

From: T Watson
Devolution and Legislation Division
31 January 2000

cc Mr Gray OLC
Mrs Devlin
Mr Margetts
Mrs O'Boyle ✓ 11/2/00
Mr McCartney
Mr Osborne (HOLAB)
Ms Maguire (HOLAB)

Mr Crawford

ROYAL ASSENT: FINAL DRAFT GUIDANCE PAPER

I attach a copy of the final draft guidance on Royal Assent procedures following the most recent VCR meeting on 20 January. The guidance reflects detailed comments from OLC and HOLAB for which I am grateful.

2. Copies of the guidance will, as before, go under separate cover to officials in the Northern Ireland Assembly, the Clerk of the Crown in the Crown Office Belfast and to the Attorney General's office. If you have any final observations/comments on the guidance, please send these to me by 4 February at the latest.

3. With regard to paragraph 13, I understand that the Office of the First and Deputy First Minister has been in direct communication with the Crown Office concerning details of Wafer Seals. Should Crown Office's advice indicate that more time will be required in order to obtain the appropriate

wafer seals, then we shall contact the Lord Chancellor's Department to ensure that the Great Seal of Northern Ireland can be made available. This will not delay any early Bills requiring Royal Assent. This approach will continue such times as Wafer Seals have been approved by the First and Deputy First Minister.

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2. The smooth passage of Assembly Bills for Royal Assent, using the procedures outlined in the Northern Ireland Act 1998, must be assured. For this to happen, close co-operation between the Presiding Officer of the Assembly, the Secretary of State for Northern Ireland, the Attorney General, the Crown Office Belfast (or, on occasion, the Lord Chancellor's Department) and Buckingham Palace will be required.

Legislative requirements

3. Sections 5 & 14 of the 1998 Act provide that:
- the Secretary of State shall submit Assembly Bills for Royal Assent;
 - a Bill shall become an Act when it has been passed by the Assembly and has received Royal Assent;
 - a Bill receives Royal Assent at the beginning of the day on which Letters Patent under the Great Seal of Northern Ireland signed with Her

Draft

Royal Assent for Assembly Bills: Procedural Guide

Introduction

The following paper sets out the main procedural steps for obtaining Royal Assent for Bills passed by the Northern Ireland Assembly, in accordance with the provisions of the Northern Ireland Act 1998.

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Majesty's own hand signifying Her Assent are notified to the Presiding Officer; and

- the date of Royal Assent shall be written on the Act by the Presiding Officer and shall form part of the Act.

4. Section 49 of the 1998 Act allows an Order in Council to provide for the form and manner of preparation and the publication of Letters Patent signed by The Queen to signify her assent to a Bill passed by the Assembly. It also permits the use of a Wafer Great Seal (essentially a copy of the Great Seal, in this case, of Northern Ireland) to be applied to the Letters Patent if the First Ministers and Deputy First Minister acting jointly so direct.

5. An Order in Council (Royal Assent to Bills Order 1999) provides for Letters Patent to enable Bills passed by the Assembly to become Acts of the Assembly. Section 2 of the Order provides that Letters Patent take the form set out in the Schedule to the Order, subject only to such variations as are specified in the Schedule itself or are necessitated by circumstances - which must then be referred to in Letters Patent. This variation is built in to take account of occasions when more than one Bill is submitted for Royal Assent.

6. There are a number of other legislative requirements in the Northern Ireland Act which may impact on the final completion of an Assembly Bill and hence the overall timetable for Royal Assent. These are listed below.

(a) Excepted and Reserved Matters

Section 10 (2) provides that where the Presiding Officer considers that a Bill contains, after Introduction and before Final Stage, any provisions dealing with an excepted or reserved matter, he must refer this to the Secretary of State before it proceeds – unless the provision is merely ancillary to other provisions dealing only with transferred matters

(b) Legislative Competence

Section 11 provides for the Attorney General to consider whether any Bill is within the legislative competence of the Assembly. In carrying out this responsibility, the Attorney General may refer the issue to the Judicial Committee.

(c) Reconsideration of Bills by the Assembly

Section 12 provides for circumstances under which the Assembly may reconsider a Bill following referral by the Judicial Committee to the European Court of Justice. Where the Assembly resolves to reconsider a Bill, the Attorney General shall request the withdrawal of the reference to the Judicial Committee.

(d) Refusal to submit Bills for Royal Assent

Section 14 (4) provides that if the Secretary of State has not given his consent before the "Final Stage" to a Bill containing provisions dealing with excepted or reserved matters, perhaps because the view of the Presiding Officer was that the Bill contained only "ancillary" reserved or excepted provisions ancillary to provisions dealing only with transferred matters and was not referred by him to the Secretary of State, he may refuse to submit it for Royal Assent; and

(e) Laying Bills before Parliament

Section 15 provides for the Secretary of State to lay before Parliament any Bill to which he has consented, before it can be submitted for Royal Assent, unless he considers that:

- (1) all the excepted and reserved matters with which the Bill deals are ancillary to transferred matters; or
- (2) the Bill is sufficiently urgent to warrant gaining Royal Assent without first being laid before Parliament.

