The legislation to be passed will be known as Acts (**Clause 5**) and a provision cannot become law if outside the legislative competence of the Assembly, for example if forming part of a law or a country outside Northern Ireland, dealing with an excepted matter, incompatible with ECHR rights or EC law or 'discriminates against any person or class of person on the ground of religious belief or political opinion'.(**Clause 6**) The Secretary of State has to give consent if a Bill deals with a reserved matter or is ancillary to an excepted matter. There may be need to stray across the boundaries of the three categories for incidental purposes, so this Clause allows some leeway. Ministers are required to state that a Bill is within the legislative competence of the Assembly and the Presiding Officer is also to consider a Bill on its introduction and before its final stage to check that it is not outwith the Assembly's competence.(**Clauses 8,9**)

The Attorney General for Northern Ireland may refer the question of whether a provision of the Bill is within the Assembly's legislative competence to the Judicial Committee of the Privy Council for decision(**Clause 10**) These provisions are similar to those contained in the *Scotland Bill* but there is a special procedure in this Bill for the Secretary

of State to submit Bills for Royal Assent. **(Clause 12) Devolution Issues**, will, as in the *Scotland Bill* and the *Government of Wales Bill* will be referred to the Judicial Committee of the Privy Council under **Clause 69** and **Schedule 11** where the term is defined.

D. Cross-Community Support

The *Agreement* made specific provision for key decisions to be taken on a cross community basis including the election of the Chair and Deputy Chair and the First Minister and Deputy First Minister. In addition an individual may be removed from office for failing to meet his responsibilities including those in the Pledge of Office, but only on a cross community basis. This was defined as follows:⁵³

(d) arrangements to ensure key decisions are taken on a cross-community basis.,

“

(i) **either** parallel consent, i.e. a majority of those members present and voting, including a majority of the unionist and nationalist designations present and voting;

(ii) **or** a weighted majority (60%) of members present and voting, including at least 40% of each of the nationalist and unionist designations present and voting.

Key decisions requiring cross-community support will be designated in advance, including election of the Chair of the Assembly, the First Minister and Deputy First Minister, standing orders and budget allocations. In other cases such decisions could be triggered by a petition of concern brought by a significant minority of Assembly members (30/108).

At their first meeting the Assembly was to register a designation of identity - nationalist, unionist or other, to measure cross community support. The UUP, DUP, UKUP and three independent Unionists designated themselves as Unionist; The SDLP and Sinn Fein designated themselves as Nationalist and the Alliance and Women's Coalition were designated as 'other'. The initial Standing Orders did not specify whether the circumstances under which re-designation might be allowed, and this subject is not addressed in the Bill.

Some commentators have argued that this immediate affirmation of identity is not likely to promote cohesion within the Assembly. In the Dail the former Taoiseach, John Bruton, argued at the second reading of the *Nineteenth Amendment of the Constitution Bill* as follows:⁵⁴

⁵³ Cm 3883 para 5(d)

⁵⁴ Dail Debates 21.4.98 c1028

That is why we must make the Agreement itself the new focus for allegiance on the island of Ireland. This will not be easy. Even within the Agreement itself, there is a requirement that all members of the assembly, once elected, designate themselves as "Nationalist", "Unionist" or "other", so as to measure cross-community support in assembly votes. This is necessary, but I hope it does not entrench division by defining parties on the basis of ultimate aspirations, which conflict with one another, rather than short-term aspirations which may coincide with one another. The rules may aggravate this by making it disadvantageous for a member to designate himself or herself in the "other" category, where his or her vote will only count in initial votes but not in determining a minimum level of support in either community. I am worried that this new institutionalisation of two labels will also institutionalise old divisions.

There are some international parallels, the most notable being the new Belgian Constitution of 1994. Article 43(1) determines that the elected members of each chamber are divided into a French language group and a Dutch language group for certain cases determined in the Constitution. Reasoned motions, signed by at least three quarters of a linguistic group can delay legislation which would disrupt community relations (Article 55). Members of the Senate are elected by linguistic electoral colleges. There are other examples such as Lebanon where the Prime Minister must be a Sunni Muslim, while the President of the Republic is a Maronite Catholic and the Speaker a Shiite Muslim.⁵⁵ In Bosnia two thirds of seats in the legislature were reserved for representatives of the Moslem-Croat entity and one third for the Serb entity under the Dayton Agreement of 1995. The New Zealand Parliament has five seats reserved for Maoris. As part of the Lancaster House Agreement of 1979 whites were to have 20 seats reserved out of 100 for them in the new House of Assembly in Zimbabwe for a period of 7 years; separate White registered voters lists were used for this purpose until the constitution was amended in 1987 to abolish the reserved seats. Seats are reserved in the Pakistan National Assembly for Christian, Hindus, Sikhs and Buddhists. In the Land assembly of Schleswig-Holstein in Germany two seats are reserved for those of Danish origin.

It is not clear from the terms of the *Agreement* that the designation of identity needs to accord with public perceptions of a party's identity. Some commentators have suggested that the Alliance party might wish to affirm itself as a unionist party to assist pro-Agreement unionists, or even that the SDLP could adopt a unionist identity. There have also been suggestions that the choice between parallel consent or weighted majority may be controversial⁵⁶ and the *Agreement* does not make clear how the choice will be made.

⁵⁵ Under revisions to the Belgian constitution in 1970 two thirds of a linguistic group were given the right to suspend temporarily the adoption of certain language laws - see *The Politics of Belgium: A Unique Federalism* (1996) by John Fitzmaurice, p49

⁵⁶ *Fortnight* June 1998 'The election: possible outcomes'

The Bill

Clause 4(5) defines 'cross community support' as follows:

"cross-community support", in relation to a vote on any matter, means-

- (a) the support of a majority of the members voting, a majority of the designated Nationalists voting and a majority of the designated Unionists voting; or (b) the support of 60 per cent of the members voting, 40 per cent of the designated Nationalists voting and 40 per cent of the designated Unionists voting;
- "designated Nationalist" means a member designated as a Nationalist in accordance with standing orders of the Assembly and "designated Unionist" shall be construed accordingly.

The definitions of the terms Nationalist and Unionist are therefore left to the Standing Orders to be drawn up by the Assembly, and the two types are no longer given separate names.

E. The Pledge of Office

This became one of the more controversial points of the referendum campaign. As a condition of appointment ministers are to affirm the terms of a Pledge of Office and can be removed from office following a decision by the Assembly taken on a cross community basis if the responsibilities of the Pledge were not met. The Agreement noted "Those who hold office should use only democratic non-violent means, and those who do not should be excluded or removed from office under these provisions" (para 25).

The Pledge of Office is as follows:

To pledge:

- (a) to discharge in good faith all the duties of office;
- (b) commitment to non-violence and exclusively peaceful and democratic means;
- (c) to serve all the people of Northern Ireland equally, and to act in accordance with the general obligations on government to promote equality and prevent discrimination;
- (d) to participate with colleagues in the preparation of a programme for government;
- (e) to operate within the framework of that programme when agreed within the Executive Committee and endorsed by the Assembly;

- (f) to support, and to act in accordance with, all decisions of the Executive Committee and Assembly;
- (g) to comply with the Ministerial Code of Conduct.

Code of conduct

Ministers must at all times:

objectivity in relationship to the stewardship of public funds;
be accountable to users of services, the community and, through the Assembly, for the activities within their responsibilities, their stewardship of public funds and the extent to which key performance targets and objectives have been met;
ensure all reasonable requests for information from the Assembly, users of services and individual citizens are complied with; and that Departments and their staff conduct their dealings with the public in an open and responsible way;

follow the seven principles of public life set out by the Committee on Standards in Public Life;

comply with this code and with rules relating to the use of public funds;
operate in a way conducive to promoting good community relations and equality of treatment;

not use information gained in the course of their service for personal gain; nor seek to use the opportunity of public service to promote their private interests;
observe the highest standards of propriety and regularity involving impartiality, integrity and ensure they comply with any rules on the acceptance of gifts and hospitality that might be offered;

declare any personal or business interests which may conflict with their responsibilities. The Assembly will retain a Register of Interests. Individuals must ensure that any direct or indirect pecuniary interests which members of the public might reasonably think could influence their judgement are listed in the Register of Interests;

This Pledge of Office is considerably more detailed than the equivalent oath for members of the Northern Ireland Executive in the 1973 Act.⁵⁷ There has been criticism of the potential difficulties of removing a member of the Executive who is suspected of breaching the Pledge, given the requirement that removal can only be achieved on a cross community basis. There is no provision for an oath or pledge for backbench members of the Assembly.⁵⁸ The Prime Minister assured David Trimble, leader of the UUP, that changes would be made if the provisions proved ineffective.⁵⁹

⁵⁷ *Northern Ireland Constitution Act Schedule 4*

⁵⁸ see *Northern Ireland Constitution Act 1973 s21* on unlawful oaths

⁵⁹ Dep 98/282 10 4.98

I understand your problem with paragraph 25 of Strand 1 is that it requires decisions on those who should be excluded or removed from office in the Northern Ireland Executive to be taken on a cross-community basis.

This letter is to let you know that if, during, the course of the first six months of the shadow Assembly or the Assembly itself, these provisions have been shown to be ineffective, we will support changes to these provisions to enable them to be made properly effective in preventing such people from holding office.

Furthermore, I confirm that in our view the effect of the decommissioning section of the agreement, with decommissioning schemes coming in-to effect in June, is that the process of decommissioning should begin straight away.

The Pledge requires ministers to have commitment to non-violent and exclusively peaceful and democratic means but there is no specific linkage to decommissioning. Sinn Fein, for example, is a political party which claims to have no formal links with the IRA. It will presumably register as a party under the *Registration of Political Parties Bill*⁶⁰ As such its representatives in the Assembly are likely to have no difficulty in accepting the pledge of office's requirements on non-violence. Its representatives in local government have signed the declaration against terrorism required for each candidate under the *Elected Authorities (Northern Ireland) Act 1989*. Nevertheless, Sinn Fein was excluded from the Talks process on 20 February 1998 when the British and Irish governments concluded that there had been IRA involvement in two recent murders and that given the clear links between Sinn Fein and the IRA it had broken Rule 29 of the *Rules of Procedure for the Negotiations* (the Mitchell Principles):

18. The Governments have previously made clear (in their conclusions of 24 September 1997) that they would expect the Republican Movement as a whole - that is Sinn Fein and the IRA - to honour the commitment to the Mitchell principles observed by Sinn Fein. They said on that occasion that they 'found it hard to conceive of circumstances where, after a group, with a clear link to any party in the negotiations had used force or threatened to use force to influence the course or the outcome of the all-party negotiations, the relevant party could be allowed to remain in the talks'. They characterised the IRA as a group 'with a clear link to Sinn Fein'. That reflects the position that has been taken throughout the negotiations (and which underlay the Governments' requirement that Sinn Fein could only be admitted to the negotiations in the event of an unequivocal restoration of the IRA ceasefire). Whatever the personal position of Sinn Fein delegates, the Governments believe it remains justifiable and indeed necessary to proceed on that basis.

