These notes refer to the Northern Ireland (Miscellaneous Provisions) Bill as brought from the House of Commons on 19th November 2013 [HL Bill 58]

NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Northern Ireland (Miscellaneous Provisions) Bill. They have been prepared by the Northern Ireland Office in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes should be read in conjunction with the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. Where a clause does not seem to require any explanation or comment, none is given.

3. A draft of the Bill was published for public consultation on 11th February 2013 (Cm 8563).

SUMMARY

4. The Bill makes provision in relation to the following:

- donations and loans for political purposes in connection with Northern Ireland;
- ending the practice of Members of the Northern Ireland Assembly holding a dual mandate to sit concurrently as Members of the House of Commons, or as Teachta Dála in Dáil Éireann (members of the lower house of the Irish Parliament);
- determining the future size of the Northern Ireland Assembly;
- extending the length of future terms of the Northern Ireland Assembly to five year fixed terms;
- changes to the process of appointment and dismissal for the Northern Ireland Justice Minister;

- steps towards the devolution of functions in relation to the Northern Ireland Civil Service Commission, Northern Ireland Human Rights Commission, and matters relating to district electoral areas;

- registration of electors and electoral administration in Northern Ireland;

- amendments to certain order making powers and court rule making powers in respect of Northern Ireland; and,

- preventing Northern Ireland Civil Service Commissioners from sitting in the Northern Ireland Assembly.

COMMENTARY ON CLAUSES

CLAUSES 1 AND 2: DONATIONS AND LOANS ETC FOR POLITICAL PURPOSES

5. These clauses give effect to commitments made by the Government following a public consultation: 'Donations and Loans to Northern Ireland Political Parties – The Confidentiality Arrangements', published on 3rd August 2010.[1] The Government published its response to this consultation on 17th January 2011.

6. Northern Ireland political parties, like parties elsewhere in the UK, must report donations and loans above a certain threshold to the Electoral Commission. However, in contrast to Great Britain, the Electoral Commission is under a strict statutory obligation not to disclose any information that relates to these donations or loans, including donor identities. These arrangements, which were introduced to protect donors and lenders from intimidation, apply only during the 'prescribed period'. This period began on 1st November 2007 (prior to that the regulatory scheme had been disapplied in respect of Northern Ireland). The prescribed period has been extended on three occasions: on 1st August 2010, on 1st March 2011, and most recently by S.I. 2013/320, which extended the prescribed period until 30th September 2014.

7. In its January 2011 consultation response, the Government noted that, while a majority of responses were in favour of moving directly to the system used in Great Britain, there were a number of responses which expressed continued concern about the security implications of such a change. The provisions of this Bill implement the Government's commitment to modify the law gradually to make more information about donations and loans to political parties available to the public, without compromising the security of individuals or businesses, before a move to full transparency.

[1] http://www.nio.gov.uk/Public-Consultation/Article?id=314

8. The August 2010 consultation also sought views on the retrospective disclosure of donor information. At present, the details of donations and loans reported to the Electoral Commission during the prescribed period can be made public when that period ends. In response to the consultation, the majority of political parties, as well as the Electoral Commission, acknowledged the need to prevent retrospective disclosure of this information, arguing that those making donations from 1st November 2007 were doing so in the belief that these donations would not be released even when the confidentiality arrangements expired. In its response to the consultation, the Government committed to introducing primary legislation to ensure that the identities of those who made donations and loans during the prescribed period - including any extended periods - would not be released after the expiry of that period.

CLAUSE 1: DONATIONS

9. Clause 1 makes amendments to the Northern Ireland (Miscellaneous Provisions) Act 2006 ("NIMPA") and the Political Parties, Elections and Referendums Act 2000 ("PPERA").

10. Subsection (1) makes the temporary provisions inserted into PPERA by section 14 of and Schedule 1 to NIMPA permanent.

11. Subsection (2) inserts a new section 15A into NIMPA, giving the Secretary of State the power to amend or modify the current donations regime to increase (but not to reduce) transparency. It gives the Secretary of State the power to amend, repeal or modify any enactment connected with political donations, provided that the overall effect is to increase transparency. Any secondary legislation made under this power will be subject to the affirmative resolution procedure.

12. Subsection (2) also inserts a new section 15B into NIMPA. This restricts the power of the Secretary of State to increase transparency in relation to "protected information", which is information from which it is possible to identify a person who made a donation before 1 January 2014 (during the prescribed period). The Secretary of State cannot (a) permit or require the publication of protected information; (b) reduce the maximum penalty for an offence of disclosure of protected information; or (c) allow persons to access protected information in the Electoral Commission's register. Section 15B does not prevent the Secretary of State from permitting or requiring the publication of other information which would not reveal the identity of a person who made a donation before 1st January 2014. For example, the Secretary of State could require the publication of some information, such as the size of donations, the nationality of donors, or whether the donor was an individual or a corporation.

13. Subsection (3) creates an exception to the provisions preventing disclosure of information reported to the Electoral Commission. Any information contained in reports submitted to the Electoral Commission, including information that would reveal the identity

of a person who made a donation before 1st January 2014, can be published if the donor has consented to information being disclosed.

CLAUSE 2: LOANS

14. Clause 2 makes provision for loans, equivalent to that set out in section 1 for donations.

15. Subsection (1) makes the temporary provisions set out in Schedule 1 to the Electoral Administration Act 2006 (Regulation of Loans etc: Northern Ireland) Order 2008 (S.I. 2008/1319) permanent.

16. There is no express statement of the Secretary of State's power to increase transparency in respect of the loans regime. This is because, under section 63 of Electoral Administration Act 2006, the Secretary of State can make provision in respect of loans corresponding or similar to any provision relating to donations for political purposes which is made by or which may be made under NIMPA. Accordingly, once the new section 15A and 15B of NIMPA in clause 1(2) are in force in respect of donations, the Secretary of State will have the power to make corresponding or similar provision in respect of loans.

17. Subsection (2) creates an exception to the provisions preventing disclosure of information reported to the Electoral Commission. Any information contained in reports submitted to the Electoral Commission, including information that would reveal the identity of a person who made a loan before 1st January 2014, can be published if the Electoral Commission has reasonable grounds to believe that the parties to the transaction have consented to the information being disclosed.

CLAUSES 3, 4 AND 5: DUAL MANDATES

18. These clauses prevent a member of the Northern Ireland Assembly (a Member of the Legislative Assembly or "MLA") from holding office simultaneously as a MLA and a member of the House of Commons or the Dáil Éireann (the lower house of the Irish Parliament). Insofar as it relates to the Commons, this practice, commonly known as "double jobbing" has been the source of some criticism, particularly in the wake of the expenses scandal. In its 2009 report on 'MPs' Expenses and Allowances: Supporting Parliament, safeguarding the taxpayer', the Committee on Standards in Public Life examined the issue and came to the following conclusions:

> *12.18 The holding of multiple mandates, or 'double jobbing' as it is known in Northern Ireland, appears to be unusually ingrained in the political culture there because of:*

- *The legacy of 'the Troubles', which discouraged many individuals from getting involved in politics, leaving it to a small minority to participate.*

- *The recent history of political instability, which led the political parties to be fearful of giving up seats in Westminster in case the local devolution settlement collapsed, as it has more than once already.*

12.19 The Committee expressed the view in Chapter 11 of this report that MPs should not be prohibited from earning income from limited activity outside the House of Commons, provided that the activity does not interfere with the primary role as an MP, is completely transparent to electors and does not present a conflict of interest.

12.20 We do not think these conditions are met in the case of multiple mandates. There is transparency – the issue has been widely aired in the Northern Ireland media. But the Committee questions whether it is possible to sit in two national legislatures simultaneously and do justice to both roles, particularly if the MP concerned holds a ministerial position in one of them.

19. The Committee went on to recommend 'that the practice of holding dual mandates in both the House of Commons and the devolved legislatures should be brought to an end as soon as possible. Ideally that would happen by the time of the scheduled elections to the three devolved legislatures in May 2011, or failing that by 2015 at the very latest.' Former Secretary of State for Northern Ireland Owen Paterson pledged to bring an end to the procedure in 2011, and his commitment was reiterated by the current Secretary of State Theresa Villiers in 2012.

