

Monday

9 November 1998

THE NEW  
NORTHERN IRELAND  
ASSEMBLY

Report of the  
Ad Hoc Committee  
on the  
Procedural Consequences  
of Devolution

NNIA 5

REPORT OF THE AD HOC COMMITTEE  
ON THE  
PROCEDURAL CONSEQUENCES OF DEVOLUTION

THE AD HOC COMMITTEE

BACKGROUND

1. In July 1998 the Procedure Committee of the House of Commons invited comments on the potential for change in the operation of Westminster procedures following the introduction of devolution. On 14 September 1998 the New Northern Ireland Assembly established an ad hoc committee to consider the relationships between a devolved Northern Ireland Assembly and the United Kingdom Parliament. The Committee dealt with issues raised by the Procedure Committee affecting the Commons, but has not considered the effect of devolution on the House of Lords.

TERMS OF REFERENCE

2. The terms of reference of the Committee were:  
  
“To consider the procedural consequences of devolution as they are likely to affect the relationship between, and working of, the Northern Ireland Assembly and the United Kingdom Parliament, and, by Tuesday 6 October, to submit a Report to the Assembly which, if approved, will be forwarded to the Procedure Committee of the House of Commons.”
3. The Committee delivered an Interim Report to the Assembly on 5 October and was granted an extension to report to the Assembly by 6 November and subsequently, if approved by the Assembly, to the Procedure Committee by 9 November 1998.

## COMMITTEE MEMBERSHIP

4. The Committee's membership and composition are set out in Annex 1.

## APPROACH OF THE COMMITTEE

5. During its initial meetings the Committee examined the current arrangements at Westminster and gathered advice from those with a detailed knowledge of the Northern Ireland Bill, constitutional relationships within the United Kingdom and the precedent established in the period of devolution following the Government of Ireland Act 1920. More recently the Committee sought advice on the relationship with Europe and how Westminster dealt with European Union business. The Committee is grateful to those who gave generously of their time, often at short notice, to assist in its deliberations. In total the Committee met on 7 occasions. Copies of the written evidence provided to the Committee have been placed in the Assembly Library.
6. During its investigations the Committee identified a range of issues which will impact on the operation of the Assembly itself, but which did not fall within its Terms of Reference. It was therefore agreed that these matters should be brought to the Assembly's attention and the Chairman wrote to the Presiding Officer under separate cover regarding these issues. A summary of the Committee's recommendations is at Annex 2.

## DEVOLUTION

### BACKGROUND

7. In May 1997 the new Labour Government introduced a policy to provide devolved Government for Scotland and Wales. Legislative proposals came before the House of Commons and a process to establish a Scottish Parliament and a Welsh Assembly was initiated. Elections planned for May 1999 will provide 129 members to a Scottish Parliament and 60 members to a Welsh Assembly. Both will be operational by September 1999. In England developments towards regional devolution are at a much earlier stage, though

elections of a Mayor and an Assembly of 25 Members for London are forecast for 2001.

8. In April 1998 the agreement of parties in Northern Ireland led, following elections, to the establishment of a shadow Assembly to which power would be devolved early in 1999. Paragraph 33 of Strand One of the Agreement describes the continuing role for Westminster and in particular confirms a continuing role for the Grand and Select Committees.

## THE KEY PRINCIPLES

### RELATIONSHIPS WITHIN THE UNITED KINGDOM

9. The Northern Ireland Act 1998 will set out the legislative competence of the Assembly. The provisions of the Northern Ireland Bill explicitly emphasise that the United Kingdom Parliament retains the power to legislate on any subject throughout the United Kingdom. Schedules 2 and 3 to the Bill describe those matters that remain 'Reserved' or 'Excepted'. All other matters are considered 'transferred'. Reserved matters include those areas which in the meantime will not transfer to the Assembly and on which it cannot legislate without the consent of the Secretary of State for Northern Ireland. Reserved matters include civil defence, the maintenance of public order, issues of communications and competitive practices. Excepted matters, which would indefinitely remain the preserve of the Parliament at Westminster, include such matters as sovereignty, the conduct of elections, international relations, national defence and matters relating to coinage and the legality of bank notes. Consequently the establishment of the Northern Ireland Assembly provides the opportunity to exercise power locally through the Belfast Agreement, within the context of the sovereignty of Parliament at Westminster.

### THE PRACTICE OF DEVOLUTION

10. The fundamental basis for the relationship between the Assembly and Westminster lies in a clear understanding that transferred matters would be essentially the responsibility of the Assembly. Consequently, procedures at



Westminster may need to be modified. The Committee has sought to recommend the establishment of conventions and procedures for Westminster which are fair, flexible and durable. The essential principle of devolution is that on transferred matters Northern Ireland should govern itself. The implementation of this key principle will have procedural consequences for both Westminster and the Northern Ireland Assembly.