19. Taking into account the principles and procedures of the Talks process, including the provisions of Rule 29, previous determinations in regard to that

⁶⁰ Bill 188 of 97-98. See Research paper no 98/62 for background. The Bill itself is not mentioned in the *Northern Ireland Bill* but registration of political parties is cited as a reserved power.

rule, the statements by all participants, including Sinn Fein and all the other considerations outlined above, the Governments are obliged to conclude that the representations under Rule 29, specified in paragraphs 5 and 6 above, have been upheld and accordingly that Sinn Fein should not be allowed to participate in the Talks.

In response to the exclusion Sinn Fein argued that it had no involvement in the killings and that it was not in an analogous position to the UDP which had made clear that it represented the UDA/UFF. It later attempted court action in the Republic against its exclusion without success.

The UDP was also excluded from the talks on 26 January following a number of sectarian killing linked to the UFF.⁶¹ It withdrew from the talks before the formal exclusion.

It should be noted that the pledge of non-violence is phrased differently from the six Mitchell Principles⁶²: which include a commitment to total disarmament:

Accordingly, we recommend that the parties to such negotiations affirm their total and absolute commitment:

To democratic and exclusively peaceful means of resolving political issues;
To the total disarmament of all paramilitary organisations;
To agree that such disarmament must be verifiable to the satisfaction of an independent commission;
To renounce for themselves, and to oppose any efforts by others, to use force, or threaten to use force, to influence the course or the outcome of all-party negotiations;
To agree to abide by the terms of any agreement reached in all-party negotiations and to resort to democratic and exclusively peaceful methods in trying to alter any aspect of that outcome with which they may agree, and;
To urge that "punishment" killings and beatings stop and to take effective steps to prevent such actions.

In response to the statement of the Secretary of State on 20 April Andrew Mackay said⁶³

Secondly, we are naturally concerned about the lack of progress on decommissioning terrorist weapons. Will the Secretary of State confirm that no member of the new Assembly will be appointed a Minister until his paramilitary associates have engaged in substantial decommissioning? Can that be incorporated in the forthcoming legislation, along the lines of the letter that the Prime Minister sent to the right hon. Member for Upper Bann?

⁶¹ *Northern Ireland Information Service* 26.1.98 'Conclusions of the Governments on the Position of the Ulster Democratic Party in the Talks'

⁶² Background on the Mitchell Principles is given in Research Paper 98/57 p49

⁶³ HC Deb vol 310 c483

The Secretary of State replied that it is clearly stated in the agreement that Ministers have to sign up to the principles of a democratic and peaceful way forward. That is a crucial step for anyone who seeks to be a Minister' (c488) The issue also featured in the Commons debates on the *Northern Ireland (Sentences) Bill*, where similar arguments were deployed about the linkage between decommissioning and prisoner release. The UUP manifesto for the Assembly elections stated:

The Ulster Unionist Party is approaching the new Northern Ireland Assembly with the clear aim of making it work to the advantage of all the people of Northern Ireland. In order for this to happen, it will be necessary to ensure that all those elected to the Assembly are there on the same basis; i.e. there must be a clear and verifiable commitment by all that they are permanently committed to peaceful and democratic means. Before any terrorist organisation and/or its political wing can benefit from the proposals contained in the Agreement on the release of terrorist prisoners and the holding of ministerial office in the Assembly, the commitment to exclusively peaceful and non-violent means must be established. The Ulster Unionist Party will, therefore, be using various criteria that are objective, meaningful and verifiable in order to judge:

- that there is a clear and unequivocal commitment that ceasefires are complete and permanent; that the 'war' is over and violence ended;
 - that targeting, training, weapons procurement and so-called punishment beatings cease forthwith;
 - that there is progressive abandonment and dismantling of paramilitary structures;
 - that use of proxy organisations for paramilitary purposes cannot be tolerated;
 - that disarmament must be completed in two years; and
 - that the fate of the 'disappeared' will be made known immediately.
- Under the terms of the agreement, full co-operation must take place between the parties and the Independent Commission on decommissioning. This is not happening currently , but we will require full implementation of the Agreement in this respect.
- Ulster Unionists reiterate that we will not sit in government with 'unreconstructed terrorists'. The UUP will measure compliance with the above and other criteria to judge whether, in our opinion, a true and permanent commitment to peace and non-violence has been established. We will press Her Majesty's Government to apply these criteria in the legislation on the release of prisoners so as to give effect to the Prime Minister's pledge that 'Prisoners are kept in unless violence is given up for good.' Similar criteria should be in the legislation for the Assembly.

- These will establish in legislation the linkages between paramilitary organisations and their political wings. Actions of organisations must impact on and have consequences for individual prisoners or representatives. The new Constitution Act should stipulate that parties as well as Members could be excluded or removed from office for failure to comply with the criteria. This will require a collective renunciation. The legislation must provide a suitable mechanism for excluding or removing those who fail to comply, if cross community support for such removal or exclusion is not forthcoming.

Lord Molyneux tabled an amendment to the *Northern Ireland (Elections) Act 1998* setting out as a condition of office unconditional acceptance of the Mitchell Principles.⁶⁴ It was not accepted by the Government.

The Bill

Clause 15(11) provides that Ministers may not take up office unless they have affirmed the Pledge of Office, contained in **Schedule 5** with the exact wording given in the *Agreement*.

F. Ministers and the Executive

The UUP originally envisaged an Assembly run by subject committees on a local authority model, as in the original version of the *Government of Wales Bill* (since amended to allow for a cabinet-type structure)⁶⁵. During the final days of the talks however agreement was reached on a cabinet model. The d'Hondt formula to be used to allocate positions was not a new suggestion and can be found, for example in the UUP *Proposals for the Three Strands*.⁶⁶ Since it will be a power sharing Executive it is likely to function in a different fashion to the traditional Cabinet model, and may not have regular meetings to agree common line on policy or uphold the traditional model of collective responsibility.⁶⁷

The Bill provides for the joint election of the First Minister and the Deputy First Minister and **Clause 14(3)** states that 'the two candidates, standing jointly, shall not be elected to the two offices without the support of the majority of the members voting in the election, a majority of the designated Nationalists voting and a majority of the designated Unionists voting'. These terms are defined in **Clause 4(5)** and it should be noted that a particular form of cross community support is required for their election. They exercise power jointly and if one resigns so the other loses office (**Clause 14(5)**). They must remain members of the Assembly. Standing Orders will provide for the election of new First Ministers and Deputy First Ministers.

⁶⁴ HL Deb vol 589 7.5.98 c777

⁶⁵ For background see Research Paper 98/38 *Cabinets, Committees and Elected Mayors*

⁶⁶ 11.2.98 The D'Hondt formula is explained in Research Paper 98/47

⁶⁷ Research Paper 96/55 *The Collective Responsibility of Ministers: An Outline of the Issues* explains the concept of collective responsibility

The elections of First Minister and Deputy First Minister have already taken place on 1 July. Under **Schedule 14, para 2**, any election held before the Bill comes into effect is valid as if held under Clause 14.

These Ministers are elected from the Assembly and not formally appointed by the Crown. In the *Northern Ireland Constitution Act 1973* the Executive was appointed by the Secretary of State on behalf of the Crown. In the *Scotland Bill* the First Minister is formally appointed by the Crown on the nomination of the Scottish Parliament. The First Minister and Deputy First Minister may not take up their office until each of them has affirmed the pledge of office under **Clause 14(4)**. The Pledge is set out in **Schedule 5** which reproduces the text given in the *Belfast Agreement*, Annex A to Strand One.

Other Northern Ireland Ministers

The First Minister and the Deputy First Minister have the power to determine the number of other Northern Ireland ministers subject to a maximum of 10 and to determine their functions under **Clause 15**. The appointments will not be made without the approval of a resolution of the Assembly with cross community support. It is the nominating officer of the political party represented in the Assembly who will nominate a person to hold a ministerial office, once that party has been allocated the post. Under the *Registration of Parties Bill*⁶⁸ each registered party has a nominating officer; registration is not compulsory and the *Northern Ireland Bill* provides that where a party is unregistered the Presiding Officer will consider the nominating officer to be the leader of the party, or the party may nominate an officer itself. (**Clause 15(15)**)

Allocations of ministerial posts are made under the d'Hondt formula as set out in **Clause 15(8)** Where there is a tie the calculation is repeated using the number of first preference votes given for each party in the June 25 election. If a nominating officer does not make a nomination the power passes to the next highest party after a period to be specified in Standing Orders. A First or Deputy First Minister can be nominated for a ministerial post.

Ministers may not take up office unless they have affirmed the terms of the Pledge of Office. There is provision for ministers to resign or to be dismissed by the nominating officer of his party, and vacancies are filled by the d'Hondt formula within a period specified in Standing Orders. (**Clause 15(12)**)

Exclusion from Office

Clause 23 governs the exclusion of ministers from office in the following terms:

⁶⁸ See Research Paper 98/? *The Registration of Political Parties Bill* for further background on the registration process. This Bill has now completed its Commons stages.

(7) In this section "nominating officer" has the same meaning as in section 15.

Exclusion of Ministers from office.

23. - (1) If the Assembly resolves that a Minister no longer enjoys the confidence of the Assembly-

(a) because he is not committed to non-violence and exclusively peaceful and democratic means;

(b) because of any failure of his to observe any other terms of the pledge of office; or

(c) for any other reason, he shall be excluded from holding office as a Minister for a period of twelve months beginning with the date of the resolution.

(2) If the Assembly resolves that a political party does not enjoy the confidence of the Assembly-

(a) because it is not committed to non-violence and exclusively peaceful and democratic means; or

(b) for any other reason, members of that party shall be excluded from holding office as Ministers for a period of twelve months beginning with the date of the resolution.

(3) The Assembly may, before a period of exclusion comes to an end, resolve to extend it for twelve months beginning with the date of the resolution.

(4) A period of exclusion shall come to an end if the Assembly-

(a) is dissolved; or

(b) resolves to bring the exclusion to an end.

(5) A motion for a resolution under subsection (1), (2) or (3) shall not be moved unless-

(a) it is supported by at least 30 members of the Assembly;

(b) it is moved by the First Minister and the deputy First Minister acting jointly; or

(c) it is moved by the Presiding Officer in pursuance of a notice under subsection (6).

(6) If the Secretary of State is of the opinion that the Assembly ought to consider-

(a) a resolution under subsection (1)(a) in relation to a Minister; or

(b) a resolution under subsection (2)(a) in relation to a political party, he may serve a notice on the Presiding Officer requiring him to move a motion for such a resolution.

(7) In forming an opinion under subsection (6), the Secretary of State shall in particular take into account whether the Minister or party concerned-

(a) is committed to the use now and in the future of only democratic and peaceful means to achieve his or its objectives;

(b) has ceased to be involved in any acts of violence or of preparation for violence;

(c) is directing or promoting acts of violence by other persons;

(d) is co-operating fully with any Commission of the kind referred to in section 7 of the Northern Ireland Arms Decommissioning Act 1997 in implementing the Decommissioning section of the Belfast Agreement.

