

# NORTHERN IRELAND (ST ANDREWS AGREEMENT) ACT 2007\*

(2007 c.4)

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An Act to modify the effect of the Northern Ireland (St Andrews Agreement) Act 2006. [27th March 2007]

### PROGRESS OF THE BILL

*Hansard*, HC Vol.458, col.1302 (presentation and first reading); col.1306 (programme motion); col.1309 (second reading); col.1354 (Committee & third reading); HL Vol.690, col.1617 (first reading); col.1617 (second reading); col.1635 (Committee); col.1636 (remaining stages); col.1636 (RA).

### INTRODUCTION AND GENERAL NOTE

#### *Summary*

The Northern Ireland (St Andrews Agreement) Act 2007 (c.4) (“the Act”) - essentially a one-clause bill put through Parliament in one day (March 27, 2007) - effectively amends the Northern Ireland (St Andrews Agreement) Act 2006 (c.53) (“the 2006 Act”), to alter the date for devolution from March 26, 2007 to May 8, 2007.

#### *Previous Legislation*

The tortured attempts to restore devolution to Northern Ireland - following suspension in October 2002 - may be followed in the Current Law Statutes Annotated introductions to the following statutes: the Northern Ireland Act 2006 (c.17); the Northern Ireland (Miscellaneous Provisions) Act 2006 (c.33); and the Northern Ireland (St Andrews Agreement) Act 2006.

#### *The Political Context*

One needs to go back no further than to December 8, 2004, and the so-called comprehensive agreement. Then, the Democratic Unionist Party (“DUP”), led by Dr Ian Paisley MP - between the 2003 assembly elections and the 2005 general election - showed it might be willing to share power with Sinn Féin, led by Gerry Adams.

#### *The Comprehensive Agreement, December 8, 2004*

The comprehensive agreement (building on the Belfast Agreement) comprised: proposals from the UK and Irish governments (9 paragraphs); annex A, a timetable; annex B, UK proposals for changes to strand one and joint proposals for changes to strands two and three; and annex C, draft statements by Irish Republican Army (“the IRA”), the independent international commission on decommissioning, the DUP and Sinn Féin. It is unclear how much, if any, the two latter parties agreed.

The main point about the comprehensive agreement is that it did not work. It fell apart ostensibly over the IRA’s refusal to have decommissioning photographed. Dr Paisley and his son, Ian Paisley junior, outmanoeuvred the modernizing wing of the DUP, led by Peter Robinson MP.

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### *Decommissioning*

The year 2005 - seven years after the Belfast Agreement - may have seen a significant breakthrough: a IRA statement of July 28, 2005 formally ordered an end to the armed campaign (but not disbandment); on September 26, 2005, the independent international commission on decommissioning reported that the IRA had finally decommissioned (but not necessarily completely disarmed, as was subsequently indicated by the independent monitoring commission).

### *The St Andrews Agreement, Friday, October 13, 2006*

The United Kingdom Prime Minister, the Rt. Hon. Tony Blair MP, and the Irish premier, Bertie Ahern TD, decided to hothouse the Northern Ireland parties in a hotel at St. Andrews (the apostrophe not being used) for three days, this Scottish coastal town being chosen to impress the DUP, which affirms Ulster-Scots culture in Northern Ireland.

As in 2001, 2003 and 2004, the parties did not agree, even with the two governments mediating. However, they were given until November 10, 2006, to endorse the St. Andrews agreement. The principal issues were: would the DUP support power-sharing including Sinn Féin?; and would Sinn Féin come out in support of the Police Service of Northern Ireland ("PSNI")?

The agreement comprised 13 paragraphs, and the following annexes: institutional changes (A); human rights etc. (B); financial package (C); timetable (D); national security (E).

The St. Andrews agreement is not legally binding in international law (something the UK government sought to avoid admitting in a parliamentary answer: *Hansard*, HL Vol.686, col.WA 149). It therefore differs from the Belfast Agreement. It resembles, in derivation and status, the 2001 Weston Park proposals, the 2003 Hillsborough joint declaration and the 2004 comprehensive agreement; indeed, the St Andrews Agreement is the comprehensive agreement reheated.

