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## NORTHERN IRELAND LEGISLATION

1. The statutory basis for legislative procedures in Northern Ireland is provided by the Northern Ireland Constitution Act 1973 and the Northern Ireland Act 1974. The 1973 Act set out three categories of matters - excepted, reserved and transferred - and provided that the NI Assembly could legislate on all transferred matters and, with the Secretary of State's consent, on reserved matters. The 1974 Act provides that, during Direct Rule, Westminster can legislate for Northern Ireland by means of Order in Council on all matters falling within the competence of the Assembly (ie transferred and reserved matters). Orders in Council, although in form subordinate legislation, have the effect of primary legislation for Northern Ireland.
2. Excepted matters - those matters for which it was envisaged that responsibility would remain permanently at Westminster eg the Crown, foreign affairs and defence, special provisions for dealing with terrorism and subversion, the appointment of judges and the DPP. Excepted matters are listed in Schedule 2 to the Northern Ireland Constitution Act 1973.

Reserved matters - cover a wide range of issues which are the responsibility of a number of UK (as opposed to NI (in this context NIO is a UK Department)) Departments. They include most law and order matters, the courts and the legal system, but not special provisions for dealing with terrorism. These matters are not available for immediate devolution to the Assembly. However, the Government has said (in para 54 of the 1982 White Paper) that if a durable and stable devolved government were established in NI, then the Government would consider the devolution of certain reserved matters. Reserved matters are listed in Schedule 3 to the Northern Ireland Constitution Act 1973.

Transferred matters - matters not in either of the above categories which would fall within the unrestricted legislative competence of the Assembly following devolution.

## PRIMARY LEGISLATION

3. Under direct rule there are four ways in which primary legislation for Northern Ireland can be effected:-

- (i) by Westminster Act extending throughout the UK including Northern Ireland;
- (ii) by Westminster Act extending only to Northern Ireland;
- (iii) by Order in Council under the Northern Ireland Act 1974, subject to affirmative resolution procedure; and
- (iv) by Order in Council under the 1974 Act, subject to negative resolution procedure.

4. Method (i) above is used to effect primary legislation on most excepted matters. It may also be used to legislate for Northern Ireland on reserved matters where the same provisions are required in Northern Ireland as in Great Britain, previous legislation is on the UK statute book, and the adaptations that may be necessary for Northern Ireland can be included without unduly complicating the Bill. We try to avoid its use for 'transferred' subjects.
5. Method (ii) is used very infrequently when it is necessary to legislate for NI alone on excepted matters (eg Fair Employment (NI) Act 1976). The Order in Council procedure (method (iii) and (iv) above) is the most usual means of effecting primary legislation on transferred and reserved matters.
6. By virtue of Section (3) of the Northern Ireland Act 1982 the Northern Ireland Assembly has important scrutinising, consultative and deliberative functions in relation to transferred matters, including the scrutiny of draft legislation. However the use of Bills makes it difficult to consult the Assembly and the Secretary of State has therefore decided that primary legislation in the transferred field should not normally be enacted by Bill, either by direct extension or a negative resolution clause. Negative resolution procedure is used mainly for parity type legislation such as social security where it is essential that Northern Ireland keeps strictly in step with GB on both the timing and content of the legislation.

#### ORDER IN COUNCIL PROCEDURE

7. One important consequence of the use of Order in Council procedure is that Parliament cannot amend draft legislation once it is laid, but only accept or reject it. It is of course possible for Parliament to force amendment by rejecting the draft Order and requiring the Government to amend and re-lay the Order: but this has not happened so far.

#### CONSULTATION

8. In an attempt to compensate for the absence of opportunities to amend Orders in council once laid, government has instituted an extensive pre-parliamentary consultation

phase on most draft legislation. Proposals for draft Orders are published well in advance of laying and are distributed to Northern Ireland Party Spokesmen in the Commons and Lords, the political parties in Northern Ireland (except Sinn Fein) and other interested groups in Northern Ireland. The Assembly is also formally requested to provide comments if the Proposal deals with transferred matters. This consultation period normally lasts 6 weeks (10 weeks for the Assembly) but can be extended for particularly long or controversial Orders. At the end of it, all comments and proposed amendments are considered and, if Ministers think it appropriate, reflected in the draft Order. The Proposal can also be considered by the Northern Ireland Standing Committee of the Commons which provides a forum in which the views of NI MPs can be canvassed in a structured way, although the Committee has no power to amend the Proposal. After that the draft Order is laid before Parliament and the affirmative resolution debated.

#### EXCEPTIONS

9. There are important instances where this consultation procedure is not adhered to:-
  - (a) in cases of exceptional urgency the 1974 Act provides for an 'urgent' procedure by which an Order may come into effect as soon as it is made. Such Orders must be affirmed by both Houses within 40 sitting days if they are to continue in effect.
  - (b) consultation periods are routinely omitted for Orders which extend the operation of the Northern Ireland Act 1974 (for one year) and the Northern Ireland (Emergency Provisions) Act 1978 (for 6 months), since these Orders do not contain primary legislation for Northern Ireland, but extend the life of the parent Act.
  - (c) non-controversial measures of an urgent nature may, in certain circumstances, also omit a consultation period, for example routine financial and Appropriation Orders.
  - (d) where NI legislation is substantially identical to new GB legislation, the GB Act may contain a clause enabling its provisions to be replicated for Northern Ireland by Order subject to negative resolution.
  - (e) consolidation legislation.

**ORDERS IN COUNCIL MADE BY NORMAL PROCEDURE UNDER THE  
NORTHERN IRELAND ACT 1974**

**STAGE**

- 1 Preliminary discussion with interested parties, possibly including the relevant Assembly Committee and Ministerial approval to prepare draft Order.
- 2 Publication of the draft Order as a Proposal for consultation purposes and its referral to the NI Assembly for comment.
- 3 Possible debate in Northern Ireland Committee.
- 4 Consideration of comments received during consultation process and during any debate in Northern Ireland Committee and preparation of a response to Assembly's report.
- 5 Response to Assembly's report and finalising of draft Order.
- 6 Laying draft Order before Parliament.
- 7 Consideration by both Houses of Parliament.
- 8 If approved, made by Her Majesty in Privy Council.

Orders in Council made by the urgent procedure are made without being laid in draft before Parliament but must be affirmed by both Houses within 40 sitting days of being made.