20. In examining this issue following the publication of a draft Bill for pre-legislative scrutiny in February 2013, the House of Commons' Northern Ireland Affairs Committee highlighted what they perceived as an anomaly between the treatment being proposed for MPs, and those who were members of other legislatures – saying that it would be "*"illogical, and potentially inflammatory, to establish a position whereby a member of the UK Parliament was excluded from being an MLA but a member of any other legislature was not"*. The Government believes that there are legitimate distinctions to be drawn between membership of the House of Commons and the other legislatures highlighted by the Committee, but accepts that it would be sensible to make provision to ensure that a dual mandate cannot be held which permits someone to sit concurrently in the Northern Ireland Assembly and Dáil Éireann, the lower House of the Irish Parliament.

CLAUSE 3: MPS TO BE DISQUALIFIED FOR MEMBERSHIP OF THE ASSEMBLY

21. Section 1 of the Northern Ireland Assembly Disqualification Act 1975 ("NIADA 1975") provides that a person is disqualified for membership of the Assembly who for the time being holds the offices, memberships and employments described in section 1(1). Clause

3(1) of the Bill inserts new section 1(1)(za) into NIADA 1975, adding membership of the House of Commons to the list. The effect is that MPs are disqualified for membership of the Assembly, subject to the exception created in clause 3(2).

22. It Clause 3(2) of the Bill provides limited exceptions to the disqualification of MPs for membership of the Assembly. It ensures that a person who is already an MP may stand for nomination to the Assembly, and may then choose which membership to pursue if subsequently returned to the Assembly. It equally ensures that a person may stand for election both to the Assembly and to the House of Commons, and then decide which membership to pursue if successfully returned to both.

23. Clause 3(2) of the Bill accordingly inserts into the NIADA 1975 a new section 1A. Subsection (1) of that new section provides that a member of the House of Commons is not disqualified for membership of the Assembly for a period of 8 days following his return to the Assembly. This short period of grace is given so that the MP, should he wish to do so, may divest himself of his seat in the Commons in order to pursue membership of the Assembly. Alternatively, the MP may use the grace period to resign his membership as an MLA. If he does nothing, the MP will automatically be disqualified for membership of the Assembly upon the expiry of the 8 day period.

24. Subsections (2) to (4) of new section 1A are aimed at a person who is elected both as an MP and an MLA following combined Westminster and Assembly elections. These subsections ensure that such a person has the benefit of the full 8 day period to decide which membership to pursue and to achieve any necessary resignation. In their absence, it would be possible for such a person to be returned as a MLA first, and as an MP sometime after, thus depriving him (in part or entirely) of the benefit of the period under subsection (1).

25. Note that the period of grace under subsections (2) to (4) is only given to a person who is a "candidate for election to the House of Commons" on being returned as a MLA. No period of grace is otherwise given to a person who is already an MLA who is then elected to the House of Commons. Such a person will, on successful return to Westminster, automatically be disqualified for membership of the Assembly under section 1(1)(za) of NIADA 1975.

26. It will be noted that the new section 1A(3) NIADA 1975 will only apply to a person who is returned as a member of the Assembly following an election. This means that a person who is returned to fill a vacancy in the Assembly's membership via methods prescribed by the Secretary of State under section 35 of the Northern Ireland Act 1998 ("the 1998 Act"), for example by substitution, cannot take the benefit of the 8 day period unless that vacancy was filled by the method of election. This is because such a person will have sufficient time under the amended provisions in Articles 6-6B of the Northern Ireland Assembly (Elections) Order 2001 (S.I. 2001/2599) to resign their seat in Westminster before returning a statement of readiness (see paragraphs 27-30 below).

27. Section 37 of the 1998 Act makes provision for the effects of disqualification for membership of the Assembly and gives the Assembly certain powers to provide for relief from disqualification. Clause 3(3) of the Bill makes an amendment to section 37(1) of the 1998 Act to make clearer that the provisions about the effects of disqualification and relief apply where a person has been disqualified under the NIADA 1975 under provision inserted into that Act after the 1998 Act was passed.

28. Clause 3(4) of the Bill makes an amendment to section 47(4) of the 1998 Act. Section 47(4) requires the Assembly to make provision in respect of salaries payable to Assembly members who are also members of the House of Commons. This provision is rendered unnecessary by clause 3 of the Bill, as Assembly members are now effectively disqualified from holding a dual mandate in the House of Commons.

CLAUSE 4: TDS TO BE DISQUALIFIED FOR MEMBERSHIP OF THE ASSEMBLY

29. Clause 4(1) of the Bill inserts new section 1(1)(db) into NIADA 1975, adding membership of the Dáil Éireann (the lower house of the Irish Parliament) to the list of offices, memberships and employments which disqualify a person for membership of the Assembly. The effect is that Teachtaí Dála (TDs, members of the lower house of the Irish Parliament) are disqualified for membership of the Assembly, subject to the exception created in clause 4(2).

30. Clause 4(2) provides a similar 8 day grace period following a person's election to the Assembly for TDs as clause 3(2) does for MPs. As the chances of an Assembly election and a Dáil election being held on the same day are very remote, and given that the elections would not in any event be held as a combined election, no provision is included which would address the coincidence of an Assembly and Dáil election taking place concurrently.

CLAUSE 5: STATEMENTS MADE BY PROSPECTIVE MEMBERS OF THE ASSEMBLY

31. Clause 5 of the Bill amends the Northern Ireland Assembly (Elections) Order 2001 (S.I. 2001/2599) ("the 2001 Order"). The 2001 Order (as amended by the Northern Ireland Assembly (Elections) (Amendment) Order 2009 (S.I. 2009/256)) provides for a system of substitutes and nominees to avoid the need for a by-election where the seat of a member of the Assembly falls vacant.

32. By Articles 6 and 6A of the 2001 Order, the Chief Electoral Officer will contact substitutes to fill the vacancies of independent candidates who gave such a list. Clause 5(2) of the Bill will require a person who wishes to be returned under the Article 6 procedure to make a written "statement of readiness". The person will be required to indicate (as he was previously) that he is willing and able to be returned to the Assembly, but will now in addition be required to state both that he is aware of the provisions of the NIADA 1975 and section 36

of the 1998 Act, and that he is to the best of his knowledge and belief not disqualified for membership of the Assembly. This will ensure that a person may only consent to be returned to the Assembly under the Article 6 procedure when he has divested himself of any disqualifying office, including that of MP or TD. Through the inclusion of a statement regarding disqualification, the statement of readiness now more closely reflects the statement that is given by a candidate when he consents to nomination for election to the Assembly under Rule 8 of the Parliamentary Election Rules (themselves contained in Schedule 1 to the Representation of the People Act 1983 (the "RPA 1983")) as modified by Schedule 1 to the 2001 Order.

33. Clause 5(3)(a) of the Bill similarly amends article 6B of the 2001 Order (vacancies arising during an Assembly term: members of registered parties) to provide that a member of a registered party who is nominated to fill a vacancy under the procedure in Article 6B of the 2001 Order will be required to make an equivalent "statement of readiness". Again, this will ensure that a person may only consent to be returned to the Assembly under the Article 6B procedure when he has divested himself of any disqualifying office, including that of MP or TD.

34. Article 6B of the 2001 Order required the nominated person to respond within 7 days to the Chief Electoral Officer's request that he was willing and able to be returned as a member of the Assembly. Clause 5(3)(b) of the Bill substitutes the 7 day rule with a more flexible period: the person is required to respond within "such period as the Officer considers reasonable". This amendment is made so that a person nominated under Article 6B may have sufficient time to divest himself of any disqualifying office (including that of MP or TD) before he is required to make the statement of readiness. In so doing, it brings the period for response to the Chief Electoral Officer's request into line with the period set for responses from substitutes under Article 6 of the 2001 Order.

35. Clause 5(4) of the Bill modifies the statement required from those seeking election to the Assembly, which is governed by Rule 8(3) of the Parliamentary Election Rules as modified by Schedule 1 to the 2001 Order. Previously, a person was required to state that he was not disqualified from membership of the Assembly. The statement is now modified to enable a person to indicate either that he is not disqualified, or instead that he is disqualified, but only by virtue of being an MP or TD. This amendment is necessary to allow an MP to consent to nomination for the Assembly notwithstanding new section 1(1)(za) or (db) of the NIADA 1975 introduced by clause 3(1) and 4(1) of the Bill. Clause 5(4) of the Bill also amends the statement to acknowledge the fact that a person may be disqualified under section 36 of the 1998 Act as well as under NIADA 1975.

CLAUSE 6: REDUCTION IN SIZE OF THE ASSEMBLY

36. The Belfast (Good Friday) Agreement 1998 (the "1998 Agreement") provided for a democratically elected Assembly in Northern Ireland which would be inclusive in its

membership, capable of exercising executive and legislative authority, and subject to safeguards to protect the rights and interests of all sides of the community.