11. Recommendation: the Committee recommends that:

Following devolution, transferred matters ought to become essentially the preserve of the Northern Ireland Assembly.

## WESTMINSTER PROCEDURAL ARRANGEMENTS

### PARLIAMENTARY QUESTIONS

12. Parliamentary Questions on Northern Ireland are currently taken in the Commons for 25 minutes every four weeks. MPs are also able to table written questions to Ministers to which they should receive an answer within 10 days. Currently MPs are permitted to raise any matter for which a Minister is responsible. Following devolution, the issue arises as to whether questions on transferred matters should be allowed at Westminster. During previous periods of devolution, questions on transferred matters were referred back to the Ministers responsible in Northern Ireland.
13. The Committee believes that, as was previously the case under devolution, questions on transferred matters should be taken primarily in the Assembly. Questions to Ministers in the House of Commons should, where appropriate, be referred to the Northern Ireland Assembly.
14. Recommendation: the Committee recommends that:

Questions on transferred matters are primarily for the Northern Ireland Assembly.

## QUESTION TIME

15. Since reserved and excepted matters remain the responsibility of Westminster, the maintenance of a Northern Ireland question time would provide a necessary and important mechanism for the scrutiny of the actions of the Secretary of State. These matters, rather than transferred matters, have tended historically to be the subject of most questions.
16. Furthermore the Committee anticipates that assessment of the implementation of the Belfast Agreement and the proposed Northern Ireland Act which gives statutory effect to its provisions, will also become a key issue for Northern Ireland's MPs and that opportunity should be given for questions on these matters.
17. **Recommendation:** the Committee recommends that:

A period for questions on Northern Ireland ought to be retained at Westminster to provide for scrutiny of reserved and excepted matters, particularly the implementation of the Northern Ireland Act 1998.

## THE ROLE OF NORTHERN IRELAND COMMITTEES

18. The system of committees at Westminster, and particularly in the House of Commons, has evolved over many years. It involves a number of Standing Committees, Joint Committees and on some occasions a Committee of the whole House. Select Committees are appointed to "examine the expenditure, administration and policy" of principal government departments. The Committee is composed of members 'selected' from the membership of the House. Their composition largely reflects the party strength in the Commons. Two Committees are of particular relevance to Northern Ireland: the Northern Ireland Select Committee and the Northern Ireland Grand Committee.

## THE NORTHERN IRELAND SELECT COMMITTEE

19. The Northern Ireland Select Committee deals with Northern Ireland Office “administration and expenditure... and other matters within the responsibility of the Secretary of State for Northern Ireland”. It is composed of 13 Members drawn from across the parties represented at Westminster. The Government holds a majority (7) of the seats including the Chair. MPs from Northern Ireland constituencies occupy four seats (2 Ulster Unionists, 1 Democratic Unionist and 1 SDLP).

## THE NORTHERN IRELAND GRAND COMMITTEE

20. The Grand Committee is in effect a Standing Committee. It consists of all Northern Ireland MPs and up to 25 others drawn from the other parties at Westminster. The Grand Committee deals with questions, short debates and legislative proposals on Northern Ireland matters. It sometimes takes the Committee stage of Bills affecting Northern Ireland.
21. The Belfast Agreement provides for the continued operation of both the Northern Ireland Grand Committee and the Northern Ireland Select Committee in so far as this relates to the Secretary of State’s duties in respect of excepted or reserved matters. As described above, under the arrangements for devolution, transferred matters are to be dealt with by the Northern Ireland Assembly. This may have significant implications for the future of the Northern Ireland Grand Committee. In addition since much of the current work of the Northern Ireland Select Committee will, in future, be carried out by Committees of the Assembly, a re-examination of the role of the Northern Ireland Select Committee may need to take place to avoid duplication.
22. Recommendation: the Committee recommends:

Standing Orders of the Northern Ireland Select and Grand Committees at Westminster should be modified to reflect the new arrangements.



## THE ROLE OF OTHER WESTMINSTER COMMITTEES

23. In some aspects Westminster will continue to establish policy and legislation for the whole of the UK. However in many other areas the operation of devolved legislatures will considerably reduce the scope of existing Westminster Committees. The Procedure Committee may therefore wish to consider whether it would be appropriate to reorganise the work of the Select Committees to reflect the operation of the new bodies and to provide for complementarity between the work of Westminster Select Committees and the scrutiny committees of the Northern Ireland Assembly.