(8) A resolution under this section shall not be passed without cross-community support.

The opportunity for the Secretary of State to require the Presiding Officer to bring a motion forward was not spelt out in the *Agreement*, and might be said to fulfil the terms of the pledge given by the Prime Minister to David Trimble in his letter of 10 April, although the fact that a motion is put forward by the Secretary of State does not ensure that the motion is passed. All such motions need to be passed with cross community support.

A motion may be considered if it is supported by at least 30 members **or** if it is moved by the First Minister and the Deputy First Minister acting jointly. It is to be noted that **Clause 23(7)** follows the same phrasing as in Clause 3(9) of the *Northern Ireland Sentences Bill* for the criteria to be used for the Secretary of State to specify terrorist organisations and suggests that the same criteria will be used for decisions about the nature of a political party. The four criteria in Clause 3(9) are , according to the Secretary of State. the criteria given by the Prime Minister in his Balmoral speech on 14 May (see above, Part I)The fourth, in 3(9)(d) was amended on Report, on a government amendment the text of which was suggested by David Trimble to give a closer reference to the *Agreement*⁶⁹The Opposition have tabled amendments to the *Northern Ireland Bill* which seek to strengthen the criteria.(Amendments 15, 16,17)

Executive Committee

Clause 16 provides for an Executive Committee of the Assembly made up of the First and Deputy First Ministers and the Northern Ireland Ministers with the functions set out in paras 19 and 20 of the Strand One of the *Agreement* :

19. The Executive Committee will provide a forum for the discussion of, and agreement on, issues which cut across the responsibilities of two or more Ministers, for prioritising executive and legislative proposals and for recommending a common position where necessary (e.g. in dealing with external relationships).

20. The Executive Committee will seek to agree each year, and review as necessary, a programme incorporating an agreed budget linked to policies and programmes, subject to approval by the Assembly, after scrutiny in Assembly Committees, on a cross-community basis.

⁶⁹ HC Deb vol 314 18.6.98 c541

There are some similarities here with the *Government of Wales Bill* provisions for an Executive Committee, chaired by the National Assembly of Wales First Secretary. The Assembly First Secretary allocates accountability to the members of the Executive Committee, who have close relationships with the relevant subject committees.⁷⁰

The First and Deputy First Ministers exercise the prerogative and other executive functions of the Crown in relation to transferred matters in Northern Ireland under **Clause 18** and it is they who determine the functions to be exercised through the Northern Ireland Ministers and the Northern Ireland Departments. Executive powers are therefore coterminous with legislative powers **Clause 17** provides that these departments are those in existence at present and gives power for new departments to be created through Assembly legislation. The First and Deputy First Ministers and the Northern Ireland Ministers become subject to the *Official Secrets Act 1989* under **para 5, Schedule 13**⁷¹. Under **Clause 21** agency arrangements can be made between any UK department and any Northern Ireland departments, but there is no mention of devolution concordats in the Bill. The Northern Ireland Civil Service is to remain separate from the Home Civil Service, in contrast to the future position of the Scottish and Welsh civil servants, who remain part of it.

There are provisions to ensure that acts or subordinate legislation contrary to European Convention on Human Rights or European Community law are invalid and the Secretary of State may direct that the proposed action be not taken. (**Clauses 19,20**) The wording in these clauses is similar to that found in the *Scotland Bill* and the *Government of Wales Bill*.

Subject Committees

Statutory subject committees are to be created to 'advise and assist' the relevant minister with respect to his responsibilities, but much of the procedure for their creation will be set out in Standing Orders (**Clause 22**). The concept is similar to that of subject committees found in both the *Government of Wales Bill* and the *Northern Ireland Act 1982*. Allocation of chairmen and deputy chairmen of the committees will be carried out using the d'Hondt formula.

⁷⁰ See Research Paper 98/38 *Cabinets Committees and Elected Mayors* for further background

⁷¹ Members of the Scottish Executive and members of the National Assembly for Wales Executive Committee will also be subject to the 1989 Act.

G. Elections

The *Northern Ireland (Elections) Act 1998* is repealed and its main provisions repeated in Part IV of the Bill. **Clause 24(1)** provides for fixed-term elections to the new Assembly on a four year cycle on the first Thursday in May, as for the National Assembly of Wales. The date of the next election is set at 1 May 2003. There are provisions in **Clause 24(4)** for an Order in Council bringing forward the date of an election if the First and Deputy First Minister resign and no other person can carry out their functions. The Clause is phrased so that ‘if it appears to Her Majesty’ that such a situation has arisen an Order in Council is made. In practical terms this means that the decision would be taken by the UK government. There are also powers for the Crown to prorogue the Assembly by Order in Council. This Order is subject to affirmative resolution unless it is for a period of less than four months. (**Clause 43**)

There are provisions, taken from the *Northern Ireland Elections Act 1998*, for 108 members elected from the 18 parliamentary constituencies under the Single Transferable Vote as commonly used in Northern Ireland for local elections and elections to the European Parliament. The procedure for filling vacancies will be set out in subordinate legislation, and will probably involve appointments from party lists rather than by-elections. (**Clauses 25-27**) There was some discussion in the Commons debate on the Bill as to whether by-elections should be held. Paul Murphy, junior Northern Ireland minister, said that the government would consult on the matter and then set out general principles⁷² in an order subject to affirmative resolution. Different procedures would not be used for individual vacancies.

Disqualifications are also transferred from the 1998 Act. EU citizens, peers, members of the Irish Seneadd,⁷³ are eligible for membership of the Assembly, but otherwise the disqualifications applicable to membership of the Commons including those in the *House of Commons Disqualification Act 1975* apply.⁷⁴ This includes prisoners detained or unlawfully at large serving sentences of more than one year for an offence. Membership of the IRA and several Loyalist paramilitary groups remains illegal under the *Northern Ireland (Emergency Provisions) Act 1996*, s.30. (**Clauses 28-30**)

⁷² HC Deb vol 310 22.4.98 c910

⁷³ Seamus Mallon brought a case to the European Court of Human Rights, following his disqualification from the Northern Ireland Assembly in 1982 on the grounds that he was a member of the Seneadd. See *M v UK Appl* 10316/83 37 D& R 110,116. NB Members of the Dail remain ineligible for membership of the Assembly

⁷⁴ The *Electing Authorities (Northern Ireland) Act 1989* s8(2) enabled the Secretary of State to bring into force the disqualification of a person from the Assembly who was found to have acted in breach of the terms of a declaration against terrorism as determined by s7 of that Act. There is no provision in the Agreement for an equivalent disqualification

H. The Secretary of State

The office of the Secretary of State has existed only since 24 March 1972, when William Whitelaw was appointed,⁷⁵ and under the *Northern Ireland (Temporary Provisions) Act 1972* he was given power to act as chief executive officer and take over the functions of of the Governor of Northern Ireland⁷⁶. There are no proposals to abolish the post at present, although the longer term future of the Secretaries of State for Scotland, Wales and Northern Ireland is considered less certain once the devolution settlements have taken effect. The Secretary of State will continue to exercise the prerogative powers not devolved to the First Minister and Deputy First Minister under the Bill

I. Part VII -North South Bodies

Under the *Agreement* a North South Ministerial Council will 'bring together those with executive responsibilities in Northern Ireland and the Irish Government, to develop consultation, cooperation and action within the island of Ireland' (Strand Two, para 1). Participation in the Council is to be one of the essential responsibilities attaching to relevant posts in the two administrations. As soon as possible after elections to the Northern Ireland Assembly an inaugural meeting is to take place and in the shadow period representatives of the Northern Ireland transitional Administration and the Irish government will 'undertake a work programme, in consultation with the British Government, covering at least 12 subject areas, with a view to identifying and agreeing by 31 October 1998 areas for co-operation and implementation for mutual benefit⁷⁷. The Annex sets out matters which may be included:

ANNEX

Areas for North/South co-operation and implementation may include the following:

1. Agriculture - animal and plant health.
2. Education - teacher qualifications and exchanges.
3. Transport - strategic transport planning.
4. Environment - environmental protection, pollution, water quality, and waste management.
5. Waterways - inland waterways.
6. Social Security/Social Welfare - entitlements of cross-border workers and fraud control.

⁷⁵ see statement by the Prime Minister on 24 March 1972 HC Deb vol 833 c 1859-63

⁷⁶ the office of Governor of Northern Ireland was abolished by s32 of the *Northern Ireland Constitution Act 1973*

⁷⁷ Strand Two para 8

7. Tourism - promotion, marketing, research, and product development.
8. Relevant EU Programmes such as SPPR, INTERREG, Leader II and their successors.
9. Inland Fisheries.

10. Aquaculture and marine matters

11. Health: accident and emergency services and other related cross-border issues.

12. Urban and rural development.

Others to be considered by the shadow North/South Council.

The *Agreement* seeks to ensure that the North South bodies will function as soon as powers are transferred from Westminster to the Assembly (paras 10-13). A separate Civic Forum is also to be considered, together with a joint parliamentary forum with representatives from the Oireachtas and the Assembly.

Concern to promote all-Ireland bodies has been traditionally associated with nationalists and opposed by unionists. The *Government of Ireland Act 1920* originally provided for a Council of Ireland, consisting of 20 representatives each from the parliaments to be established in the north and south, 'with a view to the eventual establishment of a Parliament for the whole of Ireland' (s.2(1)), if both parliaments agreed to this development. The Council's powers were initially to extend to railways, fisheries, and contagious diseases of animals (s10(2)). The Council of Ireland was finally disposed of by the *Ireland (Confirmation of Agreement) Act 1925* but it had never become operative. Article 5 of that Agreement had, however, expressed the hope that the Irish Free State and Northern Irish Governments would meet to consider matters originally within the competence of the Council of Ireland.

The 1973 White Paper⁷⁸ stated that the UK government favoured a new Council of Ireland, following responses from virtually all Northern Ireland political parties which envisaged some type of Irish dimension. The 1973 Act contained a broad provision allowing a Northern Ireland executive body to consult or enter into agreements with 'any authority of the Republic of Ireland, with the opportunity to transfer functions with the consent of Westminster and the Secretary of State (s12)'. At the end of the Sunningdale Talks in December 1973, agreement in principle for the establishment of a Council of Ireland was reached: it would consist of 7 ministers from the Irish Government and 7 members of the Northern Ireland executive and would have a consultative assembly and a secretariat:

7. The Conference agreed that a Council of Ireland would be set up. It would be confined to representatives of the two parts of Ireland, with appropriate safeguards for the British Government's financial and other interests. It would

⁷⁸ *Northern Ireland Constitutional Proposals* Cmnd 5259 March 1973

comprise a Council of Ministers with executive and harmonising functions and a consultative role, and a Consultative Assembly with advisory and review functions. The Council of Ministers would act by unanimity, and would comprise a core of seven members of the Irish Government and an equal number of members of the Northern Ireland Executive with provision for the participation of other non-voting members of the Irish Government and the Northern Ireland Executive or Administration when matters within their departmental competence were discussed. The Council of Ministers would control the functions of the Council. The Chairmanship would rotate on an agreed basis between representatives of the Irish Government and of the Northern Ireland Executive. Arrangements would be made for the location of the first meeting, and the location of subsequent meetings would be determined by the Council of Ministers. The Consultative Assembly would consist of 60 members, 30 members from Dail Eireann chosen by the Dail on the basis of proportional representation by the single transferable vote, and 30 members from the Northern Ireland Assembly chosen by that Assembly and also on that basis. The members of the Consultative Assembly would be paid allowances. There would be a Secretariat to the Council, which would be kept as small as might be commensurate with efficiency in the operation of the Council. The Secretariat would service the institutions of the Council and would, under the Council of Ministers, supervise the carrying out of the executive and harmonising functions and the consultative role of the Council. The Secretariat would be headed by a Secretary-General. Following the appointment of a Northern Ireland Executive, the Irish Government and the Northern Ireland Executive would nominate their representatives to a Council of Ministers. The Council of Ministers would then appoint a Secretary-General and decide upon the location of its permanent headquarters. The Secretary-General would be directed to proceed with the drawing up of plans for such headquarters. The Council of Ministers would also make arrangements for the recruitment of the staff of the Secretariat in a manner and on conditions which would, as far as is practicable, be consistent with those applying to public servants in the two administrations.