37. The Assembly was to be made up of 108 members elected by PR (STV) from existing Westminster constituencies. Section 33(1) of the 1998 Act provided that members of the Assembly would be returned for the parliamentary constituencies in Northern Ireland, while section 33(2) provided that each constituency would return six members.

38. The Government consulted on the size of the Assembly in August 2012, noting that in serving a population of around 1.8 million people, there appeared to be a reasonable case for a reduction in the numbers of MLAs. However, as the size of the Assembly flowed from the 1998 Agreement, the Government has been clear that any changes would require sufficient agreement amongst the Northern Ireland parties. While there seem to be reasonable prospects for such agreement at some point in the future, at this stage the parties have not signalled that they have agreed on a reduction in the size of the Assembly.

39. The provisions in Clause 6 make the reduction in size of the assembly a reserved matter, meaning that the Assembly could legislate to reduce the number of members returned to it for each Westminster constituency. Clause 6 also ensures that any Assembly legislation that reduced the size of the Assembly could not make provision for different numbers of members to be returned for different constituencies. As a reserved matter, any legislative provision put forward by the Assembly in this regard would require the consent of the Secretary of State. Should that consent be given, the Government would need to put an Order in Council before Parliament amending section 33(2) to give effect to the Assembly's decision.

CLAUSE 7: EXTENSION OF ASSEMBLY TERM

40. The Fixed Term Parliaments Act 2011 introduced fixed-term elections to the Westminster parliament. As a result, the next Westminster election will be in May 2015, then every five years thereafter.

41. The Scottish Parliament and National Assembly for Wales raised concerns that the May 2015 date clashed with elections to their respective institutions. During Second Reading in the House of Lords on 29th March 2011, Lord Wallace of Tankerness commented on the position of the devolved legislatures: 'Northern Ireland Office Ministers are conducting separate discussions with the parties in Northern Ireland on this issue and have concluded that it would be better to await the outcome of the combined polls scheduled for May this year before deciding whether special provision would be needed for Northern Ireland.' *HL Deb 1st March 2011 col 934.*

42. The Scottish Parliament and National Assembly for Wales subsequently passed resolutions (on 3rd March 2011 and 16th March 2011, respectively) calling for the

rescheduling of the elections to 5th May 2016. The Government introduced provision in the Fixed Term Parliament Act to lengthen the term of the Scottish Parliament and Welsh Assembly elected in 2011 until 2016. No legislative provision was made at that time in relation to the Northern Ireland Assembly.

43. On 12th June 2012 Northern Ireland's First Minister Peter Robinson, deputy First Minister Martin McGuinness and Justice Minister David Ford wrote to then-Secretary of State Owen Paterson making clear their view that they wished to see the current term of the Northern Ireland Assembly extended until May 2016, in common with the Scottish Parliament and Welsh Assembly elections.

44. The Bill further proposes that the Assembly moves to five-year fixed terms, in common with the changes made to the cycle for Westminster elections through the Fixed-Term Parliaments Act. This will also reduce the potential for clashes between scheduled Westminster and Assembly elections in the future. The move to five year fixed terms would also take effect on the next Assembly elections in 2016. This would schedule the subsequent Assembly election for 2021 and so avoid a clash with the 2020 Westminster poll.

45. Clause 7(1) therefore amends section 31 of the Northern Ireland Act, such that elections will be held on the first Thursday in May on the fifth calendar year following that in which its predecessor was elected, rather than the fourth. Subsection (2) means that this amendment will take effect for the current Assembly term as well as future terms, with the effect that the current term will be extended by one year.

CLAUSES 8 AND 9: JUSTICE MINISTER

46. These clauses give effect to an agreement between the Northern Ireland political parties to amend the 1998 Act to change the means by which the Minister of Justice for Northern Ireland (the "Justice Minister") is appointed, and to remove the anomaly whereby the party of which the Justice Minister is a member has one extra Ministerial post in the Northern Ireland Assembly (the "Assembly") than that which it would have pursuant to the d'Hondt formula.

47. The 1998 Act sets out the majority of the devolution settlement with Northern Ireland. Whilst certain matters were transferred to the competence of the Assembly in 1998, other matters were transferred later. Of particular note, was the transfer of policing and justice to the Assembly in 2010. This transfer is not straightforward, with related national security matters continuing to be excepted and therefore largely outside the competence of the Assembly. Given this complexity, and the fact that policing and justice remains a politically sensitive issue, the provisions in the 1998 Act for the appointment of the Justice Minister are complex and the Justice Minister is not dealt with in the same way as the other Northern Ireland Ministers.

Existing law

48. Section 21A of the 1998 Act sets out a number of possible appointment mechanisms for the Justice Minister, one of which may be selected and provided for by an Act of the Assembly. The Assembly enacted legislation in 2010 (the Department of Justice Act (Northern Ireland) 2010) which opted for the mechanism set out in section 21A(3A) of the 1998 Act. The Justice Minister is appointed by virtue of a nomination made by one or more members of the Assembly, and approved by a cross-community vote. Part 1A of Schedule 4A to the 1998 Act applies to this appointment, creating certain differences between this appointment and the appointment of other Northern Ireland Ministers.

49. First, the Justice Minister is appointed after the other Northern Ireland Ministers. The d'Hondt procedure, which ensures that each party is responsible for appointing a number of Ministers in proportion to the number of seats they hold in the Assembly, governs all Ministerial appointments, save for that of the Justice Minister. The Justice Minister's appointment is made outside the parameters of the d'Hondt procedure, which means that the party from which the Justice Minister is appointed will have an 'extra' Ministerial post.

50. Second, the incumbent Justice Minister can be removed if a motion is raised to that effect by either the FM/dFM acting together, or 30 or more Assembly members, followed by a majority cross-community vote. This is in contrast to other Ministers, who are appointed by their party's Nominating Officer, who has the power to dismiss the incumbent and refill the Ministerial position. The effect of the current provisions is that the position of the Justice Minister is less secure than that of the other Ministers in the Assembly.

51. The Bill amends the appointment procedure to give the Justice Minister the same security of tenure as that of the other Ministerial posts, and to rectify the anomaly in respect of the relationship between the representation of parties in the Assembly and appointment to Ministerial office.

CLAUSE 8: APPOINTMENT OF JUSTICE MINISTER

52. This clause makes changes to Schedule 4A to the 1998 Act.

53. Subsection (2) sets out the appointment procedure for the Justice Minister post following an Assembly election. Those provisions also apply to the appointment of the Justice Minister in other circumstances (set out in paragraph 3D(2) of that Schedule.

54. The appointment regime in paragraph 3D(4) to (8) provides that the Justice Minister is to be nominated by one or more members of the Assembly and is to be approved by a resolution of the Assembly passed by a cross-community vote (paragraph 3D(4) and (5)). A further nomination can only be made if the initial nomination does not take effect or the nominated person does not take up office within a period specified in standing orders

(paragraph 3D(6) and (7) of Schedule 4A). This procedure shall be applied as many times as necessary to secure the office of Justice Minister is filled (paragraph 3D(8)).

55. Subsections (2) and (5) provide for the order in which Ministerial positions are filled. The Justice Minister will now be appointed immediately after the First Minister and deputy First Minister posts are decided upon. This means that the formula for working out the number of Ministerial offices to which each party is entitled can be amended (subsection (3)) to take into account the position of Justice Minister. The effect of this amendment is that the party of which the Justice Minister is a member will no longer have an 'extra' Ministerial position: the Justice Minister post will now be factored into the d'Hondt allocation.

56. Subsection (6) gives a power of veto to the Nominating Officer for the party of which a nominated candidate for the position is a member, by providing that the Nominating Officer must consent to the nomination.

57. Subsection (7) provides for security of tenure. Where the appointed Justice Minister is a member of a political party who was nominated with the consent of a Nominating Officer, that official can now remove the Justice Minister. However, where the Justice Minister is not be a member of a political party, the incumbent can be removed if a motion is raised to that effect by either the FM/dFM acting together, or 30 or more Assembly members, followed by a majority cross-community vote.