Procedural aspects

6. The gaining of Royal Assent comprises a number of steps which are set out below, starting, for the purposes of this guidance, with an Assembly Bill passing its Consideration Stage.

The Attorney's role

7. Once an Assembly Bill has passed its Consideration Stage, i.e. the last point at which it can be amended and reprinted, the Speaker will formally refer it to the Attorney General using the proposed wording attached at Annex A. The Presiding Officer may copy this notice of referral to the Secretary of State. Under Section 11 (2), the Attorney General may refer the Bill to the Judicial Committee for decision at any time during four weeks starting from its passing Final Stage.

8. The Secretary of State cannot submit a Bill for Royal Assent until the expiration of this period unless the Attorney General signifies that he does not intend to refer the Bill to the Judicial Committee. Written confirmation from the Attorney General that he does not intend to refer will be communicated to the Presiding Officer and copied to the Secretary of State. The Secretary of State will require written confirmation, authenticated by the Presiding Officer, that the Bill has been passed along with a copy of the Bill. The wording at Annex B will be used in such cases.

The role of the Secretary of State

9. Upon receipt of such written confirmation from the Presiding Officer and where a notification of non-referral is forthcoming, the Secretary of State will then proceed to scrutinise the legislation under the provisions of Section 14 (4) of the Act. Where there have been changes to the Bill made by the Assembly after its introduction, he will want to ensure that, unless he has

consented to the Bill before Final Stage, he can proceed to give his consent to such provisions which are contained in the Bill at that point.

10. Under Section 14 (5) the Secretary of State will also want to ensure that the Bill is not incompatible with:

- any international obligations;
- the interests of defence or national security; or
- the protection of public safety or public order;

or would have an adverse effect on the operation of the single market in good and services within the UK. He will also wish to ensure that, unless he has consented to it so doing after Final Stage, the Bill does not deal with a reserved or excepted matter nor does any provision, ancillary to other provisions, deal with reserved or transferred matters.

11. While there is no formal requirement for the Assembly to await notification from the Attorney General before the Bill proceeds to Final Stage, it is anticipated that, in normal circumstances, the Attorney General will formally notify the Presiding Officer before the scheduled date for Final Stage. On those occasions where the Attorney General notifies the Presiding Officer that he intends referring the Bill to the Judicial Committee, such notification will only issue once the Final Stage has passed.

12. Advice to the Secretary of State that the Bill meets the requirements of Section 14 and, if it does not, what action requires to be taken, will be provided by DLD/HOLAB. On confirmation from DLD and HOLAB that the Section 14 requirements are met, the next stage is the preparation of Letters Patent.

Letters Patent

13. If the Secretary of State is satisfied that the Bill meets the requirements of Section 14 and, where appropriate, the provisions in Section 15 have been met, he will issue instructions to the Crown Office for Northern Ireland where Master Wilson acts as the Clerk of the Crown and has formal custody of the Great Seal of Northern Ireland. Since the technology no longer exists to make impressions of the Great Seal in Belfast, it is possible, under Section 49 of the Northern Ireland Act to affix a Wafer Great Seal to Letters Patent, provided the First Minister and Deputy First Minister agree to its use. It is anticipated that the First Minister and Deputy First Minister will issue a general direction to use the Wafer Great Seal to enable it to become the normal method for sealing Assembly Bills.

14. An alternative to this is for the Crown Office in the Lord Chancellor's Department in London to draw up Letters Patent. A formal approach, at Ministerial level, would need to be made to the Lord Chancellor's Department to arrange this where this method is required.

Once the input of the Crown Office has been agreed, it will be for DLD/HOLAB to ensure that the appropriate advice is placed before the Secretary of State to enable the Crown Office to prepare Letters Patent (either dealing with one or several Bills) and make arrangements to submit these to the Palace for signature.

15. For Royal Assent to be given, the Letters Patent must be signed and dated by Her Majesty. There is no requirement for members of the Privy Council to be in attendance.

The final stages

16. Two stages remain: once the actual signing of Letters Patent has occurred and the details are relayed to the Crown Office, the Clerk of the Crown Office will notify the Presiding Officer directly. This notification completes Royal Assent. The Crown Office should also notify the Secretary of State's office as soon as possible after the Presiding Officer has been given

Royal Assent details. The Letters Patent will be returned to the Crown Office and sealed by the affixing of a Wafer Great Seal as soon as practicable under the terms of the Letters Patent.

17. Following these procedures the Presiding Officer will signify to the Assembly that X Act has received Royal Assent. The Royal Assent to Bills Order provides for Letters Patent to be published in the Belfast Gazette. Arrangements for this will be a matter for the Crown Office

Other points

18. In cases where, following referral from the Presiding Officer, the Attorney General requires further advice on the legislative competence of any Bill, he shall obtain this from the Secretary of State. The preparation of advice to the Secretary of State shall be the responsibility of DLD/HOLAB.

