



FROM: JONATHAN STEPHENS
Associate Political Director (L)
9 July 1999

PS/Secretary of State (L&B) cc See Copy Distribution Below

FAILSAFE BILL AND AGREEMENT: OUTSTANDING POLICY ISSUES

Attachment for above document which was emailed last night.

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cc Miss O. Boyle 9/7/99
BTM
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PS/Mr Semple 7440 28495

Please also copy to

David Ferguson, Tony McCusker
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1 + 14

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"FAILSAFE" PROPOSAL:
INTERNATIONAL AGREEMENT

Letter from the Secretary of State for Northern Ireland to Irish Foreign Minister:

Your Excellency,

I have the honour to refer to:

- the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland done at Belfast on 10 April 1998 (hereafter "the British-Irish Agreement");
- the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing a British-Irish Council done at Dublin on 8 March 1999;
- the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing a British-Irish Intergovernmental Conference done at Dublin on 8 March 1999;
- the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing Implementation Bodies done at Dublin on 8 March 1999 ("the Implementation Bodies Agreement");
- the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing a North-South Ministerial Council done at Dublin on 8 March 1999.

Further to discussions between our two Governments, and consultation with the political parties in Northern Ireland, concerning the full and effective implementation of the Multi-Party Agreement reached at Belfast on 10th April 1998 ("the Multi-Party Agreement") in accordance with its review provisions, I have the honour to propose that the above Agreements, and any supplementary arrangements concluded pursuant to those Agreements, shall apply subject to the arrangements set out in the Annex to this Note.

If the foregoing proposal is acceptable to your Government, I have the honour to propose that this Note and your reply to that effect shall constitute an Agreement between our two Governments which shall enter into force on the date on which the British-Irish Agreement enters into force.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

Marjorie Mowlam

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ANNEX

PART A

COMMENCEMENT & CESSATION OF SUSPENSION ARRANGEMENTS

1. In the event that:

(i) the Independent International Decommissioning Commission ("the Commission") reports to the British and Irish Governments that a political party or other organization has failed to take any step specified by the Commission in accordance with the Multi-Party Agreement within a period so specified or has otherwise failed to honour a commitment relating to decommissioning; or

(ii) the British Government, following consultation with the Irish Government, determines that a political party represented in the Northern Ireland Assembly ("the Assembly") has failed to honour a commitment relating to the operation of devolved government in Northern Ireland;

the suspension arrangements in Part B below shall be brought into operation immediately.

For the purposes of this paragraph:

"commitment", means a commitment arising under the Multi-Party Agreement, including a commitment to adhere to the three principles set out in the joint statement of the British and Irish Governments issued on 25th June 1999, that is:

- (1) an inclusive Executive exercising devolved powers;
- (2) decommissioning of all paramilitary arms by May 2000; and
- (3) decommissioning to be carried out in a manner determined by the Commission.

"organization" does not include an organization specified in an order made under the Northern Ireland (Sentences) Act 1998.

2.(a) The suspension arrangements in Section 1 of Part B shall be brought into operation by the British Government in accordance with the relevant provisions of United Kingdom legislation.

(b) The suspension arrangements in Sections 2 and 3 of Part B shall be brought into operation on the same date as those in Section 1 by an exchange of letters between the British and Irish Governments.

3.(a) The suspension arrangements shall remain in operation until terminated by decision of the British and Irish Governments following consultation with the political parties represented in the Assembly.

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(b) Such termination shall be given effect:

(i) in relation to the suspension arrangements in Section 1 of Part A, by the British Government acting in accordance with the relevant provisions of United Kingdom legislation;

(ii) in relation to the suspension arrangements in Sections 2 and 3 of Part B by an exchange of letters between the British and Irish Governments.

PART B
SUSPENSION ARRANGEMENTS

The following arrangements shall apply from their entry into operation in accordance with paragraph 2 of Part A until their termination in accordance with paragraph 3 of Part A.

Section One

1. The operation of devolved government in Northern Ireland shall be suspended in accordance with United Kingdom legislation.

2. The British Government shall, as appropriate and save as decided otherwise, assume the benefits and duties of arrangements entered into by Northern Ireland Ministers.

Section Two

1. The British-Irish Council shall not convene or otherwise operate.

2. The North-South Ministerial Council shall not convene or otherwise operate.

3. The British-Irish Intergovernmental Conference shall continue to operate save that those arrangements relating to the participation of Northern Ireland Ministers or their representative shall not apply.