CLAUSE 9: REAPPOINTMENT OF OTHER NORTHERN IRELAND MINISTERS IN CERTAIN CASES

58. This clause deals with the procedures to be followed in the event that the Justice Minister position becomes vacant. The new paragraph 3E means that if a new Justice Minister is appointed and the effect is to create a change in the total number of Ministerial offices held by members of a political party, then all Ministers will cease to hold office, and the d'Hondt procedure will be re-run again after a new Justice Minister has been appointed. This is to ensure that any potential anomaly in the number of Ministerial offices held by a political party is avoided.

59. The effect of new paragraph 3E(4) is that if the Justice Minister is dismissed by the Nominating Officer of his party, and there is an eligible member of that party who could fill the position but does not do so, either because the Nominating Officer does not consent to the nomination, or the potential replacement fails to take up the position, then all the other Ministers will remain in office and d'Hondt will not be re-run. Should the party fail to replace a dismissed Justice Minister with an eligible member from their ranks, then no steps will be taken to redress any imbalance in Ministerial seats which may result.

CLAUSES 10-12 – EXCEPTED AND RESERVED MATTERS: ARMS-LENGTH BODIES

60. These clauses make provision amending Schedules 2 (excepted matters) and 3 (reserved matters) to the 1998 Act.

61. The amendments made by these clauses have the effect of converting the functions relating to certain arms-length bodies from excepted matters into reserved matters. This change enables the Assembly to legislate on those matters, but only with the consent of the Secretary of State. This change also enables the Secretary of State to devolve these matters by making an Order in Council under section 4 of the 1998 Act, following a resolution of the Northern Ireland Assembly with cross-community support.

62. Currently, the appointment of the Civil Service Commissioners for Northern Ireland is an excepted matter and this function is exercised by the Secretary of State on behalf of Her Majesty. Similarly, the provisions in Part VII of the 1998 Act relating to the Northern Ireland Human Rights Commission are excepted matters and functions under those provisions are exercised by the Secretary of State.

63. Clauses 10 and 11 move the appointment of the Civil Service Commissioners for Northern Ireland and certain provisions relating to the Northern Ireland Human Rights Commission from the 'excepted' category in Schedule 2 to the 'reserved' category in Schedule 3 of the 1998 Act. These changes put those bodies in the same category as the Equality Commission for Northern Ireland, which is already a reserved matter.

64. Local government boundaries in Northern Ireland are a transferred matter. However, local government elections in Northern Ireland are an excepted matter under paragraph 12 of Schedule 2 to the 1998 Act, and "elections" in this context is taken to include the determination of electoral boundaries. Accordingly, while the boundaries of the district within which each council operates are set by the Assembly following recommendations by the Local Government Boundaries Commissioner, the electoral areas for each of those districts are set by order of the Secretary of State acting under section 84 of the 1998 Act, following recommendations by the District Electoral Areas Commissioner. In recent practice, the Secretary of State has appointed the former Local Government Boundaries Commissioner to be the District Electoral Areas Commissioner (this was the case in 1984, 1992, 2009 and 2014).

65. Clause 12 moves the division of local government areas into electoral areas, the determination of names of district electoral areas and the determination of the number of councillors to be elected in each district, from the excepted to the reserved category. This change enables the Assembly to legislate on them, but only with the consent of the Secretary of State. This change also enables the Secretary of State to devolve these matters by making an Order in Council under section 4 of the 1998 Act, following a resolution of the Northern Ireland Assembly with cross-community support. For example, such an order could permit the

Northern Ireland Executive to create a local government boundaries commission responsible for both local government and electoral area boundaries, as exists in Scotland, Wales and England. Any such order would ensure that the Secretary of State would retain the power to set electoral areas in the event that the Assembly did not reach agreement on a suitable model.

CLAUSES 13-20: ELECTORAL REGISTRATION AND ADMINISTRATION

66. These clauses give effect to commitments made by the Government following its 20th July 2009 public consultation: 'Improving Electoral Registration Procedures in Northern Ireland'. The Government published its response to this consultation on 24th November 2009. These clauses also give effect to recommendations made by the Electoral Commission in its October 2011 report on elections in Northern Ireland and its November 2012 report on the electoral register in Northern Ireland.

67. A number of measures simplify registration and voting procedures, bringing Northern Ireland closer to the system used in Great Britain. In view of reduced concern about electoral fraud in Northern Ireland, the requirement for electors to have been resident for at least three months is abolished. The prohibition on application for an absent vote during the late registration period is also removed. The duty on the registration officer to take certain steps to maintain the register and certain data-sharing powers are extended to Northern Ireland. Provision is made to bring arrangements for setting the canvass form in Northern Ireland closer to new arrangements established for Great Britain, including by making it possible to give the Electoral Commission a role in setting the canvass form. The Secretary of State is given the power to extend to Northern Ireland the performance standards for registration and returning officers used in Great Britain.

68. The Bill also includes provision for a number of matters specific to electoral law in Northern Ireland. Changes are made to the nationality declaration for overseas electors in order to adequately reflect the provisions of the Belfast Agreement. There is also provision to close a loophole in the law on electoral identity cards.

CLAUSE 13: CANVASS FORM

69. The process for carrying out a canvass in Northern Ireland is set out in sections 10 and 10(1A) of the RPA 1983. Section 10(4) provides that the form used for the purposes of the canvass in Northern Ireland shall be a form prescribed for those purposes. In Great Britain, section 9D of the RPA 1983 (inserted by the Electoral Registration and Administration Act 2013) provides greater flexibility in relation to the form used for the annual canvass. Section 9D also envisages that the Electoral Commission might be required to design a canvass form.

70. Subsection (1) of this Clause amends section 10 of the RPA 1983 to remove the requirement to prescribe a canvass form, and replaces it with a duty to prescribe requirements

as to the form or content of a canvass form. Subsection 1(c) makes amendments to allow the Secretary of State to require the Electoral Commission to design a canvass form. There already exists a power to make similar provision in relation to Great Britain in section 9D(4) of the RPA 1983, although that power is not restricted to the conferral of functions in relation to a canvass form.

71. Subsection (3) is a transitional provision to cater for the possibility that the amendments made by the Electoral Registration and Administration Act 2013 have not yet come into force when this clause comes into force (which will be 2 months after Royal Assent – see clause 28(3)).

CLAUSE 14: ABOLITION OF THE 3-MONTH RESIDENCE REQUIREMENT

72. The requirement that persons registering as electors in Northern Ireland must have been resident in Northern Ireland for at least three months has been in force in one form or other since 1949. However, it has the effect of disenfranchising a small number of individuals. The requirement to provide evidence of residence also places an additional burden on those wishing to register to vote. The residence requirement is no longer needed to prevent fraud, following the introduction of a system of individual registration in 2002. No objections were made to the proposal to remove it during a public consultation in 2009.

73. Subsection (1) removes the 3-month residency requirement for registration in respect of all elections held in Northern Ireland, including elections to Parliament, the European Parliament, the Northern Ireland Assembly and local government.

74. Subsection (2) makes relevant consequential amendments.

CLAUSE 15: REGISTRATION AS AN OVERSEAS ELECTOR: DECLARATION OF NATIONALITY

75. Section 1 of the Representation of the People Act 1985 (the "1985 Act") makes provision for the eligibility of persons resident outside the UK to vote at parliamentary elections in the UK (including in Northern Ireland). A person qualifies as an "overseas elector" if certain conditions are met. One of those conditions is that the person is a British citizen (section 1(1)(b)(ii)). Section 2 of the 1985 Act provides for the registration of overseas electors. As part of the registration process, section 2(3)(b) requires an overseas elector to make a declaration that he is a British citizen.

76. The 1998 Agreement recognises "the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose". To ensure consistency with the terms of the 1998 Agreement, this clause allows persons born in Northern Ireland to identify themselves as British citizens or Irish citizens or both when

making a declaration under section 2 of the 1985 Act. Clause 8 does not remove the requirement in section 1 of the 1985 Act that persons born in Northern Ireland must be British citizens in order to register as overseas electors.

77. Subsection (1) inserts subsections (3A), (9) and (10) into section 2 of the 1985 Act to provide for a possible alternative declaration for persons who are on the electoral register in Northern Ireland. Instead of declaring that they are British citizens, such persons can declare that they are "eligible Irish citizens".

78. The definition of "eligible Irish citizen" does not encompass all Irish citizens. Instead, "eligible Irish citizen" denotes a person who is an Irish citizen under Irish law, who was born in Northern Ireland and who also qualifies as a British citizen under UK law. In general, under British nationality law, persons born in Northern Ireland before 31st December 1982 will qualify as British citizens, regardless of their parentage; persons born after that date will qualify as British citizens if they have at least one parent who was a British citizen or who was otherwise settled in the United Kingdom at the time of their birth. This results in a slightly broader range of persons being entitled to make a declaration than are covered by the 1998 Agreement.