24. Recommendation: the Committee recommends that:

**There should be a review of the Select Committee system to prevent duplication of the work of the devolved legislatures.**

## EUROPEAN LEGISLATION

25. Under the current arrangements, the Select Committee on EU Legislation deals with a large number of legislative proposals arising from the United Kingdom's membership of the European Union. Annex 3 describes the current practice at Westminster.

26. The Ad Hoc Committee considers relationships between the Assembly and the European Union to be important for Northern Ireland. It also considers important that Northern Ireland interests and views are properly reflected in the United Kingdom's responses to Brussels. The Committee anticipates that the Assembly will therefore seek an opportunity to comment on proposals for EU Legislation within the context of the UK's membership of the European Union. However the Committee recognises that the system for consideration of the myriad of EU proposals is both costly and complex. It therefore suggests that the Assembly should contribute to the Westminster process in tandem with the consideration by its Standing Committees on EU Legislation. The Committee believes it would be helpful if arrangements could be established to copy to the Assembly the content of the proposals, the Departmental Memorandum and any



brief prepared by the Clerks at Westminster on each of the proposals to be considered by EU Standing Committees.

27. **Recommendation:** the Committee recommends that:

The Assembly should seek arrangements to provide access to information from the Select Committee on EU legislation as a basis for comments on EU proposals from the Northern Ireland Assembly.

### **FINANCIAL SCRUTINY ARRANGEMENTS**

28. Under the system of Direct Rule, Westminster deals with a range of issues impacting on Northern Ireland's public finances. Currently the Northern Ireland Block is voted by Parliament to the Northern Ireland Office and allocated between Northern Ireland departments following a series of financial bi-laterals between the Secretary of State and NI Departmental Ministers. Scrutiny of accounts for Departments in Northern Ireland is undertaken by the Comptroller and Auditor General for Northern Ireland who reports to the Public Accounts Committee at Westminster. Under the previous arrangements for devolution in Northern Ireland, the local Comptroller and Auditor General reported to the Parliament at Stormont.
29. Devolution presents significant procedural consequences particularly in the area of financial regulation. The Committee believes that the Assembly should arrange for a Public Accounts Committee for Northern Ireland to scrutinise the use of public expenditure on transferred matters within Northern Ireland. Such an arrangement would involve the Comptroller and Auditor General for Northern Ireland reporting to this Committee rather than to the Public Accounts Committee at Westminster. It would also mean that Westminster should retain responsibility for oversight of the appropriation of funds into the Northern Ireland Office budget for expenditure on reserved and excepted matters. Thereafter the Assembly itself would be responsible for the scrutiny of expenditure on transferred matters.

30. **Recommendation:** the Committee recommends that:

The Assembly should establish a Public Accounts Committee for Northern Ireland to which the Comptroller and Auditor General for Northern Ireland should report.

#### **PRIVATE MEMBERS' BILLS AND OTHER LEGISLATIVE PROPOSALS**

31. As stated above, the provisions of the Northern Ireland Bill explicitly emphasise that the United Kingdom Parliament retains the power to legislate on any subject throughout the United Kingdom.

32. It is the Committee's expectation that the Assembly will process all the legislation necessary to discharge fully the public's expectations in regard to transferred matters. Whilst it will remain possible for any Member at Westminster to propose a Private Member's Bill on any matter, including devolved matters, the Committee, from past experience, does not expect that many such proposals will become law.

33. **Recommendation:** the Committee recommends that:

There should be no change, as a result of devolution, to the current arrangements for Private Member's Bills.

#### **THE 'WEST LOTHIAN' QUESTION**

34. The Committee was aware of concern around the so-called 'West Lothian' question where Scottish MPs could vote on matters affecting England whilst English MP's could not vote on matters in a devolved Scottish Parliament. The Committee takes the view that this ultimately, is a matter which only Westminster can resolve.

## ISSUES FOR FURTHER CONSIDERATION

### THE NORTHERN IRELAND BILL

35. It was clear that the content of the Northern Ireland Act 1998 would clarify further significant details in the relationship between Westminster and the Northern Ireland Assembly. The fact that the Bill proposing the Act had not completed its passage through Parliament restricted the extent to which the Committee could shape a relationship between the two bodies. The Committee agreed that the procedural arrangements at Westminster, but also in the Assembly, should be re-considered in the light of the enactment of the Bill and after a period of devolved operation by the Northern Ireland Assembly.
36. **Recommendation:** the Committee recommends that:
- a. Following the enactment of the Northern Ireland Bill, the recommendations in this Report should be reviewed to confirm that they are still valid.
  - b. The procedural consequences of devolution and their effects on the relationship between the Northern Ireland Assembly and the United Kingdom Parliament should be reviewed after the Northern Ireland Assembly has exercised devolved power for a period.