Section Three

1. (a) Subject to paragraph 4 below, the Bodies established by the Implementation Bodies Agreement shall only continue to operate to the extent necessary to carry out such activities as were exercisable prior to the entry into operation of the suspension arrangements or as may be required to comply with legal, including contractual, obligations or other commitments.

(b) During the period of the operation of the suspension arrangements the British and Irish Governments shall not confer new functions on the Bodies nor shall they establish new implementation bodies.

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2. (a) (i) The responsibilities and functions exercisable by the North/South Ministerial Council under the Implementation Bodies Agreement shall be exercisable by the British and Irish Governments save that no decisions shall be taken on new policies and actions for implementation by the Bodies.

(ii) Where under the Implementation Bodies Agreement reports or statements are to be submitted to the North/South Ministerial Council, such reports or statements shall be submitted to the British and Irish Governments.

(b) (i) The responsibilities and functions exercisable by a Northern Ireland Minister or by the Assembly under the Implementation Bodies Agreement, including those relating to the provision of funding, shall be exercisable by the British Government.

(ii) Where under the Implementation Bodies Agreement, reports are to be submitted to, or persons are to appear before or co-operate with, the Assembly or one of its committees, such reports shall be submitted to, and such persons shall appear before or co-operate with, the United Kingdom Parliament.

(c) The responsibilities and functions exercisable by a Northern Ireland Department under the Implementation Bodies Agreement shall continue to be exercised by that Department.

3. Where the Implementation Bodies Agreement stipulates that action shall be taken on or by a specified date such date shall be deemed to have been extended by the period during which the suspension arrangements remain in operation.

4. (a) The British and Irish Governments shall as soon as possible, and no later than two months, after the entry into operation of the suspension arrangements agree on arrangements for the transfer of the Bodies' functions to the relevant Northern Ireland and Irish Departments. The Bodies shall only retain such functions as were exercised by a single body in both jurisdictions prior to the entry into force of the Implementation Bodies Agreement.

(b) In the event of the termination of the suspension arrangements, such functions as have been transferred to Northern Ireland and Irish Departments in accordance with sub-paragraph (a) above shall be transferred back to the relevant Bodies in accordance with arrangements to be determined by the British and Irish Governments.

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Make provision for the suspension in certain circumstances of devolved government in Northern Ireland and the exercise of certain functions conferred by or under Part V of the Northern Ireland Act 1998; and for connected purposes.

A.D. 1999.

B E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

5 1.—(1) This section applies where, at any time after the commencement of Parts II and III of the Northern Ireland Act 1998 ("the 1998 Act")—

Suspension of devolved government etc.

(a) the Decommissioning Commission reports to the Secretary of State that a political party or other organisation—

1998 c.47.

10 (i) has failed to take any step specified by the Commission in accordance with the Belfast Agreement within a period so specified; or

(ii) has failed to honour a commitment relating to decommissioning; or

15 (b) the Secretary of State has reason to believe, after such consultation as he considers necessary, that a political party whose members hold seats in the Assembly has failed to honour a commitment relating to devolution.

20 (2) The Secretary of State shall make a suspension order, that is to say, an order providing that during the suspension period—

(a) no Act shall be passed by the Assembly and, except as authorised under paragraph 4 of the Schedule to this Act, neither the Assembly nor any committee of the Assembly shall hold any meetings or conduct any business;

25 (b) no person shall hold office as a Minister or junior Minister, or as a chairman or deputy chairman of a statutory committee; and

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(c) none of the following shall be exercisable—

(i) the functions conferred by section 52 or 53 of the 1998 Act (North-South Ministerial Council and British-Irish Council);

(ii) the functions conferred by section 54 of that Act (British-Irish Intergovernmental Conference); and

(iii) the function conferred by section 55(2)(b) of that Act of conferring functions on implementation bodies.

(3) The provisions of the Schedule to this Act shall have effect with respect to the exercise of legislative, executive and other functions in relation to Northern Ireland during a suspension period.

(4) A suspension order—

(a) may make such consequential, incidental and supplementary modifications of enactments as appear to the Secretary of State to be necessary or expedient; and

(b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In this section—

“commitment” means a commitment arising under the Belfast Agreement, including a commitment to adhere to the three principles agreed on 25th June 1999, namely—

(i) an inclusive Executive should be formed exercising devolved powers;

(ii) all paramilitary arms should be decommissioned by 25 May 2000; and

(iii) decommissioning should be carried out in a manner determined by the Decommissioning Commission;

“organisation” does not include an organisation specified in an order made by the Secretary of State under section 3(8) of the Northern Ireland (Sentences) Act 1998.