79. Subsection (2) makes amendments to regulation 20 of the Representation of the People (Northern Ireland) Regulations 2008 (the "2008 Regulations"), which reflect the contents of the new alternative declaration available to persons born in Northern Ireland who are on the Northern Ireland electoral register. Eligible Irish citizens are required to provide equivalent evidence and information to that required of British citizens. There is no additional burden on those who declare themselves to be both British and Irish; such persons can make a choice about which information that they provide.

80. Subsection (3) makes similar amendments to the 2008 Regulations in respect of those who are required to attest overseas electors' declarations. Such persons can also identify themselves as eligible Irish citizens (as defined in the amendment made by subsection (1)(b)) for the purpose of attesting an overseas declaration made by another individual, whether that individual declares himself to be British or Irish.

CLAUSE 16: ABSENT VOTING

81. Section 13A of the RPA 1983 provides for the procedure to be followed for the alteration of an electoral register (for example, for a change of address or addition to the register). Having received an application for registration, the registration officer must determine whether to allow the application, taking into account any objections. The process of determining each application for registration can take some time. If the registration officer allows an application, he shall issue a notice specifying the appropriate alteration in the register. The alteration will take effect in the register between 2 weeks and 6 ½ weeks after the application has been allowed.

82. Section 13BA of the RPA 1983 provides for alterations to be made where an election is pending. In normal circumstances, alterations which would take effect after the 'final nomination day' (the 11th working day before the poll) will have no effect for the purpose of that election unless the alterations are due to an appeal or a clerical error. However, there is a "late registration period" between the final nomination day and the 11th calendar day before the poll. Persons who want their details to be altered in the register in time for the election must submit additional evidence to the registration officer before the end of the "late registration period". The alteration (if approved) will take effect on the 5th or 6th calendar day before the poll, which gives the registration officer time to consider the application and additional evidence before publishing the alteration.

83. There is an additional limitation in Northern Ireland. A person whose registration took place as a result of an alteration made during the 'late registration' period is not entitled as an elector to an absent vote at that election and must not be shown in the absent voters list for that election. This restriction has the effect of disenfranchising a small number of people who register or change their details on the register during the late registration period, but are unable to attend a polling station in person.

84. Subsection (1) removes the current bar on those who register during the late registration period from applying for an absent vote. Persons who register during the late registration period will be able to apply for an absent vote on the same basis as persons who were already on the electoral register and made no alteration during the late registration period. Subsection (2) makes consequential amendments.

85. This clause does not amend the more general closing dates for applications for an absent vote, which are set out in regulation 61 of the 2008 Regulations, paragraph 11 of Schedule 2 to the Local Elections (Northern Ireland) Order 1985 and paragraph 8 of the European Parliamentary Elections (Northern Ireland) Regulations 2004.

CLAUSE 17: ELECTORAL IDENTITY CARDS

86. In order to exercise the right to vote in any election in Northern Ireland, registered persons must provide a prescribed form of identification to the presiding officer or clerk at the polling station before being provided with a ballot paper. One of the acceptable documents that can be produced is an 'electoral identity card', which is issued by the Chief Electoral Officer for Northern Ireland under section 13C of the RPA 1983. To obtain an electoral identity card, persons registered (or who are applying to be registered) on the register of parliamentary or local electors in Northern Ireland can submit an application to the Chief Electoral Officer in accordance with the requirements set out in regulation 13 of the 2008 Regulations.

87. Section 13D of the RPA 1983 provides that a person who for any purpose connected with the registration of electors provides to a registration officer any false information is

guilty of an offence. However, there is a lack of clarity as to whether this provision would cover the provision of false information in an application for an electoral identity card. This is because an application for an electoral identity card might be made when a person is already registered to vote. In addition, an application for an electoral identity card must contain some information that is not required for registration purposes, such as a photograph certified as being a true likeness. Clause 17 closes this potential loophole in the law.

88. Clause 17 inserts section 13CZA into the RPA 1983, which provides that it is an offence to provide false information in connection with an application for an electoral identity card. The offence is similar to the existing offence under section 13D of the RPA 1983, with the same defence open to a defendant, the same evidential burden on the defendant and the same maximum penalty. A person who signed with a signature which was different to one they had used in the past due to illness would not fall within the offence in new section 13CZA (or the existing offence in section 13D) simply because their signature had changed.

CLAUSE 18: CHIEF ELECTORAL OFFICER: DUTY TO TAKE NECESSARY STEPS

89. In Great Britain, registration officers are subject to the duties in section 9A, RPA 1983, which provides that each registration officer must "take all steps that are necessary for the purpose of complying with his duty to maintain the registers". Section 9A does not currently apply to Northern Ireland. Instead, the Chief Electoral Officer for Northern Ireland is subject to the "relevant registration objectives" which are set out in section 10ZB of the RPA 1983. These are "to secure, so far as reasonably practicable –

a) that every person who is entitled to be registered in a register is registered in it,
b) that no person who is not entitled to be registered in a register is registered in it, and
c) that none of the required information (name, address, date of birth, signature, national insurance number) relating to any person registered in a register is false."

90. In its 2012 report, the Electoral Commission recommended that section 9A be extended to Northern Ireland. Subsection (1) extends the duty to take necessary steps to Northern Ireland and subsection (2) makes consequential amendments.

91. Subsection (3) makes amendments to section 9A which are required once amendments to that section are made by the Electoral Registration and Administration Act 2013 come into force. It makes clear that the duty to take steps applies in Northern Ireland in relation to all three registration objectives, rather than the two requirements which apply in Great Britain; the Chief Electoral Officer has a duty to take necessary steps to ensure that none of the required information relating to any person registered is false, as well as that all those entitled

to be registered (and no others) are registered. Subsection (4) makes consequential amendments.

CLAUSE 19: CHIEF ELECTORAL OFFICER: PERFORMANCE STANDARDS

92. In Northern Ireland, the Chief Electoral Officer is appointed by the Secretary of State and must prepare a report each year for the Secretary of State on how he has discharged his functions. The Secretary of State then lays a copy of the report before each House of Parliament.

93. In Great Britain, local authorities are responsible for the appointment of registration officers. The standards of performance of registration officers in Great Britain are set by the Electoral Commission. Sections 9A-9C of the Political Parties, Elections and Referendums Act 2000 give the Electoral Commission the power to publish standards of performance for registration officers, returning officers and counting officers and to publish assessments of relevant officers against the standards.

94. In its 2011 report, the Electoral Commission recommended that the performance standards framework be extended to Northern Ireland. Following that report, the Chief Electoral Officer has worked with the Electoral Commission to pilot a set of registration performance standards in Northern Ireland. The initial pilot concluded at the end of March 2013.

95. Subsection (1) gives the Secretary of State the power to make provision about performance standards, including the setting of performance standards and reporting and assessment against those standards.

96. Subsection (2) clarifies that the Order may modify or remove a function of the Secretary of State, the Chief Electoral Officer or the Electoral Commission. This allows the Secretary of State to amend the current reporting framework in parallel with introducing a new assessment framework being introduced, so avoiding two overlapping performance management frameworks.

97. Subsection (6) makes any amendment to make provision on performance standards subject to the affirmative resolution procedure.

CLAUSE 20: DATA SHARING

98. Schedule 2 of the Electoral Registration and Administration Act 2013 inserts a number of regulation-making powers into section 53 of and Schedule 2 to the RPA 1983. These provisions relate to the implementation of individual electoral registration in Great Britain. They give the Secretary of State power to make regulations about the sharing of data obtained

from individuals or other public authorities for the purpose of electoral registration. Before any information can be shared under those provisions, the Secretary of State must consult the Electoral Commission, the Information Commissioner and any other person the Secretary of State thinks appropriate. These provisions currently apply in Great Britain, but not in Northern Ireland. Subsections (1) and (2) of clause 20 make amendments to apply those provisions to Northern Ireland.

99. In relation to Northern Ireland, there are existing powers in paragraphs 1(4A)-(4B), 1(6)-(8), 11A(1A) and 13(1ZA) of Schedule 2 to the RPA 1983 to permit the Chief Electoral Officer to require information from public authorities. Provision made under those powers is required to include a restriction on the onward disclosure to third parties of the information received by the Chief Electoral Officer from public authorities, save for the purpose of assisting the registration officer to meet the registration objectives or for the purpose of criminal or civil proceedings. Subsection (2) of clause 20 repeals those existing powers, and the linked requirement for a restriction on onward disclosure of information. Those powers are no longer necessary because regulations instead can be made using the power in the new paragraph 1A(1) to allow the Chief Electoral Officer to require information from public authorities. Subsections (3)-(7) make consequential amendments.