8. In the context of its harmonising functions and consultative role, the Council of Ireland would undertake important work relating, for instance, to the impact of EEC membership. As for executive functions, the first step would be to define and agree these in detail. The Conference therefore decided that, in view of the administrative complexities involved, studies would at once be &et in hand to identify and, prior to the formal stage of the conference, report on areas of common interest in relation to which a Council of Ireland would take executive decisions and, in appropriate cases, be responsible for carrying those decisions into effect. In carrying out these studies, and also in determining what should be done by the Council in terms ' of harmonisation '. the objectives to be borne in mind would include the following:

- (1) to achieve the best utilisation of scarce skills, expertise and resources;
- (2) to avoid in the interests of economy and efficiency, unnecessary duplication of effort; and
- (3) to ensure complementary rather than competitive effort where this is to the advantage of agriculture, commerce and industry.

In particular, these studies would be directed to identifying, for the purposes of executive action by the Council of Ireland, suitable aspects of activities in the following broad fields.

- (a) exploitation, conservation and development of natural resources and the environment;
- (b) agricultural matters (including agricultural research, animal health and operational aspects of the Common Agriculture Policy), forestry and fisheries;
- (c) co-operative ventures in the fields of trade and industry;
- (d) electricity generation;
- (c) tourism;
- (f) roads and transport;
- (g) advisory services in the field of public health;
- (h) sport, culture and the arts.

It would be for the Oireachtas and the Northern Ireland Assembly to legislate from time to time as to the extent of functions to be devolved to the Council of Ireland. Where necessary, the British Government will cooperate in this devolution of functions. Initially, the functions to be vested would be those identified in accordance with the procedures set out above and decided, at the formal stage of the conference to be transferred.

Unionist opposition to the Council of Ireland proposals prompted the resignation of Brian Faulkner, a participant in the Sunningdale talks, as leader of the Unionists, although he remained at the head of the Executive until his resignation at the end of May following the Ulster power workers' strike. The choice of the term 'Council of Ireland' was perhaps unfortunate, given the 1920 precedent, and the transfer of executive functions to it never took place.⁷⁹

The *Propositions on Heads of Agreement* issued by both governments on January 12 1998 envisaged a North - South Ministerial Council which would 'take decisions on matters of mutual interest within the mandate of, and accountable to the Northern Ireland Assembly and the Oireachtas respectively', with suitable 'implementation bodies and mechanisms for policies' agreed by the Council. North-South Bodies have been a long-standing demand of the nationalist community in Northern Ireland, but the *Propositions* indicated that there would be some form of accountability to the Assembly, a suggestion not made in the *Framework Document* of February 1995. There already exist some official cross border bodies, such as the Foyle Fisheries Commission and a number of non-governmental bodies such as trade Unions and professional bodies organise on an all-Ireland basis.

⁷⁹ for further background see Research Paper 98/57 *Northern Ireland: Political Developments since 1972*

British-Irish Council

The *Agreement* provides for a new body to comprise representatives of the British and Irish governments, devolved institutions in Scotland Wales and Northern Ireland and representatives of the Isle of Man and the Channel Isles. This British-Irish Council will not have executive powers but will exchange information, discuss and consult on matters of mutual interest within the competence of the devolved institutions. Precedents for this type of body include the Nordic Council in Scandinavia and its establishment was supported at the talks by unionist elements as a counterweight to north-south bodies. The Nordic Council was first set up in 1952 as an inter-parliamentary body from five separate states and three autonomous regions⁸⁰ and since 1971 it has been supplemented by a Council of Ministers from the 8 entities. Some of its achievements including the merging of separate national companies to create a unified Scandinavian Airlines and other transport initiatives.⁸¹ The new Labour government was seen as more predisposed to such a body, given its proposals to introduce devolution elsewhere in the British Isles. A joint British and Irish government discussion paper on Strand Three (east - west structures), issued on 27 January 1998 looked in more detail at the suggestion in the *Proposition on Heads of Agreement* issued on 12 January that an intergovernmental council could be set up to 'deal with the totality of relationships' in the two islands. A UDP document argued 'across these islands we share the same air and seas. We share a rich common language and legal system, education system, professional institutions and standards. Above all we share a rich common history. We must look to the future and we must work together.'⁸²

There has been growing interest in the concept of the British/Irish Council from other areas of the UK. Welsh politicians for example have noted the potential links between Wales and Ireland and junior Welsh Office minister Peter Hain has been quoted as stating 'what the council reflects is the new evolving constitutional arrangements and the new reality that we are all regions of Europe', suggesting that a body made up of peripheral European regions could act as a balance to the activity concentrated in the Benelux area.⁸³

British-Irish Intergovernmental Conference

Also under Strand Three is the new British-Intergovernmental Conference, which is to subsume both the Anglo- Irish Intergovernmental Council and the Conference created under the 1985 Anglo-Irish Agreement The *Belfast Agreement* set out the role of the new Conference as follows:

3. The Conference will meet as required at Summit level (Prime Minister and Taoiseach). Otherwise, Governments will be represented by appropriate

⁸⁰ Sweden, Norway, Denmark, Finland, Iceland, Greenland, Faroe Islands, and Aland Islands

⁸¹ *Fortnight* March/April 1998 'Border Crossings'

⁸² Ulster Democratic Party Council of the British isles: a Proposal for Meaningful Co-operation' 1998

⁸³ 'A new future in Council of the Isles' www.totalcardiff.com 14 April 1998

Ministers. Advisers, including police and security advisers, will attend as appropriate.

4. All decisions will be by agreement between both Governments. The Governments will make determined efforts to resolve disagreements between them. There will be no derogation from the sovereignty of either Government.

5. In recognition of the Irish Government's special interest in Northern Ireland and of the extent to which issues of mutual concern arise in relation to Northern Ireland, there will be regular and frequent meetings of the Conference concerned with non-devolved Northern Ireland matters, on which the Irish Government may put forward views and proposals. These meetings, to be co-chaired by the Minister for Foreign Affairs and the Secretary of State for Northern Ireland, would also deal with all-island and cross-border co-operation on non-devolved issues.

6. Co-operation within the framework of the Conference will include facilitation of co-operation in security matters. The Conference also will address, in particular, the areas of rights, justice, prisons and policing in Northern Ireland (unless and until responsibility is devolved to a Northern Ireland administration) and will intensify co-operation between the two Governments on the all-island or cross-border aspects of these matters.

7. Relevant executive members of the Northern Ireland Administration will be involved in meetings of the Conference, and in the reviews referred to in paragraph 9 below to discuss non-devolved Northern Ireland matters.

8. The Conference will be supported by officials of the British and Irish Governments, including by a standing joint Secretariat of officials dealing with non-devolved Northern Ireland matters.

9. The Conference will keep under review the workings of the new British-Irish Agreement and the machinery and institutions established under it, including a formal published review three years after the Agreement comes into effect. Representatives of the Northern Ireland Administration will be invited to express views to the Conference in this context. The Conference will contribute as appropriate to any review of the overall political agreement arising from the multi-party negotiations but will have no power to override the democratic arrangements set up by this Agreement.

The last sentence is of particular importance to the Unionists who saw the original 1985 Agreement as anti-democratic.

The Bill

Clause 65 provides for a new consultative Civic Forum to be funded by the Assembly, as proposed in the *Agreement*, where it was envisaged that a forum would be established by both the Assembly and the Oireachtas. There are some similarities with the Partnership Council proposed for Wales for local government and consultations with business and the

voluntary sector in the *Government of Wales Bill*. A Civic Forum has been proposed by community groups for Scotland and also for London, as a way of drawing in the wider community.⁸⁴

Clause 66 requires the First and Deputy First Minister, acting jointly, to ensure participation in both the North South Ministerial Council and the British-Irish Council by Northern Ireland Ministers.

Clause 67 deals with attendance at meetings of the new British-Irish Intergovernmental Conference by Northern Ireland Ministers where excepted or reserved matters are to be discussed. The First and Deputy First Ministers are required to arrange necessary attendance 'as appears to be required by Strand Three of the Belfast Agreement'

Clause 68 allows the Secretary of State to make an Order about any North South Body to confer functions and give it a legal status, and to fund it.

J. Part V Financial Provisions

The main purpose of these clauses is to allow the current system of public finance to continue while incorporating the Assembly into the process of approving expenditure.

Background

The current system of public finance in Northern Ireland is completely different from that elsewhere in the United Kingdom. The Province has its own civil service, its own consolidated fund (established under the Exchequer and Audit Act (NI) 1921) through which most transactions pass (with accompanying supply estimates and appropriation accounts) and its own national insurance fund to finance contributory social security benefits. However, some expenditure is outside this system including spending by the UK Northern Ireland Office (principally on administration and law and order) and the MoD (both on regular operations and anti-terrorism duties) that is financed directly from the mainland.

The system assumes that taxes raised in Northern Ireland are insufficient to finance expenditure. In broad terms, the Province is allocated its notional share of national taxes⁸⁵ and any shortfall between revenue and expenditure is met via a grant-in-aid. A more detailed description is provided below:⁸⁶

⁸⁴ London Voluntary Service Council *Enriching Democracy; A Civic Forum for London* 1997

⁸⁵ Northern Ireland's share of UK taxes covers Inland Revenue taxes (income tax, corporation tax, etc.) Customs and Excise taxes (VAT, excise duties, etc.) and vehicle excise duties. The basis for the allocation varies from tax to tax but factors such as the level of income, expenditure and profits in the Province are taken into account. Some taxes are outside this system. For example, regional and district rates raised in Northern Ireland are paid into the Northern Ireland Consolidated fund and social security contributions are paid directly to the Northern Ireland National Insurance Fund and the health service as appropriate.