1998 c.35.

The suspension period.

2.—(1) The suspension period, in relation to a suspension order, shall be the period beginning with the making of the order and ending with such date as the Secretary of State, after such consultation as he considers necessary, may by order direct.

(2) An order under subsection (1) may make such consequential, incidental and supplementary modifications of enactments as appear to the Secretary of State to be necessary or expedient.

(3) The power to make an order under subsection (1) shall be exercisable by statutory instrument; and no order shall be made under that subsection unless either—

(a) a draft of the order has been approved by resolution of each House of Parliament; or

(b) the order declares that it appears to the Secretary of State to be expedient for the order to be made without a draft having been so approved.

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(4) An order under subsection (1), other than an order of which a draft has been approved by resolution of each House of Parliament—

(a) shall be laid before Parliament after being made; and

5 (b) if at the end of the period of forty days after the date on which it is made the order has not been approved by resolution of each House, shall then cease to have effect (but without prejudice to anything previously done under the order or to the making of a new order).

10 (5) In reckoning the period mentioned in subsection (4) no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

3.—(1) This section applies where a suspension period is brought to an end under section 2(1).

Restoration of devolved government.

15 (2) If there are two persons who, if the suspension order had not been made, would be holding or would be entitled to hold office as First Minister and deputy First Minister, those persons shall resume or, as the case may be, take up those offices.

20 (3) In any other case, section 16 of the 1998 Act shall apply as if the reference to the Assembly's first meeting included a reference to the ending of the suspension period.

(4) Any persons who, if the suspension order had not been made, would be holding or would be entitled to hold office as—

(a) Northern Ireland Ministers or junior Ministers; or

25 (b) chairmen or deputy chairmen of a statutory committees,

those persons shall resume or, as the case may be, take up those offices.

(5) If, after the application of subsection (4), there are any vacancies in any such offices as are mentioned in that subsection, those vacancies shall be filled—

30 (a) in the case of Northern Ireland Ministers, under section 18(10) of the 1998 Act;

(b) in the case of junior Ministers, under the provision for the filling of vacancies made by virtue of section 19(3)(a) of that Act; and

35 (c) in the case of chairmen or deputy chairmen of statutory committees, under standing orders made by virtue of section 29(8) of that Act.

4.—(1) This Act may be cited as the Northern Ireland Act 1999.

Short title and interpretation.

(2) In this Act—

"the 1998 Act" means the Northern Ireland Act 1998;

1998 c.47.

40 "the Decommissioning Commission" means the Independent International Commission on Decommissioning established by agreement between Her Majesty's Government in the United Kingdom and The Government of Ireland;

45 "statutory committee" shall be construed in accordance with section 29 of the 1998 Act;

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"suspension order" shall be construed in accordance with section 1(2);

"suspension period", in relation to a suspension order, shall be construed in accordance with section 2(1);

and expressions which are also used in the 1998 Act have the same meanings as in that Act. s

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SCHEDULE

section 1(3).

PROVISIONS APPLICABLE DURING SUSPENSION PERIOD

Legislative functions

1.—(1) During a suspension period or, in the case of a suspension period
5 which exceeds six months, during the first six months of that period. Her
Majesty may by Order in Council make laws for Northern Ireland and, in
particular, provision for any matter for which the 1998 Act authorises or
requires provision to be made by Act of the Assembly.

(2) No recommendation shall be made to Her Majesty to make any Order in
10 Council under this paragraph containing a provision which would be outside the
legislative competence of the Assembly.

(3) No recommendation shall be made to Her Majesty to make an Order in
Council under this paragraph unless either—

15 (a) a draft of the Order has been approved by resolution of each House of
Parliament; or

(b) the Order declares that it has been made to appear to Her Majesty that by
reason of urgency the Order requires to be made without a draft
having been so approved.

(4) Any Order in Council under this paragraph, other than an Order of which a
20 draft has been approved by resolution of each House of Parliament—

(a) shall be laid before Parliament after being made; and

25 (b) if at the end of the period of forty days after the date on which it is
made the Order has not been approved by resolution of each House,
shall then cease to have effect (but without prejudice to anything
previously done under the Order or to the making of a new Order).