100. Read together with paragraph 11A of Schedule 2 to the RPA, the power to require information from public authorities under paragraph 1A of Schedule 2 includes a power to supply such data to third parties. Provision made under that power is not required to include a restriction on the passing of information to third parties. Accordingly, regulations might allow the Chief Electoral Officer to pass information obtained from public authorities to a body, such as the Northern Ireland Statistics and Research Agency, for purposes other than assisting the Chief Electoral Officer to meet the relevant registration objectives (for example, for statistical or research purposes).

CLAUSES 21-25: MISCELLANEOUS

101. Clauses 21 to 24 amend various order making powers and court rule making powers in relation to Northern Ireland. Clause 25 adds the Civil Service Commissioner for Northern Ireland to the list of disqualifying offices in the Northern Ireland Assembly Disqualification Act 1975.

CLAUSE 21 AND THE SCHEDULE: RULES OF COURT

102. Clause 21 introduces the Schedule. Paragraph 1 of the Schedule amends the Judicature (Northern Ireland) Act 1978 to make provision regarding the parliamentary procedure to be followed for rules of court (in the Court of Appeal and the High Court) relating to excepted matters. Currently such rules are subject to negative resolution in the Northern Ireland Assembly. The amendment makes them subject to negative resolution of either House of

Parliament. The same change is made to the Crown Court Rules by paragraph 2 of the Schedule. These changes remedy an oversight in the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (the "2010 Order").

103. The 1998 Act sets out the majority of the devolution settlement with Northern Ireland. Substantive issues are either excepted (Schedule 2), reserved (Schedule 3) or transferred (everything else). The legislative competence of the Assembly in relation to primary legislation is set out in sections 5-8, providing that the Assembly may legislate on reserved matters, and on excepted matters to the extent that they are ancillary to other provisions dealing with reserved or transferred matters, in both cases with the consent of the Secretary of State.

104. Although many aspects of policing and justice were transferred to the devolved administration in 2010, certain issues were not, and in particular national security and counter-terrorism continue to be excepted. This has resulted in split order-making or rule-making powers in a number of areas, with the Secretary of State (or the Lord Chancellor) retaining the power when it relates to an excepted matter, (and in some instances but not always, when it relates to a reserved matter too), but otherwise the power has passed to a devolved Minister or department, usually the Northern Ireland Department of Justice.

105. One of the rule-making powers devolved under the 2010 Order was the power to approve certain court rules. The Department of Justice, rather than the Lord Chancellor, shall approve court rules, save where those rules relate to excepted matters. The amendments to the 2010 Order provided that the parliamentary procedure to be followed for all court rules is the negative resolution procedure in the Northern Ireland Assembly. This was an oversight, as it should have provided that rules dealing with an excepted matter are subject to the negative resolution procedure in the Westminster Parliament. Paragraphs 1 and 2 of the Schedule rectify that error, by providing that rules dealing with an excepted matter are subject to the negative resolution procedure in the Westminster Parliament.

106. The Schedule also makes changes to the rule-making procedures for other courts (county courts, magistrates' courts and inquests). These changes seek to harmonise court rule-making procedures, so that in each case there is a relevant authority which must allow or disallow the rules (the Lord Chancellor in the case of rules dealing with excepted matters, the Department of Justice in all other cases). A parliamentary procedure is also provided for each of these rules, being negative resolution in Parliament in the case of rules dealing with excepted matters, and negative resolution in the Northern Ireland Assembly in the case of all other rules.

CLAUSE 22: EQUALITY DUTIES

107. Section 75 of the 1998 Act imposes a statutory duty to promote equality of opportunity on public authorities. Section 75(3) lists a number of public authorities to whom

the statutory duty applies and contains powers (but not any obligation) for the Secretary of State to designate by order other persons or bodies as public authorities for that purpose. Currently, the power under section 75 only allows the Secretary of State to make a 'full' designation – that is, for all of a person's functions and without exceptions. The effect of the current law is that even where it might be sensible to designate a person for certain functions only, that option is not available.

108. Clause 22 amends the power of the Secretary of State under section 75 to enable persons to be designated in respect of certain of their functions only or to apply to certain elements of the equality duty only. This means that persons or bodies who it is currently considered cannot be designated in their entirety (because, for example, certain of their functions must be excepted from the duty) can be considered for designation in the future. This clause facilitates designation in a manner similar to that permitted by the Equality Act 2010 in England and Wales.

109. Clause 22 does not alter the position of any persons who have already been designated for the purpose of section 75. It does not identify the persons who might be designated by the Secretary of State in future for certain of their functions only. There is no intention to partially designate any public authorities which are already subject to full designation in Northern Ireland.

CLAUSE 23: EXTENSION OF POWERS TO MAKE SUBORDINATE LEGISLATION

110. This clause makes changes to the powers conferred by sections 34(4) and 84(1) of the 1998 Act. Section 34(4) of the 1998 Act confers power to make provision for Assembly elections, and section 84(1) for local elections (which are district council elections). Clause 23 amends these powers so that different provision may be made for different areas about the conduct of elections, including different provisions about the registration of persons entitled to vote at an election. These changes are being made so that, for example, a pilot scheme for electronic registration of electors or electronic counting of votes could be set up in specific areas only.

CLAUSE 24: REGULATION OF BIOMETRIC DATA

111. Clause 24 makes a minor and technical amendment to paragraph 8 of Schedule 1 to the Protection of Freedoms Act 2012 (the "2012 Act"**).** Paragraph 8 of Schedule 1 contains two order making powers that enable the Secretary of State to make an order regarding the retention, use and destruction of DNA samples and profiles, fingerprints and footwear impressions (biometric data) in Northern Ireland for excepted or reserved purposes (in particular, in the interests of national security or for the purposes of a terrorist investigation) if an Act of the Northern Ireland Assembly made in 2011 or 2012 makes provision regarding

the retention and use of biometric data for transferred (devolved) purposes. The order may also make provision in respect of a transferred matter where that matter is ancillary to an excepted or reserved matter. By virtue of paragraph 8(6) and (7) the order is subject to the affirmative resolution procedure if it amends or repeals primary legislation and to the negative resolution procedure if it does not.

112. Clause 24 amends paragraph 8 of Schedule 1 to the 2012 Act to enable the order to be made by the Secretary of State if the Act of the Assembly is made in 2013 or 2014 (rather than 2011 or 2012). The amendment is necessary because the Assembly did not pass the relevant legislation before the end of 2012 and because the Assembly is expected to legislate in 2013 or 2014 (the Assembly's Criminal Justice Bill is expected to receive Royal Assent in 2013).

CLAUSE 25: AMENDMENT OF THE NORTHERN IRELAND ASSEMBLY DISQUALIFICATION ACT 1975

113. This clause makes provision amending Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

114. The amendment will disqualify anyone holding the position of Civil Service Commissioner for Northern Ireland from sitting concurrently in the Northern Ireland Assembly.

FINAL PROVISIONS

CLAUSE 26: AMENDMENTS WHICH COULD HAVE BEEN MADE UNDER EXISTING POWERS

115. The Bill amends certain provisions of subordinate legislation. Clause 26 provides that those amendments are to be treated as having been made under the relevant power to make subordinate legislation. This is to ensure that any such provisions can be amended again by subordinate legislation in future.

CLAUSE 27: TERRITORIAL EXTENT

116. Clause 27 makes provision about extent. The main impact of the Bill's provisions is on Northern Ireland. However, because many of the enactments upon which the Bill operates extend to the whole of the UK, as a technical matter much of the Bill extends to the whole of the UK. The exceptions are provisions modifying enactments with a different extent. Those provisions have the same extent as the enactments being modified.

117. The devolution position has been resolved with the devolved administration in Northern Ireland, and a Legislative Consent Motion for the court rules provisions in the Schedule was agreed by the Northern Ireland Assembly on 23rd September. There is no effect on Scotland and Wales.