### CO-OPERATION AND CONSULTATION BETWEEN MEMBERS OF THE SCOTTISH PARLIAMENT, THE WELSH OR NORTHERN IRELAND ASSEMBLY AND THE UNITED KINGDOM PARLIAMENT

37. The Committee noted the Government's announcement of a Joint Ministerial Council involving Ministers from each of the UK's devolved legislatures. In the absence of any detailed information about the proposed operation of this body, the Committee considered that it would be appropriate to support the concept of co-operation and consultation between the UK's devolved legislatures. However it was not clear how, or on which matters, the devolved bodies would be



expected to conduct joint operations, nor whether this would extend to Members as well as Ministers.

38. The full impact of devolution will only become clear after the Scottish and Welsh legislatures become established. Whilst this will have consequences for the bilateral relationship between those bodies and Westminster, it will also be important that they consider the relationship between the three devolved bodies.

39. **Recommendation:** the Committee recommends that:

As soon as the Scottish Parliament and the Welsh Assembly are established, Westminster should consult with the three devolved legislatures on the relationship between Members of the United Kingdom's parliamentary bodies.

#### **THE ROLE OF OTHER WESTMINSTER COMMITTEES**

40. The introduction of devolution arrangements elsewhere in the United Kingdom will also impact on the work of Committees at Westminster. It may be useful for Westminster to give consideration to how the Select Committee system ought to be organised to reflect the changes in governance throughout the United Kingdom and to provide for scrutiny of these arrangements. For example, Select Committees at Westminster will presumably not become involved in scrutiny of the policy of Northern Ireland Departments. Equally the implementation of the policy on devolution may suggest the need to provide for the scrutiny of the devolved legislatures.

41. **Recommendation:** the Committee recommends that:

As soon as the Scottish Parliament and the Welsh Assembly are established consideration should be given to the introduction of a Select Committee on 'Regional Affairs' to scrutinise the operation of the devolved legislatures in the United Kingdom.

## DEALING WITH EUROPEAN LEGISLATION

42. There are a number of options for taking forward Westminster's agreement to the recommendation at paragraph 27 above. The Committee believes that the Assembly will want to clarify its own procedural arrangements for dealing with European matters. Subsequently the Assembly should liaise with Westminster on which arrangements would allow proper, cost-effective, consideration by the Assembly of relevant EU legislative proposals.

43. Recommendation: the Committee recommends that:

The Assembly should consider, based on the information provided by the Standing Committees on EU Legislation, how to contribute to the UK's response to EU proposals.

## CONCLUSION

44. Through a process of proposal, consideration, debate and resolution, the Committee has considered many issues which will impact on the operation of Westminster in the period following devolution. In many respects the full impact of these changes can only be addressed when the system has become fully operational. However the Committee believes that the issues raised and the acceptance of the recommendations proposed in this Report form the basis for a successful return to devolved government in Northern Ireland.

**A McFarland**  
**Chairman**

MEMBERSHIP OF THE AD HOC COMMITTEE

<u>Chairman</u> (Ulster Unionist Party)	Mr A McFarland
<u>Members</u> (by Party)	
Alliance Party	Mr S Close
Democratic Unionist Party	Rev W McCrea
	Mr I Paisley Jnr
	Mr S Wilson
NI Women's Coalition	Ms J Morrice
Progressive Unionist Party	Mr D Ervine
Sinn Fein	Mr B McElduff
	Mr G McHugh
	Ms M Nelis
Social Democratic and Labour Party	Mr E McGrady MP
	Mr A Maginness
	Mr T Gallagher
	Ms C Hanna
UK Unionist Party	Mr R McCartney QC MP
Ulster Unionist Party	Mr B Bell *
	(previously Rt Hon J Taylor MP)
	Mr D McClarty *
	(previously Mr R Empey)
	Mr D Hussey
United Unionist Assembly Party	Mr D Watson *
	(following change to Standing Orders)

\*With effect from 8 October 1998



## AD HOC COMMITTEE

### Westminster Select Committee on European Legislation – Implications for the Assembly

#### Introduction

1. The Select Committee on EU Legislation is unique amongst the Select Committees at Westminster in its scale and modus operandi. The role of the Committee is specifically focused on the scrutiny of legislative proposals emerging from the Council of Ministers (including Green Papers, Reports from the Court of Auditors and other associated papers). The Committee receives about 1200 such papers annually.