⁸⁶ Source: NI Department of Finance & Personnel *Financial Accounts of Northern Ireland* 1995/96 p.3

The main item of Public Income is Northern Ireland's Attributed Share of United Kingdom Taxes collected for Northern Ireland by the United Kingdom Government under powers reserved by the Northern Ireland Constitution Act 1973, less the cost of collection and Northern Ireland's share of the United Kingdom payment to the European Community. The allocation to Northern Ireland of an appropriate share of the revenues is determined by HM Treasury in accordance with Statutory Instruments made under section 15 of the Act. Cash issues to Northern Ireland proceed throughout the year in weekly instalments based on annual estimates. These estimates are adjusted in subsequent financial years when final collection figures have been established. Adjustments to past years are effected by means of increases or reductions in current transfers. The Consolidated Fund also receives a refund of Value Added Tax paid by Northern Ireland Departments. The main sources of local revenue are Regional and District Rates, interest on loans made and miscellaneous receipts, largely collected by Northern Ireland Departments. Together these sources of income are insufficient to fund planned expenditure. The difference between income and expenditure is made up by a payment of grant in aid from the United Kingdom Consolidated Fund to the Northern Ireland Consolidated Fund.

The grant-in-aid forms the major part of the UK subvention to Northern Ireland. The total subvention for 1996/97 was some £3,448 million. This included a grant-in-aid of £2,419 million, £905 million for the costs of the Northern Ireland Office, £49 million for the Northern Ireland Court Service and a £75 million transfer from the GB National Insurance Fund to the equivalent fund in Northern Ireland.⁸⁷

The following table summarises the forecast accounts of the Northern Ireland Consolidated Fund for the year 1997/98. Public income was expected to be some £7.0 billion of which £4.4 billion was to be financed by the attributed share of UK taxes and £1.9 billion by the grant-in-aid. Public expenditure was also some £7.0 billion.

Financial Statement 1997/98

Estimated revenue	£ million	Estimated expenditure	£ million
NI share of UK taxes	4,413.0	Supply services (a)	6,573.2
Grant-in-aid from UK Government	1,886.4	Consolidated fund standing services:	
Regional & district rates	295.0	Interest on sums borrowed	190.0
Interest on loans made	200.0	Transfer of district rates to councils	190.0
Other revenue	160.0	Miscellaneous	1.0
		Guarantees under Ind. Devp. Act (NI) 1966	0.1
		Provisions for surplus	0.1
Total	6,954.4	Total	6,954.4

Note: (a) It is expected that supplementary estimates will increase the supply services total.

Source: *Northern Ireland Financial Statement 1997/98*

It is important to note that the accounts above only relate to transactions passing through the Northern Ireland Consolidated Fund and do not provide a comprehensive picture of all public revenues and expenditures in the Province. (For example, the income and expenditure of the Northern Ireland National Insurance Fund are excluded, as is

⁸⁷ Sources: Appropriation accounts of Lord Chancellor's Department and Northern Ireland Office HC 251 1997-98; *National Insurance Fund Accounts 1995/96*, HC 221 1996/97

expenditure by the Northern Ireland Office. The residents of Northern Ireland also benefit from other expenditure made centrally on behalf of the whole United Kingdom such as defence and overseas representation.) Such a comprehensive analysis is not routinely published for Northern Ireland - or for any other part of the United Kingdom. In the context of devolution, the Scottish⁸⁸ and Welsh⁸⁹ Offices have recently conducted separate exercises to estimate an overall budget position for these two countries. However, no similar study for Northern Ireland Office has been published as yet.

Within the public expenditure planning process, spending in Northern Ireland falls into three categories:

- Expenditure by UK departments (e.g. on the Northern Ireland Court Service and the Army).
- The Northern Ireland Departmental Expenditure Limit (DEL).
- Northern Ireland expenditure within Annually Managed Expenditure (AME) including social security benefits and the cost of the Common Agriculture Policy.

The Barnett formula helps to determine the size of the Northern Ireland DEL.⁹⁰ If during the course of the annual public expenditure survey (PES) - or, more recently the Comprehensive Spending Review - there are negotiated changes to comparable programmes in Great Britain, then a fixed proportion of that change is generally added to, or deducted from, the Northern Ireland DEL. The relevant proportion is currently 2.91% representing the relative sizes of the populations of Northern Ireland and Great Britain in 1996. For example, if £1 billion is added to health budgets in Great Britain, then £29.1 million is added to the Northern Ireland DEL.

The Barnett formula does not determine the overall size of the DEL nor does it allocate expenditure between different parts of the UK on the basis of need. The overall size of the block is largely determined by its size in previous years. The Secretary of State has the discretion to allocate the DEL between services in response to local needs and priorities. In the interim period before the establishment of the Assembly, the Secretary of State will consult the First Minister and Deputy First Minister on the plans for the next three years.⁹¹

Social security spending is largely determined by the expected number of claimants and national benefit rates and CAP spending is 100% funded by the EU.

⁸⁸ *Government Expenditure and Revenue in Scotland 1995/96*, Scottish Office, November 1997

⁸⁹ *Government Expenditure and Revenue in Wales 1994/95*, Welsh Office, January 1997

⁹⁰ For a more detailed description of the Barnett formula see Research Paper 98/8

⁹¹ CSR press notice dated 14 July 1998

The Clauses

Clause 44 provides for the continuance of the Northern Ireland Consolidated Fund. Money will be appropriated by an Act of the Assembly rather than, at present, by a Northern Ireland Appropriation Order at Westminster. **Clause 47** specifies the extent to which sums can continue to be issued from the Consolidated Fund if an appropriation act has not been passed by particular points in the financial cycle. This would enable public services to continue in the event of a delay in passing the necessary legislation. **Clauses 45 and 46** allow for the continued payment of the attributed share of UK taxes and the grant-in-aid.

Clause 48 allows the Secretary of State to lend the Northern Ireland Government up to £250 million from the National Loans Fund to meet temporary deficits in the Consolidated Fund's cashflow or to provide a working balance of funds. Interest will be charged on the loans. **Clause 49** requires the Secretary of State to prepare annual accounts of such loans and to submit them to the Comptroller and Auditor General for audit.

Clause 50 specifies that the Assembly can only take a decision that has financial consequences if it is proposed by the Minister for Finance and Personnel and it receives cross-community support.

Clause 51 requires the Minister for Finance and Personnel to provide the Assembly with proposals for public expenditure in the forthcoming financial year no later than the first working day after 9 December. The draft budget must have previously been agreed with the Executive Committee. The Assembly will be asked to approve the draft, which may be modified, with cross-community support.

Clause 52 provides for the auditing of accounts. As at present, this will be by the Comptroller and Auditor-General for Northern Ireland, who will be appointed by the Crown. **Clause 53** allows the Treasury to require the Assembly to provide financial information.

K. Human Rights

Section 20 of the *Northern Ireland Constitution Act 1973* created the Standing Advisory Commission on Human Rights for the purpose of:

advising the Secretary of State on the adequacy and effectiveness of the law for the time being in force in preventing discrimination on the ground of religious belief or political opinion and in providing redress for persons aggrieved by discrimination on either ground.

The Commission consists of a chairman, three ex officio members - the Northern Ireland Commissioner for Complaints, the Northern Ireland Commissioner for Administration and the chairman of the Fair Employment Commission for Northern Ireland - and such other members as may be appointed by the Secretary of State. The Commission's annual reports are laid before Parliament.

As part of the Belfast Agreement the Government undertook to create a new Northern Ireland Human Rights Commission with a wider role than that of the current Standing Advisory Commission. Paragraph 5 of the section of the Agreement entitled "Human Rights" states that⁹²:

5. A new Northern Ireland Human Rights Commission, with membership from Northern Ireland reflecting the community balance, will be established by Westminster legislation, independent of Government, with an extended and enhanced role beyond that currently exercised by the Standing Advisory Commission on Human Rights, to include keeping under review the adequacy and effectiveness of laws and practices, making recommendations to Government as necessary; providing information and promoting awareness of human rights; considering draft legislation referred to them by the new Assembly; and, in appropriate cases, bringing court proceedings or providing assistance to individuals doing so.

The *Human Rights Bill*⁹³ currently before Parliament, is designed to give further effect in England and Wales, Scotland and Northern Ireland to the European Convention on Human Rights. The Bill does not provide for the establishment of a human rights commission for the UK as a whole. In his speech opening the debate on the Bill's second reading in the House of Lords the Lord Chancellor, Lord Irvine of Lairg, said the Government had not ruled out a commission in future, but considered that it would be premature to provide for one now, partly because of unresolved questions about the relationship between a new commission and other bodies in the human rights field, such as the Equal Opportunities Commission and the Commission for Racial Equality. He added that the Government wanted to be sure that the potential benefits of a human rights

⁹² *The Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland* Cm 3883 p.17

⁹³ Bill 119 of 1997-98

commission were sufficient to justify establishing and funding for a new non-governmental organisation⁹⁴.

The Belfast Agreement notes that:⁹⁵:

2. The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.

It goes on say that:

3. Subject to the outcome of public consultation underway, the British Government intends, as a particular priority, to create a statutory obligation on public authorities in Northern Ireland to carry out all their functions with due regard to the need to promote equality of opportunity in relation to religion and political opinion; gender; race; disability; age; marital status; dependants; and sexual orientation. Public bodies would be required to draw up statutory schemes showing how they would implement this obligation. Such schemes would cover arrangements for policy appraisal, including an assessment of impact on relevant categories, public consultation, public access to information and services, monitoring and timetables.

The Irish Government has also undertaken to take steps to further strengthen the protection of human rights in its jurisdiction and to establish a Human Rights Commission with a mandate and remit equivalent to that within Northern Ireland⁹⁶. In addition the Belfast Agreement states that the Irish Government will:

- proceed with arrangements as quickly as possible to ratify the Council of Europe Framework Convention on National Minorities (already ratified by the UK);
- implement enhanced employment equality legislation;
- introduce equal status legislation; and
- continue to take further active steps to demonstrate its respect for the different traditions in the island of Ireland.

The Belfast Agreement also envisages a joint committee of representatives of the two Human Rights Commissions, North and South, as a forum for consideration of human rights issues in the island of Ireland⁹⁷. It states that the joint committee will consider,

⁹⁴ HL Deb Vol 582 c.1233, 3.11.1997

⁹⁵ *ibid.* p16-17

⁹⁶ *ibid* p.17-18

⁹⁷ *ibid* p.18 para.10

among other matters, the possibility of establishing a charter, open to signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland.

The section of the Belfast Agreement entitled "Economic, Social and Cultural Issues" contains a further provision on anti-discrimination legislation, stating that, subject to the public consultation currently under way, the British Government will make rapid progress on a number of issues, including:

(iii) measures on employment equality included in the recent White Paper ("Partnership for Equality") and covering the extension and strengthening of anti-discrimination legislation, a review of the national security aspects of the present fair employment legislation at the earliest possible time, a new more focused Targeting Social Need initiative and a range of measures aimed at combating unemployment and progressively eliminating the differential in unemployment rates between the two communities by targeting objective need.

A Northern Ireland Human Rights Commission

Measures intended to provide for the establishment of the new Northern Ireland Human Rights Commission are set out in clauses 54-58 of the *Northern Ireland Bill*. The dissolution of the Standing Advisory Commission on Human Rights is provided for by Clause 58.