CLAUSE 28: COMMENCEMENT

118. Clause 28 provides for the commencement of the clauses in the Bill. Subsection (1) sets out the clauses that will be commenced on Royal Assent. Subsection (3) sets out the clauses that will be commenced two months after Royal Assent. Subsections (2) and (4) are technical and deal with complications arising from the fact that the Bill amends certain provisions of existing legislation which are subject to amendments which are not yet in force. Subsection (5) provides for commencement of clauses 3, 4 and 5 on the first day after the Bill is passed on which the Northern Ireland Assembly is dissolved. Subsections (6) and (7) provide for the remaining provisions to be commenced by order of the Secretary of State.

FINANCIAL EFFECTS

119. The financial effects of the Bill are minimal. The majority of the provisions will effect procedural changes. The exception is the creation of the new criminal offence of provision of false information in relation to application for an electoral identity card. During consultation with the Northern Ireland Department of Justice on this measure it was agreed that the expectation of the overall impact of this change on resources in Northern Ireland would be low. The total number of cases involving registration offences, including the new electoral identity card offence, is projected to be fewer than five per year. There is no anticipated expenditure expected to fall on the Consolidated Fund or the National Loans Fund. The financial consequences in terms of total public expenditure are so minimal that an estimate of the full year costs is not considered necessary.

PUBLIC SECTOR MANPOWER

120. The Bill is not expected to give rise to any changes to the staff of any Government department nor their agencies.

SUMMARY OF IMPACT ASSESSMENT

121. The Bill does not require an Impact Assessment as the provisions are largely procedural and technical in nature.

EUROPEAN CONVENTION ON HUMAN RIGHTS

122. Section 19 of the Human Rights Act 1998 (the "HRA 1998") requires the Minister in charge of a Bill in either House of Parliament to make a statement before the Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Secretary of State has made the following statement:

> "In my view the provisions of the Northern Ireland (Miscellaneous Provisions) Bill are compatible with the Convention rights."

DONATIONS AND LOANS FOR POLITICAL PURPOSES: CLAUSES 1 AND 2

DONATIONS AND LOANS MADE ON OR AFTER 1 OCTOBER 2014

123. The existing provisions prohibiting the publication of information relating to donations and loans to Northern Ireland political parties were made because of fears of intimidation of potential donors. There were concerns that individuals or businesses making donations to particular parties would face the threat of intimidation or violence if information relating to these donations was made public. The risk of intimidation might then result in potential donors refusing to provide funding to political parties in future.

124. Clauses 1 and 2 provide for a power to increase transparency through secondary legislation by disclosure of some or all of the details provided in donation reports. Should the power be exercised to permit publication of the personal details (i.e. name and address) of donors and lenders in donation reports under PPERA, the rights of those donors and lenders to private life under Article 8 would be engaged.

125. The Government considers that a power to increase transparency strikes an appropriate balance between respecting the right to privacy of individual donors and lenders and achieving the aim of transparency and accountability in election finance.

126. Transparency and accountability in matters relating to election finance are important to ensure that fraud and corruption can be avoided. The publication of the details of donations and loans made to political parties will allow the electorate to know how and by whom candidates and elected officials are funded, thereby facilitating the free and informed expression of the opinion of the people in the election of their legislature under Article 3 of Protocol 1.

127. The Secretary of State has a duty under section 6 of the HRA 1998 to act compatibly with the ECHR. This will require the Secretary of State to take into account whether the risk of intimidation of donors and lenders remains a problem in Northern Ireland.

128. The Government notes that the details of reports on donations and loans submitted to the Electoral Commission are published in full in respect of recipients registered in Great Britain.

129. Whether or not the power to increase transparency is exercised, clauses 1(3) nd 2(2) provide that information that might reveal the identity of a person who made a donation can be disclosed by the Electoral Commission if they believe on reasonable grounds that the donor or lender has consented to that disclosure in accordance with requirements that will be set out in secondary legislation. The provision that the Commission must believe that a person has consented protects the Commission from challenge or prosecution in circumstances where it was understandably mistaken. By providing that the Commission must believe on reasonable grounds that a person has consented, the provision provides protection for a person's privacy under Article 8. In addition, the Electoral Commission is a public authority and therefore has a duty under section 6 of the HRA 1998 to act compatibly with the ECHR. In order to comply with this duty in relation to the rights of individuals under Article 8, the Electoral Commission will need to take care in ensuring that it has sufficient evidence to support its belief in consent to disclosure.

130. Should persons have concerns about the disclosure of their details, it will be open to them to inform the Commission that they will not consent to the disclosure of their details at any time. The Commission could not then be mistaken about whether the person has consented. The Government considers that this strikes an appropriate balance between achieving the greatest possible measure of transparency, while ensuring the least possible interference with a person's Article 8 rights.

131. The Government considers that any order to increase transparency will not interfere with the Article 11 rights of political parties and will not engage the rights of political parties under Article 1 of Protocol 1.

DONATIONS AND LOANS MADE BETWEEN 1 NOVEMBER 2007 AND 1 OCTOBER 2014

132. Respondents to a Government consultation on this issue in August 2010 raised concerns that the publication of details of donations and loans made during the prescribed period would be contrary to the expectations of donors at the time they donated and would be a source of distress to them. In order to avoid any unfairness, or perception of unfairness, to persons who made donations or loans during the prescribed period in the belief that their details would never be disclosed, the power to increase transparency is restricted in relation to the period between 1st November 2007 and 30th September 2014.

133. It is the Government's view that these arrangements for the period prior to 1st October 2014 strike a fair and appropriate balance between the rights of the donors and lenders under Article 8 and the aim of achieving transparency and accountability in electoral finance.

DUAL MANDATES: CLAUSES 3 AND 4

ARTICLE 3, PROTOCOL 1

134. The right to free elections under Article 3, Protocol 1 obliges states to hold elections which ensure the free expression of the opinion of the people, but this includes the right to vote and the right to stand for election. The rights enshrined in Article 3, Protocol 1, are not absolute and may be subject to limitations.[2] In examining compliance, the ECtHR has focused mainly on two criteria: whether there has been arbitrariness or a lack of proportionality, and whether the restriction has interfered with the free expression of the opinion of the people. Limitations must not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness. Limitations must not run counter to the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage.[3] Stricter requirements may be imposed on eligibility to stand for election to Parliament than is the case for eligibility to vote.[4] The Convention provisions do not prevent, in principle, contracting states from introducing general policy schemes by way of legislative measures whereby a certain category or group of individuals is treated differently from others, provided that the interference with the rights of the statutory category or group as a whole can be justified under the Convention.[5]

135. In M v. UK,[6] the applicant complained that the disqualification from membership of the Assembly of members of the Seanad (the Irish Senate) was in contravention of Article 3, Protocol 1. The Commission (Plenary) dismissed the claim on the basis that "the condition that one must not be a member of another legislature is a requirement which is reconcilable with the rights enshrined in Article 3 of the First Protocol".

136. The Government accepts that the prohibition in clauses 3 and 4 may constitute an effective limitation on the right to stand for election under Article 3, Protocol 1. However, this limitation is a proportionate and reasonable limitation, which aims to preserve the effectiveness of the electoral system by ensuring that elected representatives are properly capable of carrying out their mandate. The Government's view is that there is no violation of Article 3, Protocol 1. Analogous prohibitions exist in European Law. For example, Council Decision 2002/772/EC rendered the office of member of European Parliament incompatible with that of member of a national parliament.

ARTICLE 14

[2] *Ahmed v United Kingdom* (1998) 29 E.H.R.R. 1 (para. 75)
[3] *Yumak and Sadak v Turkey*, Application No.10226/03, 8 July 2008 (Grand Chamber), paragraph 109.
[4] *Melnychenko v. Ukraine* (2006) 42 E.H.R.R. 39, Application no. 17707/02, 19 October 2004, paragraph 57
[5] *Žđanoka v. Latvia* (2007) 45 E.H.R.R. 17 Application no. 58278/00, 16 March 2006 (Grand Chamber), paragraph 112
[6] Application no. 10316/83, 7 March 1984, Commission (Plenary).

137. Article 14 complements the other substantive provisions of the Convention and the Protocols thereto. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Discrimination means treating differently, without an objective and reasonable justification, persons in similar situations. "No objective and reasonable justification" means that the distinction in issue does not pursue a "legitimate aim" or that there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised".