(5) In reckoning the period mentioned in sub-paragraph (4) no account shall be
taken of any time during which Parliament is dissolved or prorogued or during
which both Houses are adjourned for more than four days.

30 (6) References to Acts of the Assembly in any enactment or instrument
(whether passed or made before or after the passing of this Act) shall, so far as the
context permits, be deemed to include references to Orders in Council under
this paragraph.

35 (7) Orders in Council under this paragraph may be omitted from any annual
edition of statutory instruments required to be prepared under regulations made by
virtue of section 8 of the Statutory Instruments Act 1946.

1946 c.36.

40 (8) The Secretary of State may by order direct, in relation to any suspension
period, that sub-paragraph (1) shall have effect as if the number of months
mentioned in that sub-paragraph (whether as enacted or as previously modified
under this sub-paragraph) were increased by such number of months not
exceeding six as may be specified in the order.

(9) The power to make an order under sub-paragraph (8) shall be exercisable by
statutory instrument; and no order shall be made under that sub-paragraph
unless a draft of it has been approved by a resolution of each House of
Parliament.

45 (10) In this paragraph "instruments" includes charters, contracts and other
documents.

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Executive functions

2.—(1) During a suspension period any functions of a Minister may be discharged by the Northern Ireland department of which he was in charge.

(2) During a suspension period any functions of a Northern Ireland department, including functions discharged by virtue of sub-paragraph (1), shall be discharged by the department subject to the direction and control of the Secretary of State. 5

(3) Anything required or authorised by or under any enactment or instrument to be done to or in relation to a Minister in connection with any functions exercisable by virtue of this paragraph by a substituted authority (whether a Northern Ireland department or the Secretary of State) shall, during a suspension period, be done instead to or in relation to that authority. 10

(4) Any enactment or instrument shall have effect so far as may be necessary for or in consequence of the exercise of any functions by a substituted authority by virtue of this paragraph, as if references to a Minister were references to that authority. 15

(5) This paragraph shall not invalidate anything done before the beginning of a suspension period; and—

(a) anything which, at the beginning of that period, is in process of being done by or in relation to a Minister may be continued by or in relation to the substituted authority; 20

(b) any order, regulation, rule, direction, authority, appointment, authentication, approval or other instrument or act effective at the beginning of that period as that of a Minister shall continue to have effect as that of the substituted authority. 25

(6) The foregoing provisions of this paragraph apply to functions conferred by any enactment or instrument during as well as before a suspension period except in so far as provision to the contrary is made by that enactment or instrument.

Subordinate instruments etc

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3.—(1) Where under any enactment or instrument it is a condition for the taking of any step (other than the annulment of any instrument) or the coming of anything into operation that a resolution or motion has been passed or an address presented by the Assembly, then, during a suspension period, that step may be taken or that thing shall come into operation without any such resolution, motion or address. 35

(2) Any statutory instrument made or coming into operation by virtue of sub-paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Any statutory rules made or coming into operation by virtue of sub-paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly. 40

1946 c.36.

(4) So much of any enactment or instrument as makes the taking of any step or the coming of anything into operation conditional on the laying of any instrument or document before the Assembly, or on any lapse of time after an instrument or document is so laid, shall not apply during a suspension period. 45

(5) So much of any enactment or instrument as makes it a condition for the continuing of anything in operation that a resolution or motion has been passed or an address presented by the Assembly shall not apply in relation to anything done during a suspension period or in relation to anything done previously that would, apart from this sub-paragraph, cease to have effect during that period. 50

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(6) No instrument made during a suspension period shall be liable to annulment or capable of being revoked in pursuance of a resolution, motion or address of the Assembly; and no draft of any such instrument shall be laid before the Assembly nor shall any proceedings be taken in the Assembly with respect to a draft of any such instrument.

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(7) Regulations made during a suspension period under Article 7 of the Statutory Rules (Northern Ireland) Order 1979 shall not require the concurrence of the Presiding Officer of the Assembly.

S.I. 1979/1573
(N.I.12).

(8) In this paragraph "statutory rules" has the same meaning as it has for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

Meetings of Assembly and committees

4.—(1) During a suspension period the Secretary of State may by notice served on the Presiding Officer authorise the Assembly or any committee of the Assembly to meet at such times, and to conduct such business, as may be specified in the notice.

(2) For the purposes of sub-paragraph (1) the Assembly's standing orders shall have effect subject to such modifications as may be specified in the notice.