#### Background

2. Papers for the Council of Ministers are processed through the Member State's Permanent Representation in Brussels and reported back to the Government of each Member of the European Union. In this case UKRep (the UK's Permanent Representative) relays papers to the Government at Westminster via the EU Secretariat in the Cabinet Office and the Foreign Office.

#### Stage 1

3. Proposals are copied to Parliament (the Select Committee on EU Legislation) via the Department of Government responsible for that area of domestic legislation. The Department, at the same time, supplies an explanatory memorandum describing the background to the proposal and the implications for the United Kingdom.

#### Stage 2

4. The Committee Clerk (supported by a body of full-time staff including lawyers and policy specialists) prepares a briefing note for the Committee on about 400 of the proposals. The Committee, meeting weekly, sifts these briefs to identify those with political or legal significance for the UK. The Committee formally considers all proposals to satisfy itself that no action is required in respect of the remaining 800 proposals.

#### Role of Standing Committees – Stage 3

5. In general terms, about 50 of the proposals raise issues to justify further, more detailed, scrutiny by one of two Standing Committees (Standing Committee A, which deals with agriculture, food, transport, environment and related matters, and Standing Committee B which deals with any other matters).
6. At present the Modernisation Committee is considering whether to change these arrangements and has suggested increasing the number of Standing Committees, possibly to five. Another alternative might require the Departmental Select Committees to consider proposals in their functional areas.

7. A number of issues have been the subject of more detailed scrutiny by the Select Committee. Recently these have included the Common Agricultural Policy, Fisheries policy, Telecommunications, dealing with Land-fill waste, Air Transport and Energy.

### Impact of Devolution

8. Given the volume and the detail of the preparatory work undertaken by the Committee staff, initial discussions have taken place about how this will be carried forward following the establishment of devolved legislatures in Northern Ireland, Scotland and Wales. It is suggested that much of the initial sift need not be repeated.
9. Copies of all the proposals and Departmental Memoranda could be made available to each of the devolved bodies. However it is anticipated that only those, about 50, issues referred to the Standing Committees are likely to be of interest anywhere in the UK. It may therefore be that the Assembly would want to concentrate on how it would process these issues.
10. The Committee will be aware that some of the topics of recent Select Committee reports concern matters which under the Northern Ireland Act 1998 will be reserved or excepted matters (including consumer safety, air transport, telecommunications etc.). If these are not to be considered by the Assembly, only 30-40 issues could be expected to come before the Assembly annually.

### Conclusion

11. It is recommended, that the Assembly should establish a mechanism which, based on an initial sift by the Westminster Select Committee, would provide a Northern Ireland input to the work of the Select Committee on EU Legislation.

AD HOC COMMITTEE ON THE PROCEDURAL CONSEQUENCES  
OF DEVOLUTION

SUMMARY OF RECOMMENDATIONS

Paragraph Number	Recommendation
11	Following devolution, transferred matters ought to become essentially the preserve of the Assembly.
14	Questions on transferred matters are primarily for the Northern Ireland Assembly.
17	A period for questions on Northern Ireland ought to be retained at Westminster to provide for scrutiny of reserved and excepted matters, particularly the implementation of the Northern Ireland Act 1998.
22	Standing Orders of the Northern Ireland Select and Grand Committees at Westminster should be modified to reflect the new arrangements.
24	There should be a review of the Select Committee system to prevent duplication of the work of the devolved legislatures.
27	The Assembly should seek arrangements to provide access to information from the Select Committee on EU legislation as a basis for comments on EU proposals from the Northern Ireland Assembly.



- 30 The Assembly should establish a Public Accounts Committee for Northern Ireland to which the Comptroller and Auditor General for Northern Ireland should report.
- 33 There should be no change, as a result of devolution, to the current arrangements, for Private Member's Bills.
- 36a Following the enactment of the Northern Ireland Bill, the recommendations in this Report should be reviewed to confirm that they are still valid.
- 36b The procedural consequences of devolution and their effects on the relationship between the Northern Ireland Assembly and the United Kingdom Parliament should be reviewed after the Northern Ireland Assembly has exercised devolved power for a period.
- 39 As soon as the Scottish Parliament and the Welsh Assembly are established, Westminster should consult with the three devolved legislatures on the relationship between Members of the United Kingdom's parliamentary bodies.
- 41 As soon as the Scottish Parliament and the Welsh Assembly are established consideration should be given to the establishment of a Select Committee on 'Regional Affairs' to scrutinise the operation of the devolved legislatures in the United Kingdom.
- 43 The Assembly should consider, based on the information provided by the Standing Committees on EU Legislation, how to contribute to the UK's response to EU proposals.

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