138. Article 14 is potentially engaged through the prohibition on members of the Assembly from holding a dual mandate with the House of Commons or with the Dáil. This is because, via the application of the ban, members of the House of Commons and the Dáil are treated differently from members of other Commonwealth legislatures. Members of these other legislatures are not similarly disqualified from seeking dual membership of the Assembly. In M v. UK,[7] the Commission (Plenary) observed that there was a difference in treatment under the Northern Ireland Assembly Disqualification Act 1975 between members of a legislature outside of the Commonwealth, who are disqualified from membership of the Assembly, and members of a legislature inside the Commonwealth, who are not disqualified. The Commission accepted that this could amount to a difference in treatment on the basis of "national origin", but concluded that the distinction found "a reasonable and objective justification in the special historical tradition and special ties that are shared by members of the British Commonwealth of which Ireland does not form a part".

139. The Government's view is that the difference in treatment can be objectively justified in light of the different character of the Upper Houses in each jurisdiction. The Government considers that the demands of membership of the House of Lords and the Seanad are different, in terms of both workload and responsibility, and that such demands do not have the same impact on the exercise by a MLA of his or her responsibilities.

140. There is also a reasonable and objective justification for imposing a prohibition on dual mandates in respect of members of the House of Commons and the Northern Ireland Assembly, but not in respect of members of the House of Commons and the Scottish Parliament or the National Assembly for Wales. The Committee on Standards in Public Life noted that the holding of multiple mandates appears to be "unusually ingrained" in Northern Ireland. This was thought to be both because of the legacy of the Troubles, which discouraged many individuals from getting involved in politics, and because of the recent history of political instability, which has led the political parties to be fearful of giving up seats in Westminster for fear that the local devolution settlement will again collapse. There remain in Northern Ireland a number of MPs/MLAs who hold a dual mandate. By contrast, there are no dual mandates between the House of Commons and the National Assembly for Wales, and no Members of the Scottish Parliament also sit in the Commons.

[7] Application no. 10316/83, 7 March 1984, Commission (Plenary)

EXTENSION OF TERM OF THE ASSEMBLY: CLAUSE 7

141. Article 3 of Protocol 1 to the European Convention on Human Rights contains an undertaking that the Parties will hold free elections at reasonable intervals by secret ballot under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature. The extension of the current Assembly term by one year, and the move to five year terms, will mean that voters in Northern Ireland are entitled to less frequent elections and will not have a chance to vote again for a new Assembly until one year later than was envisaged at the time that they cast their votes in 2001.

142. However, the voters will still be entitled to free elections by secret ballot every five years which will allow a free expression of their opinion. The Government considers that a five year term between elections is reasonable and indeed brings the length of the term into alignment with the parliaments and assemblies in the rest of the United Kingdom. It is possible that some voters will feel disadvantaged in not being able to vote for a new Assembly for a further year during the current Assembly term. The Government considers that this slight disadvantage is justified and proportionate given the support for change expressed by the majority parties in Northern Ireland and the advantage in having consistency across the United Kingdom. In moving to five year terms the provisions of the European Convention will not be breached.

ELECTORAL REGISTRATION AND ADMINISTRATION: CLAUSES 15 AND 20

DATA SHARING: CLAUSE 20

143. Clause 20 amends section 53 of and Schedule 2 to the RPA 1983 to apply to Northern Ireland additional regulation-making powers relating to the sharing of data obtained from individuals or other public authorities for the purpose of electoral registration.

144. The regulation-making powers relate to the processing of individuals' personal information, such as name, address, date of birth, nationality and national insurance number, and therefore could potentially engage Article 8. Article 8 is not an absolute right and interference with it can be justified on a number of grounds set out in Article 8(2). The Government considers that any such provisions are necessary in a democratic society, as they will enable the voter registration system to function properly, and will be in accordance with law. The powers are necessary for the prevention of crime and the protection of the rights and freedoms of others, including, significantly, the right of individuals to exercise their right to vote under Article 3 of Protocol 1. The powers are necessary to ensure that:

the Chief Electoral Officer is able to ensure that only those individuals who are entitled to be registered to vote are included on the register;

the Chief Electoral Officer is able to ensure that the electoral register is not used in order to create fraudulent identities or commit electoral offences; and

the Chief Electoral Officer is able to obtain information relating to individuals who may be eligible to be registered to vote, in order to carry out his duty to maintain the register and to meet the relevant registration objectives.

145. The requirement to consult the Electoral Commission, the Information Commissioner and any other person the Secretary of State thinks appropriate provides an additional safeguard for the rights of individuals under Article 8. In addition, the Secretary of State has a duty under section 6 of the HRA 1998 to act compatibly with the ECHR. The Secretary of State will therefore be required to consider the Article 8 rights of individuals when making regulations in relation to the processing of information. In order to protect the rights of individuals, the Secretary of State will have the power to include provisions which regulate the manner in which information is disclosed; require the retention or disposal, or otherwise regulate the processing, of information disclosed; and impose criminal sanctions for processing information in breach of those provisions. Under this power, the Secretary of State could set a period after which the information should no longer be retained.

146. Read together with paragraph 11A of Schedule 2 to the RPA 1983, the power to require information from public authorities under paragraph 1A includes a power to supply such data to third parties. The Government considers that this will not interfere with the Article 8 rights of individuals due to the safeguards inherent in the exercise of the power to require information in paragraph 1A(1). The requirement to consult with the Information Commissioner is particularly important in this respect. In exercising the power to share information with third parties under paragraph 11A, the Secretary of State's duty to comply with section 6 of the HRA in relation to the Article 8 rights of individuals continues to apply.

EQUALITY DUTIES: CLAUSE 22

147. This clause does not itself engage any provisions of the Convention. However, it is considered that the application of a statutory equality duty to public authorities may impact on other rights and freedoms protected by the Convention when those other rights and freedoms are engaged by actions taken by those public authorities. When exercising the power to designate bodies under section 75, the Secretary of State will be obliged under section 6 of the HRA 1998 to keep in mind the considerations that normally arise under Article 14 in relation to those other rights and freedoms protected by the Convention. Article 14 complements the other substantive provisions of the Convention and the Protocols thereto and has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions.

REGULATION OF BIOMETRIC DATA: CLAUSE 24

148. The minor and technical amendment which is made in clause 24 simply ensures that the order making power in paragraph 8 of Schedule 1 to the Protection of Freedoms Act 2012 ("POFA") can now be exercised if the Northern Ireland Assembly passes such an Act in 2013 or 2014 (rather than 2011 or 2012).

149. Whilst the amendment is minor and technical and does not itself impact upon the ECHR, an order made under paragraph 8 of Schedule 1 to POFA as amended by clause 22 will engage Article 8. Much of the provision which is made for England and Wales in sections 1-18 and 23-25 of POFA has been transferred to the competence of the Northern Ireland Assembly and will be replicated in the Criminal Justice Bill, which is currently before the Assembly. However, provision regarding the retention and use of biometric data for excepted or reserved purposes (in particular, in the interests of national security and for the purposes of a terrorist investigation) will be made by order under paragraph 8 of Schedule 1 to POFA and will mirror the corresponding provision made in respect of England and Wales in POFA.

150. Article 8 is not an absolute right and interference with it can be justified on a number of grounds set out in Article 8(2). The retention and use of biometric data will be compatible with Article 8 if it is necessary in a democratic society for a legitimate aim, if it answers a pressing social need and if it is proportionate to the legitimate aim pursued (S and Marper v UK [2008] ECHR 1581, see paragraph 101). The provision which will be made by order under paragraph 8 of Schedule 1 to POFA will be necessary in a democratic society for the purposes of national security and public safety and for the protection of the rights and freedoms of others. Consequently, the Government considers that clause 24 is compatible with Article 8.

AMENDMENT OF THE NORTHERN IRELAND ASSEMBLY DISQUALIFICATION ACT 1975: CLAUSE 25

151. Clause 25 disqualifies the Civil Service Commissioner for Northern Ireland (CSCNI) from membership of the Assembly. The Government accepts that the prohibition in clause 25 may constitute an effective limitation on the right to stand for election under Article 3, Protocol 1. However, this limitation is a proportionate and reasonable limitation, which aims to preserve the independence and integrity of CSCNI. This is consistent with the Code of Practice of the CSCNI, which states that the CSCNI will not hold any paid or unpaid posts in a political party; publicly support or criticise a political party in speeches, letters to the Press, books, articles or leaflets; or canvass on behalf of a political party. The Government notes that the CSCNI is a disqualifying office for the House of Commons and the legislatures of the other devolved administrations. The Government considers that this clause is compatible with the Convention.

NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) BILL

EXPLANATORY NOTES

These notes refer to the Northern Ireland (Miscellaneous Provisions) Bill as brought from the House of Commons on 19th November 2013 [HL Bill 58]

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