Assembly Commission

5.—(1) During a suspension period no meetings shall be held by the Northern Ireland Assembly Commission and the functions of that Commission—

(a) shall be exercisable by the Secretary of State; and

(b) in the case of functions under section 40(6) of the 1998 Act (proceedings by or against the Assembly), shall be so exercisable in the name of the Commission.

(2) Any expenditure incurred by the Secretary of State in consequence of this paragraph shall be paid out of money provided by Parliament.

Members' remuneration and pensions

6.—(1) During a suspension period the functions of the Assembly under sections 47 and 48 of the 1998 Act (remuneration and pensions) shall be exercisable by the Secretary of State.

(2) The functions under section 48, and such of the functions under section 47 as consist in the making of determinations, shall be exercisable by order made by statutory instrument.

(3) Any expenditure incurred by the Secretary of State in consequence of this paragraph shall be paid out of money provided by Parliament.

Implementation bodies

7.—(1) References to the Agreement in any order made under section 55 of the 1998 Act (implementation bodies) shall be construed at any time during a suspension period as references to the Agreement as it has effect at that time when read with any subsequent agreements between the same parties.

(2) For the purposes of section 55 any body which has at any time been an implementation body (within the meaning of that section) shall be treated as such a body during the suspension period.

(3) In this paragraph "the Agreement" means the Agreement between Her Majesty's Government in the United Kingdom and the Government of Ireland which established implementation bodies and was done at Dublin on 8th March 1999.

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8.—(1) During the suspension period section 96(2)(b) of the 1998 Act shall not apply in relation to an order under section 55 of that Act; but no such order shall be made unless either—

- (a) a draft of the order has been approved by resolution of each House of Parliament; or
- (b) the order declares that it appears to the Secretary of State to be expedient for the order to be made without a draft having been so approved.

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(2) Such an order as is mentioned in sub-paragraph (1), other than an order of which a draft has been approved by resolution of each House of Parliament—

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- (a) shall be laid before Parliament after being made; and
- (b) if at the end of the period of forty days after the date on which it is made the order has not been approved by resolution of each House, shall then cease to have effect (but without prejudice to anything previously done under the order or to the making of a new order).

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(3) In reckoning the period mentioned in sub-paragraph (2) no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

Audit

9. During a suspension period the function of the Assembly under section 65(1) of the 1998 (nomination of a person for appointment as Comptroller and Auditor General for Northern Ireland) shall be exercisable by the Secretary of State.

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Accounts, reports and other documents

10.—(1) The accounts and reports to which sub-paragraph (2) applies shall be laid before the House of Commons instead of the Assembly; and the accounts, reports and other documents to which sub-paragraph (3) applies shall be laid before each House of Parliament instead of the Assembly.

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(2) This sub-paragraph applies to such of the accounts and reports required by section 11, 19, 21 or 22 of the Exchequer and Audit Act (Northern Ireland) 1921, or by Article 8 of the Financial Provisions (Northern Ireland) Order 1993, to be laid before (or presented or made to) the Assembly as relate to—

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- (a) any financial year ending during a suspension period; and
- (b) if part of a financial year ending after the end of a suspension period falls within that period, the part falling within that period;

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and for the purposes of paragraph (b) those accounts and reports shall be prepared separately for the part there mentioned and for the remainder of the financial year in question.

(3) This sub-paragraph applies to such accounts, reports and other documents required to be laid before (or presented or made to) the Assembly as may be prescribed by order of the Secretary of State made by statutory instrument.

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(4) A statutory instrument containing an order under sub-paragraph (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Ombudsman and Commissioner for Complaints

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11.—(1) During a suspension period any report required to be laid before the Assembly under—

- (a) Article 17(1) or (2) of the Ombudsman (Northern Ireland) Order 1996; or
- (b) Article 19 of the Commissioner for Complaints (Northern Ireland) Order 1996.

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shall be laid instead before each House of Parliament; and the reference in Article 18(2)(a) of the first-mentioned Order to a report to the Assembly shall accordingly include a reference to a report to either House of Parliament.

1921 c.2 (N.I.).
S.I. 1993/1252
(N.I.5).

S.I. 1996/1298
(N.I.6).
S.I. 1996/1297
(N.I.7).

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(2) During a suspension period any complaint under the Ombudsman (Northern Ireland) Order 1996 may be made to, and referred to the Commissioner by, a member of the House of Commons; and references to a member of the Assembly in Articles 9, 16 and 18 of that Order shall be construed accordingly.

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S.I. 1996/1298
(N.I.8).