Clause 54 is designed to establish the new Northern Ireland Human Rights Commission as a body corporate consisting of a Chief Commissioner and other Commissioners appointed by the Secretary of State. Supplementary provisions about Commissioners' tenure of office, salaries and staff are set out in Schedule 8 of the Bill. The Commission appears to have the form of a non-departmental public body (NDPB). Clause 54(3) provides that, in making appointments to the Commission, the Secretary of State:

shall as far as practicable secure that the Commissioners, as a group, are representative of the community in Northern Ireland

The Commission will report annually to the Secretary of State, who will lay the report before Parliament.

Clause 55 sets out the functions which the Commission is intended to have. It will have powers:

- to advise the Secretary of State and the Executive Committee of the Assembly of legislative and other measures which ought to be taken to protect human rights;
- to advise the Assembly on whether or not a Bill is compatible with human rights,

either in response to a general or specific request from these bodies or on such other occasions as the Commission thinks appropriate.

Clause 55 also seeks to require the Commission to promote understanding and awareness in Northern Ireland of the importance of human rights. It will be able to undertake, commission or provide financial or other assistance for research and educational activities for this purpose. The Secretary of State will have powers to request the Commission to provide advice on rights which might constitute a Bill of Rights for Northern Ireland and other matters referred to in paragraph 4 of the Human Rights section of the Belfast Agreement, which provides that:

4. The new Northern Ireland Human Rights Commission (see paragraph 5 below) will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland. Among the issues for consideration by the Commission will be:

- the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and
- a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.

Clause 55 also seeks to require the Commission to do all that it can to facilitate the establishment of the joint committee of representatives of the Human Rights Commissions for Northern Ireland and the Republic of Ireland referred to in paragraph 10 of the Agreement⁹⁸.

Where someone in Northern Ireland is bringing or wishes to bring proceedings under what is currently the *Human Rights Bill 1997-98*⁹⁹, which is designed to give further effect to the rights set out in the European Convention (the "Convention rights"), or where someone is relying or wishes to rely on Convention rights in any proceedings, Clause 56 seeks to enable him or her to apply to the Commission for assistance. The Commission will have powers to grant an application for assistance on any of the following grounds:

- a) that the case involves an issue of principle;

⁹⁸ see p. 59-60 ?

⁹⁹ Bill 119 of 1997-98

- b) that it would be unreasonable to expect the individual to deal with the case without assistance because of its complexity, or because of the individual's position in relation to another person involved, or for some other reason;
- c) that there are special circumstances which make it appropriate for the Commission to provide assistance.

Where the Commission grants an application it will be able to provide or arrange for the provision of legal advice, arrange for the provision of legal representation, or provide any other assistance it thinks appropriate. Where the Commission arranges for the provision of legal assistance to an individual Clause 56(4) seeks to enable it to provide for the recovery of expenses from the individual in certain circumstances. The Commission's powers to provide assistance under Clause 56 are broadly similar to those of the Commission for Racial Equality and the Equal Opportunities Commission.

Clause 6(2)(d) of the *Northern Ireland Bill* provides that a provision which is incompatible with any of the Convention rights or with Community law is outside the competence of the Northern Ireland Assembly. The *Scotland Bill* currently before Parliament contains a similar provision relating to Acts of the Scottish Parliament¹⁰⁰. Clause 19(1) of the *Northern Ireland Bill* is designed to prevent Ministers or Northern Ireland departments having the power to make subordinate legislation or do any other acts which are incompatible with any of the Convention rights or with Community law. Again, there are equivalent provisions in the *Scotland Bill* relating to subordinate legislation and acts of the Scottish Executive¹⁰¹.

Clause 57(3)(a) of the *Northern Ireland Bill* seeks to ensure that Clauses 6(2)(d) and 19(1) do not apply to those acts of public authorities which, although incompatible with Convention rights, would be considered lawful by virtue of Clause 6(2) of the *Human Rights Bill*, because the public authority concerned was prevented by primary legislation from acting differently, or was acting so as to give effect to provisions of, or made under primary legislation, which could not have been read or given effect in a way which was compatible with Convention rights.

Clause 57(3)(b) of the *Northern Ireland Bill* seeks to ensure that Clauses 6(2)(d) and 19(1) do not enable courts or tribunals dealing with cases involving breaches of Convention rights to award damages which they could not award on finding an act unlawful under Clause 6(1) of the *Human Rights Bill*. The circumstances in which courts may award damages for breaches of Convention rights are set out in Clause 8 of the *Human Rights Bill*, which provides that damages may only be awarded by a court which has power to award damages, or to order the payment of compensation in civil proceedings and that:

¹⁰⁰ Clause 28(2)(d) of the current version of the *Scotland Bill* [HL Bill 119 of 1997-98]

¹⁰¹ *ibid.* Clause 53(2)

(3) No award of damages is to be made unless, taking account of all the circumstances of the case, including-

- (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and
- (b) the consequences of any decision (of that or any other court) in respect of that act,

the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

In determining whether to award damages and the amount of an award the court is required to take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the European Convention¹⁰².

Clause 57(1) of the Bill is designed to prevent Clauses 6(2)(d) or 19(1) enabling a person to bring any proceedings in a court or tribunal, or to rely on any of the Convention rights in any such proceedings, in respect of an act unless he or she is the Attorney General, the Attorney General for Northern Ireland or the Lord Advocate, or would be the victim for the purposes of article 34 of the European Convention on Human Rights if proceedings in respect of the act were brought in the European Court of Human Rights. Under the *Human Rights Bill* the right to bring proceedings against public authorities for alleged breaches of Convention rights, or to rely on Convention rights in legal proceedings, is similarly restricted to those people who would be victims of the unlawful act for the purposes of article 34 of the European Convention. The Strasbourg definition of victim provides standing to bring legal proceedings for a rather narrower range of complainants than the range which is currently permitted under the rules concerning standing for judicial review. The definition of victim in the *Human Rights Bill* has been a subject of concern to some commentators¹⁰³.

L Equal Opportunities

As part of the Good Friday Agreement, the British Government promised to “make rapid progress” with:¹⁰⁴

Measures on employment equality included in the recent White Paper (“Partnership for Equality”) and covering the extension and strengthening of anti-discrimination legislation, a review of the national security aspects of the present fair employment legislation at the earliest possible time, a new more focused Targeting Social Need initiative and a range of measures aimed at combating

¹⁰² Clause 8(4) *Human Rights Bill* [current version Bill 219 of 1997-98]

¹⁰³ See Library Paper 98/24 *The Human Rights Bill* pp47-49

¹⁰⁴ *The Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland*, Cm 3883, April 1998, p 19

unemployment and progressively eliminating the differential in unemployment rates between the two communities by targeting objective need.

Clauses 59-61 of the *Northern Ireland Bill* take the first steps by:

- merging the Fair Employment Commission for Northern Ireland (FEC), the Equal Opportunities Commission for Northern Ireland (EOC(NI)), the Commission for Racial Equality for Northern Ireland (CRE(NI)), and the Northern Ireland Disability Council to form a single Equality Commission; and
- imposing a statutory duty on public authorities in Northern Ireland to carry out their functions with due regard to the need to promote equality of opportunity –
 - (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - (b) between men and women generally;
 - (c) between persons with a disability and persons without; and
 - (d) between persons with dependants and persons without.

1. Background

In November 1994, the then Secretary of State for Northern Ireland, Sir Patrick Mayhew, asked the Standing Advisory Commission on Human Rights (SACHR):

to undertake a comprehensive review of employment equality, after five years experience of the operation of the Fair Employment (Northern Ireland) Act 1976 as amended. The review should consider the effectiveness of those enactments and the institutions and procedures which they established in promoting equality of opportunity in employment and fair participation in employment between the Protestant and Catholic communities in Northern Ireland. The review should consider all aspects of fair employment (including the cost of compliance effects on employers and employees) but notably the legal, social and economic dimensions and the impact of relevant government policies. The Commission may include additional relevant matters in its report.

SACHR's report, *Employment Equality: Building for the Future*, was published in June 1997, shortly after the election of a Labour Government.¹⁰⁵ In March 1998, the Labour Government published a White Paper, *Partnership for Equality*, which drew on the SACHR report, but in several respects went further in its proposals for tackling discrimination in the labour market.¹⁰⁶ Dr Marjorie Mowlam, the Secretary of State, made it clear in her introduction that the plans in the White Paper:

¹⁰⁵ Cm 3684

¹⁰⁶ Cm 3890

relate to the particular circumstances of Northern Ireland and do not carry implications for equal opportunities and race relations strategies in the different context of Great Britain.

The White Paper contains many wide-ranging proposals. However, the Government considered two issues, which had been put out to consultation, urgently. These were the proposal to create a statutory obligation on the public sector to promote equality of opportunity and the proposal to amalgamate the Fair Employment, Racial Equality and Equal Opportunities Commissions for Northern Ireland and the Disability Council for Northern Ireland to form a new Equality Commission with important responsibilities in relation to this statutory obligation. The reason for bringing forward consideration of these proposals was that it would be necessary to include provisions in the legislation consequent on the Good Friday Agreement, if new arrangements for promoting equality were to be integral to devolved institutions.

2. Equality Commission

The White Paper put the case for an over-arching Equality Commission in paragraphs 4.12-4.14:

At present there are four statutory bodies in Northern Ireland established by anti-discrimination legislation - the Fair Employment Commission; the Equal Opportunities Commission for Northern Ireland; the Commission for Racial Equality for Northern Ireland and the Northern Ireland Disability Council. The future of the Northern Ireland Disability Council is currently under consideration in the context of a proposal to establish a National Disability Rights Commission. From time to time, proposals for the amalgamation of some or all of these bodies have been made. SACHR has not recommended their amalgamation, but has proposed that the position be kept under review and has noted that, if significant problems emerged from the separate operation of the three Commissions, this might have to be reconsidered. The statutory anti-discrimination bodies contain considerable experience and expertise on equality of opportunity in their respective fields. A new statutory authority created to fulfil the functions described in the preceding paragraphs could not hope to duplicate this expertise. The most rational organisational solution would be the creation of a unified Equality Commission, bringing together the existing statutory bodies. This would not imply a downgrading of the priority attached to the work of any body. Indeed, the main purpose of such amalgamation would be to enable their work to be greatly extended into a new area, a positive engagement with the public sector to promote equality of opportunity in a broad sense.

4.13 A unified Equality Commission could operate on the basis of separate directorates for Fair Employment, gender, race and possibly (subject to decisions on a National Disability Rights Commission) disability. Other directorates could implement the new functions suggested here. It is not proposed that the separate anti-discrimination laws currently in force should be brought together in one statute. It is also possible that the proposed Equality Commission could consider some of the implications for sections of the Northern Ireland community arising from the application of the concept of parity of esteem.