Use of the Section 15 (3) procedure in urgent cases

19. It is anticipated that Assembly Bills containing "excepted" or "reserved" provisions are likely to be more frequent than those containing solely "transferred" provisions. Section 15 of the Northern Ireland Act provides that the Secretary of State must lay before Parliament those Bills to which he has consented, unless all the provisions dealing with excepted and reserved matters are ancillary to transferred matters, for a period of 20 sitting days before seeking Royal Assent. Unlike other legislation "Sitting Days" are defined in the 1998 Act as only those days on which Parliament is actually sitting. This means that Assembly Bills will have to be laid before Parliament for a minimum of 5 weeks before the Secretary of State can seek Royal Assent. It should also be noted that an Assembly Bill containing excepted or reserved provisions would, unless for reasons of urgency as set out below, be unable to gain Royal Assent until October if it were submitted to Westminster in late July.

20. Section 15 (3) provides that the Secretary of State can proceed to seek Royal Assent where he considers that he should do so for reasons of urgency. These are likely to include the need to retain parity throughout the rest of the UK, for example in social security or comply with the ECHR or a European Directive by a certain date. Where it appears that there is an urgency to have the Bill enacted by a certain date, the relevant Northern Ireland Departmental Minister will inform the Secretary of State of the reason for the urgency and request that he proceed to seek Royal Assent. DLD/HOLAB will provide advice to the Secretary of State to assist him in reaching a decision on whether he should immediately proceed to seek Royal Assent.

Illustrative timetable

21. An illustrative timetable, representing the best estimate as to the minimum period needed for obtaining Royal Assent for Assembly Bills not referred by the Attorney General, is attached at Annex C. This will be revised in the light of experience.

**Devolution and Legislation Division
Northern Ireland Office
Castle Buildings
31 January 1999**

Draft

Proposed wording for formal referral of Assembly Bills from Speaker
to Attorney General

"I am forwarding the [Short Title] Bill which is now subject only to its Final Stage in the Assembly where it can be approved or rejected but not amended. May I request your notification, in accordance with Section 11 (3) of the Northern Ireland Act 1998, that you do not intend to make reference to the Judicial Committee in relation to the Assembly's legislative competence in respect of this Bill?

I enclose, for information, a copy of the Explanatory Document and Financial Memorandum which accompanied the Bill on its introduction to the Assembly.

Outline Timetable for obtaining Royal Assent for Assembly Bills not referred by the Attorney General

Day 1 – Assembly Bill passes Consideration Stage

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Bill reprinted, if necessary, following amendments during stages

Presiding Officer writes to Attorney General

Proposed wording to be used by the Speaker when referring a Bill to the Secretary of State for submission for Royal Assent.

Day 8 – Assembly Bill passes Final Stage

Day 9/10 – OLW/OLAB prepare advice for Secretary of State

“I am forwarding the [Short Title] Bill which has now been passed by the Assembly. May I request your submission of the Bill for Royal Assent?”

Crown Office prepares documentation including Letters Patent

Day 12 – Letters Patent sent to Buckingham Palace for Her Majesty's signature

Day 13/14 Crown Office receives notification of date of signing of Letters Patent

Crown Office notifies Presiding Officer, Royal Assent complete

Day 14 – Bill reprinted as Act and date of Royal Assent entered on it by Presiding Officer. Presiding Officer announces to Assembly that X Act has received Royal Assent

Day 15+ – Crown Office receives Letters Patent and affixes Great Seal. Crown Office arranges for Letters Patent to be published in Belfast Gazette

Annex C

Outline Timetable for obtaining Royal Assent for Assembly Bills not referred by the Attorney General

- Day 1 Assembly Bill passes Consideration Stage
- Day 2 Bill reprinted, if necessary, following amendment during stages
 Presiding Officer writes to Attorney General
- Day 3-8 Attorney General notifies Presiding Officer of non
 referral/copies to Secretary of State
- Day 9 Assembly Bill passes Final Stage.
- Day 9/10 DLD/HOLAB prepare advice for Secretary of State.
- Day 10/11 Secretary of State issues instructions to Crown Office
 Northern Ireland.
- Crown Office prepares documentation including Letters Patent.
- Day 12 Letters Patent sent to Buckingham Palace for Her Majesty's
 signature.
- Day 13/14 Crown Office receives notification of date of signing of
 Letters Patent.
- Crown Office notifies Presiding Officer. Royal Assent
 complete.
- Day 14 Bill reprinted as Act and date of Royal Assent written on it by
 Presiding Officer. Presiding Officer announces to Assembly
 that X Act has received Royal Assent.
- Day 15+ Crown Office receives Letters Patent and affixes Wafer Great
 Seal. Crown Office arranges for Letters Patent to be published
 in Belfast Gazette.