Many organisations responding to the White Paper expressed doubts about the creation of an Equality Commission along these lines. In answer to a PQ from Kevin McNamara, Tony Worthington said that 45% of the organisations expressing a view were broadly against. These included the EOC (NI), the CRE (NI) the NI Disability Council and SACHR as well as many voluntary organisations involved with women, ethnic minorities and the disabled.¹⁰⁷

On 10 July 1998, Dr Mowlam announced the results of the consultations and her decisions on the two issues:¹⁰⁸ The announcement summarised the objections that had been made to the proposals for a single Commission and outlined the way in which the Government intended to deal with them:

Equality Commission

7. Many respondents to the consultation expressed concern about the proposal for an amalgamated Equality Commission, including several who were not opposed to the principle of a single Commission. It was suggested that, in the particular circumstances of Northern Ireland, issues of religious discrimination would overshadow other equality considerations and also that the time was not opportune for amalgamation, given the comparatively brief period since the Commission for Racial Equality for Northern Ireland and the Disability Council for Northern Ireland were established. The Government fully appreciates the work currently carried out by the Equal Opportunities Commission for Northern Ireland, the Commission for Racial Equality for Northern Ireland and the Disability Council for Northern Ireland. It is anxious that the priority given to this work should not be lessened as a result of amalgamation. The Government believes that appropriate arrangements can ensure that the ethos of the existing bodies and the advances which they have made can be protected within the framework of a single Equality Commission. It is intended that the legislation should:

- require the Equality Commission to devote appropriate resources to the full range of its responsibilities;
- permit the Equality Commission to establish consultative councils for advice on particular aspects of equality, thus maintaining effective contact with non-governmental organisations in these fields.

8. The internal administrative arrangements for an Equality Commission should also help to ensure that no particular aspect of equality predominates over the others. Accordingly, the Secretary of State for Northern Ireland proposes to invite representatives of the Fair Employment Commission, the Equal Opportunities Commission for Northern Ireland, the Commission for Racial Equality for Northern Ireland and the Disability Council for Northern Ireland, together with individuals with an interest in other aspects of equality, to form a working party which will plan for the establishment of the new Commission.

¹⁰⁷ HC Deb 13 July 1998, cc 40-42W

¹⁰⁸ Northern Ireland press release, 10 July 1998, *Secretary of State announces Equality White Paper decisions*

9. The Government is grateful to all those who expressed views on these two consultation proposals. Responses have indicated areas of particular concern and appropriate changes have been made to the proposals set out in the White Paper. The Government hopes that these changes will help to reassure those who expressed objections or reservations and that the current statutory equality bodies, together with relevant non-governmental organisations, can give their support to the forthcoming legislative proposals.

Clause 59 of the *Northern Ireland Bill* establishes the Equality Commission for Northern Ireland. It will consist of at least 14 but no more than 20 members appointed by the Secretary of State to be representative of the community of Northern Ireland. Schedule 9 gives details of matters such as tenure, salaries, staff, funding and procedures. Clause 60 abolishes the FEC, the EOC(NI), and the CRE(NI) and transfers all their functions to the new Equality Commission. It also transfers the functions of the Northern Ireland Disability Council to the new Commission.

The FEC was established in 1989 under the *Fair Employment (Northern Ireland) Act 1989*. It replaced the Fair Employment Agency, established by the *Fair Employment (Northern Ireland) Act 1976*. It has considerable power to act against discrimination in employment on grounds of religion or political opinion, including the power to require public and private sector organisations to draw up affirmative action programmes and the enforcement of the Act's provisions on the compulsory monitoring of workforces. The March 1998 White Paper says quite accurately that Northern Ireland's fair employment legislation probably constitutes "the toughest measures against employment discrimination available to any European Government, going well beyond equivalent provisions in UK law on race and sex discrimination".¹⁰⁹ At present the Fair Employment Act does not apply to the provision of goods, facilities and services and the disposal or management of premises. These are covered by the legislation on sex, race and disability discrimination, but the White Paper announced the Government's intention of extending the fair employment legislation on religion and political opinion to cover these areas.

The EOC (NI) was established by the *Sex Discrimination (Northern Ireland) Order 1976*. This, essentially, introduced the British *Sex Discrimination Act 1975* to Northern Ireland. The CRE (NI) was established by the *Race Relations (Northern Ireland) Order 1997*. This effectively introduced the British *Race Relations Act 1976* to Northern Ireland, some twenty years after it had been adopted on the mainland. Most provisions are identical to those in the rest of the UK, but some are unique to Northern Ireland. These include identifying Irish Travellers as a racial group and ensuring a distinction is maintained between discrimination on grounds of race and discrimination on grounds of religious belief or political opinion which is already covered by the Fair Employment legislation in Northern Ireland. The Disability Council for Northern Ireland was established by the *Disability Discrimination Act 1995* which also established a National Disability Council

¹⁰⁹ Cm 3890, para 1.4

for Great Britain.¹¹⁰ At present the Disability Councils do not have the same powers to assist individuals to enforce their rights and to carry out formal investigations that the Equal Opportunities and Race Relations Commissions have. In March 1998, the Government's Disability Rights Task Force recommended that the Councils should be replaced by a Disability Rights Commission with powers similar to these bodies.¹¹¹

There has been some discussion of merging all these organisations to form a single equality or human rights commission. The Institute for Public Policy Research has argued that such a merger would have serious disadvantages as it would lose the energy, drive and focus of a single issue organisation.¹¹² It prefers the idea of an umbrella organisation, consisting of the heads of the various bodies, which would be able to address issues concerning more than one human rights principle.

3. Statutory Obligation to Promote Equal Opportunity

In 1994, administrative guidelines on Policy Appraisal and Fair Treatment (PAFT) came into effect in Northern Ireland. Their purpose was to ensure that equality considerations were taken into account in the mainstream of Government policies. The guidelines require that in formulating and reviewing policies and delivering services, Northern Ireland Departments and other public bodies should assess the potential for unequal impact in terms of eight categories:

- Religion and political opinion
- Gender
- Race
- Disability
- Age
- Marital status
- Dependants
- Sexual orientation

The White Paper outlines some of the problems there have been in interpreting and implementing these guidelines and goes on to describe the Government's proposals for replacing them with a statutory obligation on public authorities to carry out their functions with due regard to the need to promote equal opportunity for the groups covered by the PAFT guidelines:¹¹³

¹¹⁰ Schedule 8 of the Act modifies its provisions in relation to Northern Ireland

¹¹¹ Disability Rights Task Force, *Recommendations to the Government on the proposed role and functions of a Disability Rights Commission*, March 1998

¹¹² reported in *Equal Opportunities Review* 74, July/August 1997

¹¹³ Cm3890, paras 4.9-4.11

4.9. The Government's proposal would be based on a statutory obligation on public bodies (including District Councils and United Kingdom Departments operating in Northern Ireland) to secure that, consistent with their other responsibilities, their various functions are carried out with due regard to the need to promote equality of opportunity in those areas covered by the current PAFT guidelines. Obligations in respect of categories where there is current legislation on discrimination may be stronger in character than for other categories. It is also suggested that a statutory obligation might extend to the promotion of good relations between people of different religious beliefs and political opinions, and people of different racial groups.

4.10 Each public body might be required to adopt a statutory scheme setting out how it proposed to take regard of its new statutory obligations in its day-to-day work. Such schemes might include:

- arrangements for the appraisal of policies (superseding the PAFT administrative guidelines);
- arrangements for consultation on policies;
- access to services by the public;
- arrangements for monitoring the uptake of services;
- the training of staff on the new statutory obligations;
- the impact of any grant schemes administered by the public body;
- a timetable for giving effect to the scheme;
- arrangements for publicising the scheme.

This list is not exhaustive and details of statutory schemes might vary considerably, depending on the nature of a public body's responsibilities.

4.11. The proposed new statutory obligations would require significant culture change in the Northern Ireland public sector. It is doubtful whether public sector bodies would have the expertise to implement effectively these proposals without external assistance. If this radical proposal is to be successful, a key element would be a close relationship between each public body and a statutory authority charged with responsibility for setting the standards for statutory schemes, validating specific schemes, monitoring their implementation and investigating complaints that schemes had not been appropriately applied by public bodies. If complaints were substantiated, the Secretary of State might exercise statutory enforcement powers.

The response to this proposal was, generally, more favourable than that to the Equality Commission proposal. The Government summarised the responses and explained how it intended to proceed in the announcement on 10 June 1998:¹¹⁴

¹¹⁴ Northern Ireland press release, 10 July 1998, *Secretary of State announces Equality White Paper decisions*

Statutory Obligation to Promote Equality of Opportunity

4. This proposal was broadly supported in principle by respondents to the consultation, though several expressed reservations that the White Paper had not provided sufficient detail about its operation of the obligation. The Government confirms that it is not intended to leave substantial areas of discretion to those public bodies which would be required to implement the obligation. In particular, it is intended that:

- statutory equality schemes should contain a requirement for the assessment of the impact of policies on equality;
- public bodies should be required to consult with relevant non-government organisations when drawing up their statutory equality schemes.
- statutory equality schemes should require consultation by public bodies with relevant non-governmental organisations before taking decisions on specified policy areas;
- the provision of information on equality impact assessments should be an integral part of consultation on policies;
- there should be provision for publication of equality impact appraisals by public bodies.

5. The Government is committed to an effective system for promoting equality of opportunity, which involves consultation with those organisations best placed to represent the views of women, ethnic minorities, people with disabilities and others who will benefit from this proposal.

6. Many of those consultees who expressed reservations about the proposal for an equality of opportunity obligation were concerned by the mechanism for its oversight set out in the White Paper. This proposed that a unified Equality Commission should have responsibility for setting the standards for statutory equality schemes, validating specific schemes, monitoring their implementation and investigating complaints that schemes had not been appropriately applied by public bodies. Some respondents were concerned that this mechanism removed from the Government its responsibility for the effective promotion of this initiative. This was not the intention behind this proposal. The primary responsibility for promoting equality of opportunity under the White Paper proposals would fall on every public body covered by the legislation. There is a need for strong mechanisms, both within and outside Government, to provide oversight and challenge in the implementation of the obligation. In addition to the structure proposed in the White Paper, internal arrangements for co-ordinating, promoting and monitoring the activities of Government Departments and public bodies will need to be rigorous and effective. The central responsibility in this respect will be allocated, in the first instance, to the Central Community Relations Unit of the Central Secretariat, though the new Executive Committee will, in due course, determine its own departmental structure, including which part of the

administration should have internal responsibility for the equality of opportunity obligation.

Clause 61 of the *Northern Ireland Bill* imposes a duty on public authorities in Northern Ireland in carrying out its functions to "have due regard to the need to promote equality of opportunity -

- (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- (b) between men and women generally;
- (c) between persons with a disability and persons without; and
- (d) between persons with dependants and persons without."

Schedule 10 sets out the way in which the Equality Commission will enforce this duty by advising public authorities and, where appropriate, requesting them to draw up an equality scheme showing how they propose to fulfil their duties.

This "mainstreaming" of equal opportunities is something which the Government encourages in Great Britain, but it has tended to concentrate on women and ethnic minorities and has not gone so far as to impose a statutory duty to draw up equality impact statements.¹¹⁵

M. Conclusion: Devolution All Round

The *Northern Ireland Bill* and the creation of the new Assembly has a double significance in terms of the UK constitution. It is at once the outcome of prolonged negotiations about the future status of Northern Ireland and another model of devolution within the UK, raising the same types of issues as for Scotland and Wales. In particular, the West Lothian Question is relevant,¹¹⁶ although the smaller number of MPs for the province perhaps reduces its potential force.

The creation of an Assembly for Northern Ireland will complete a process of legislative and executive devolution for all constituent parts of the United Kingdom apart from England. Attention may next turn to the regions of England, starting with the new Greater London Authority. The impact of such profound changes to the governance of the UK will inevitably take years, if not decades, to be absorbed. One striking feature is the diversity of the models of devolution now being implemented, with full legislative power and an executive on Westminster lines for Scotland, limited legislative power with the potential for a cabinet style government for Wales, and full legislative power, but with a

¹¹⁵ See, eg, DSS press release, 22 June 1998, *Government delivering on promise to make women count*; and DfEE, *Equal opportunities into the mainstream: guidance on policy appraisal for equal treatment*, August 1996

¹¹⁶ On which see Research Paper 98/3 *The Scotland Bill: Some Constitutional and Representational Aspects*

power - sharing executive marking a new beginning for Northern Ireland's constitutional arrangements. There are major factors which will encourage centripetal tendencies among the devolved institutions, such as the major political parties, the need to agree common positions over EU matters and the Treasury control over public expenditure. However new constitutional conventions may be required, not least for Parliament to establish lines of communication with the devolved bodies. The Procedure Select Committee is expected to begin an inquiry into post devolution arrangements shortly.

Devolution for Northern Ireland is of course a return to the 'normal' arrangements before the advent of Direct Rule. Professor Vernon Bogdanor has noted that Northern Ireland's post-1920 experience of devolution is atypical for the rest of the UK, given the cross community conflict and the fact that a Parliament was in effect imposed on the province by the British government as a by-product of the attempt to resolve the Irish question.¹¹⁷ One of the legacies of devolution in the province is the development of a completely separate party system and this characteristic, along with the earlier factors are likely to continue to influence the nature of Northern Irish devolution. The creation of a power-sharing Executive owes more to the attempts to resolve the dissatisfactions of national minorities in continental Europe than to the models evolved for relatively homogeneous cultures in Scotland and Wales. Devolution in Northern Ireland is a bargained compromise between two communities with conflicting aspirations; ultimately its success will depend on the degree of common purpose which their representatives can establish.

¹¹⁷ *Devolution* (1979) by Vernon Bogdanor pp42-43

Appendix 1

Northern Ireland Referendum – 22 May 1998

Do you support the agreement reached at the multi-party talks on Northern Ireland and set out in Command Paper 3883?

	Number	% valid votes
Yes	676,966	71.1
No	274,879	28.9
Rejected ballot papers [¶]	1,738	
Total Poll	953,583	

[¶] Ballot papers may be rejected for a variety of reasons. These include: having more than one vote, no vote, not bearing the official mark or they may be void if the vote is not clear.

THE TURNOUT WAS 81.1%.

SOURCE: CHIEF ELECTORAL OFFICER FOR NORTHERN IRELAND

1998 Assembly elections - First preference votes by party

Party	East Antrim	North Antrim	South Antrim	Belfast East	Belfast North	Belfast South	Belfast West	North Down	South Down	East Londonderry	Lower Manhattan Tyrone	Foyle	Lagan Valley	Mid Ulster	Newry & Armagh	Strangford	Upper Bann	West Tyrone	Northern Ireland
Alliance	7,168	2,282	3,778	7,144	1,276	4,068	129	5,368	1,502	2,395	614	1,058	6,788	497	777	5,216	1,556	1,011	52,627
Con	233			203		97		337					702		263				1,835
DUP	7,889	18,687	8,850	12,225	8,764	5,321	1,345	2,571	4,826	9,307	7,082	6,112	8,350	10,646	7,214	11,901	7,812	8,015	146,917
Energy				15															15
Green					257							253				200			710
Ind	424	232			50			1,327							1,227	201	101	171	3,733
Ind Com																		1,269	1,269
Ind Un									121										121
Ind Nat		478																	478
Ind Un	1,571					437		1,382	1,562	3,811						3,198			11,961
Lab			137	369	255	293		212	498			345				181	439		2,729
Nat Law	32	156	28	22	76	73	29	39	33	46	63	32	43	38	23	27	32	40	832
NIWC			1,108	711		3,912		1,808			1,729		955		1,138				11,361
PUP	1,432	641	1,546	5,385	3,751	2,112	2,180	1,376	1,658	582		287				1,342			22,292
WLP	2,106	8,415	7,783	1,025	8,661	8,838	10,420	2,048	23,257	9,366	11,007	23,342	4,039	11,076	18,953	3,865	11,947	11,815	177,963
SF	746	4,045	3,226	917	8,775	2,605	24,650		7,771	3,860	13,714	12,696	2,000	20,305	14,052	614	7,216	15,666	142,858
Soc Party							128							91				570	789
UDP	596	400		516	911	1,745		265		171			3,725			322			8,651
UIM								72							933				1,212
UKUP	2,866		4,360	1,362	748	1,496	666	8,361	2,576		4,262		5,361			3,078	1,405		36,541
UUP	10,547	11,064	13,175	9,620	4,479	9,533	1,640	12,147	7,419	9,954	12,572	4,669	14,339	6,938	9,819	12,514	14,559	7,237	172,225
UUM		3,297			2,976												4,855		11,128
WP				79	155	176	607		130				208	207			270	157	1,989
Total	35,610	49,697	43,991	39,593	41,134	40,706	41,794	37,313	51,353	39,492	51,043	48,794	46,510	49,798	54,136	42,922	50,399	45,951	810,236

<u>Abbreviations</u>	<u>Party</u>
Alliance	Alliance
Con	Conservative
DUP	Democratic Unionist
Energy	Energy 106
Green	Green
Ind	Independent
Ind Com	Independent Community
Ind Lab	Independent Labour
Ind Nat	Independent Nationalist
Ind Un	Independent Unionist
Lab	Labour
Nat Law	Natural Law
NIWC	NI Women's Coalition
PUP	Progressive Unionist
SDLP	Social Democratic & Labour
SF	Sinn Fein
Soc Party	Socialist
UDP	Ulster Democratic
UIM	Ulster Independence Movement
UKUP	UK Unionist
UUP	Ulster Unionist
UUUU	Ulster Unionist/United Unionist
WP	Workers

1998 Assembly elections - Percentage of first preference votes by party

Party	East Antrim	North Antrim	South Antrim	Belfast East	Belfast North	Belfast South	Belfast West	North Down	South Down	East Londonderry	West Tyrone	Foyle	Lagan Valley Mid	Newry & Armagh	Strangford	Upper Bann	West Tyrone	Northern Ireland	
Alliance	20.1%	4.6%	8.6%	18.0%	3.1%	10.0%	0.3%	14.4%	2.9%	6.1%	1.2%	2.2%	14.6%	1.0%	1.4%	12.2%	3.1%	2.2%	6.5%
Con	0.7%			0.5%		0.2%		0.9%					1.5%		0.6%				0.2%
DUP	22.2%	37.6%	20.1%	30.9%	21.3%	13.1%	3.2%	6.9%	9.4%	23.6%	13.9%	12.5%	18.0%	21.4%	13.3%	27.7%	15.5%	17.4%	18.1%
Energy Green				0.0%								0.5%				0.5%			0.1%
Ind	1.2%	0.5%			0.6%			3.7%							2.3%	0.5%	0.2%	0.4%	0.5%
Ind Com					0.1%													2.8%	0.2%
Ind Un									0.2%										0.0%
Ind Nat		1.0%																	0.1%
Ind Un	4.4%					1.1%		3.7%	3.0%	9.7%						7.5%			1.5%
Lab			0.3%	0.9%	0.6%	0.7%		0.6%	1.0%			0.7%				0.4%	0.9%		0.3%
Nat Law	0.1%	0.3%	0.1%	0.1%	0.2%	0.2%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.0%	0.1%	0.1%	0.1%	0.1%
NIWC			2.5%	1.8%		9.6%		4.8%					2.1%		2.1%				1.4%
PUP	4.0%	1.3%	3.5%	13.6%	9.1%	5.2%	5.2%	3.7%	3.2%	1.5%		0.6%				3.1%			2.8%
WLP	5.9%	16.9%	17.7%	2.6%	21.1%	21.7%	24.9%	5.5%	45.3%	23.7%	21.6%	47.8%	8.7%	22.2%	35.0%	9.0%	23.7%	25.7%	22.0%
SF	2.1%	8.1%	7.3%	2.3%	21.3%	6.4%	59.0%		15.1%	9.8%	26.9%	26.0%	4.3%	40.8%	26.0%	1.4%	14.3%	34.1%	17.6%
Soc Party							0.3%							0.2%				1.2%	0.1%
UDP	1.7%	0.8%		1.3%	2.2%	4.3%		0.7%		0.4%			8.0%			0.8%			1.1%
UIM								0.2%						1.7%		0.4%			0.1%
UKUP	8.0%		9.9%	3.4%	1.8%	3.7%	1.6%	22.4%	5.0%		8.3%		11.5%			7.2%	2.8%		4.5%
UUP	29.6%	22.3%	29.9%	24.3%	10.9%	23.4%	3.9%	32.6%	14.4%	25.2%	24.6%	9.6%	30.8%	13.9%	18.1%	29.2%	28.9%	15.7%	21.3%
UUM		6.6%			7.2%											9.6%			1.4%
WP				0.2%	0.4%	0.4%	1.5%		0.3%				0.4%	0.4%		0.5%	0.3%		0.2%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Turnout	61.4%	68.4%	63.4%	65.4%	65.8%	67.7%	70.6%	59.3%	73.7%	67.7%	79.4%	70.8%	64.0%	86.3%	72.2%	59.6%	71.1%	78.3%	68.8%

Note: The above figures are based on press reports and should be treated as provisional. Final figures will be produced by the Chief Electoral Officer.

Source: Belfast Telegraph 27 June 1998 "Assembly taking shape"

Belfast Telegraph election 98 internet site <http://www.belfasttelegraph.co.uk/referendum/results/index.shtml>

<u>Abbreviations</u>	<u>Party</u>
Alliance	Alliance
Con	Conservative
DUP	Democratic Unionist
Energy Green	Energy 106 Green
Ind	Independent
Ind Com	Independent Community
Ind Lab	Independent Labour
Ind Nat	Independent Nationalist
Ind Un	Independent Unionist
Lab	Labour
Nat Law	Natural Law
NIWC	NI Women's Coalition
PUP	Progressive Unionist
SDLP	Social Democratic & Labour
SF	Sinn Fein
Soc Party	Socialist
UDP	Ulster Democratic
UIM	Ulster Independence Movement
UKUP	UK Unionist
UUP	Ulster Unionist
UUUU	Ulster Unionist/United Unionist
WP	Workers