The DUP secured its institutional changes (annex A), but the nationalists also obtained concessions. There was very little on finance for either side (annex C). The extreme unionists effectively agreed in annex D to: Ian Paisley and Martin McGuinness being nominated as first minister and deputy first minister on November 24, 2006; and the assembly going live on March 26, 2007.

Sinn Féin, in contrast, surrendered little or nothing. It had to consult its executive "and other appropriate party bodies" by November 10, 2006 (but not expressly the special conference necessary to endorse the police). However, the devolution of policing and justice was scheduled, in the main text, for May 2008. Annex E also provided for MI5 accountability in Northern Ireland. The republicans also gained in the profuse annex B: a bill of rights forum; an Irish language act; more powers for the human rights commission; and effectively the employment of Irish nationals from the Republic of Ireland in the senior civil service (the DUP, in comparison, getting empty gestures on Ulster Scots, parading and reverse discrimination - the 50/50 rule - in police recruitment).

The Secretary of State, the Rt. Hon. Peter Hain MP, told parliament on October 16, 2006 that the St Andrews Agreement "may come to be seen as a pivotal moment in Irish history" (*Hansard*, HC Vol.450, col.587).

Lord Smith of Clifton, for the Liberal Democrats, was uncharacteristically dyspeptic on November 22, 2006, during the passage of the first Northern Ireland (St Andrews Agreement) Bill:

"This flawed Bill accurately reflects the character of the politics of Northern Ireland. It is but a fig leaf to camouflage the almost irreconcilable elements at work. Whether it will provide a foundation for an operating, representative and democratic system of devolved government - as all people of good will would wish - is extremely doubtful. This wretched Bill comprises the wish list of DUP demands and a corresponding Sinn Féin wish list. Where the two conflict, it is either silent or offers a fudge. The idea that the Bill is based on robust principles which, taken together, facilitate the creation of a power-sharing Executive, as it should be, is far from the truth. Rather, it is a patchwork of cobbled-together partisan clamourings with a touch of half-baked Northern Ireland Office ingenuity." (*Hansard*, HL Vol.687, col.352)

### *After the St. Andrews Agreement*

Disagreement broke out immediately. The DUP over-spun the idea of Martin McGuinness taking an oath on November 24, 2006, supporting the police, the special branch and even MI5.

Sinn Féin continued to do nothing, demanding effectively party control of the police and justice before it would even schedule a conference to abandon opposition to the rule of law.

On October 27, 2006, the DUP published a short, illustrated paper, *Your Verdict: what is it to be?* Formally a consultation for the November 10, 2006 decision, the document made four points: (1) negotiations were continuing; (2) the DUP's position was: no delivery (by Sinn Féin), no deal; (3) the St. Andrews Agreement was immeasurably better than the Belfast Agreement; and (4) essentially, there was no alternative - saying "no" would let Sinn Féin off the hook on law and order.

#### *November 10, 2006*

According to the St Andrews Agreement, the political parties had to accept it by November 10, 2006. The sanction was dissolution of the assembly (even though there was no such power in the Northern Ireland Act 2006).

There was no such acceptance, not even seemingly from the centrist parties. The DUP stated it did not have to move towards power-sharing (there was work in progress), until Sinn Féin had moved on policing; Gerry Adams affirmed the need to agree on the devolution of policing and justice first.

#### *November 24, 2006*

The next deadline - according to the St Andrews Agreement - was November 24, 2006, when the "Assembly [would] meet[s] to nominate FM/DFM", that is the first minister and deputy first minister.

The DUP thought that the St Andrews Agreement meant that: Martin McGuinness would have to sign up to the rule of law at an early stage. The UK government, therefore, sought to downgrade November 24, 2006, to spare the DUP from its miscalculation, but above all to protect Sinn Féin from having to affirm the rule of law.

First, the Northern Ireland Act 2006 (with the key deadline) was repealed - on November 22, 2006 - by s.22 of the Northern Ireland (St Andrews Agreement) Act 2006. Second, a new transitional assembly was created, under s.1 and Sch.1; the nomination of first minister and deputy first minister was detached, by para.3 of the latter, from the due date of November 24, 2006. Third, a new deadline of March 26, 2007 - after an election on March 7, 2007 - was created, under s.2 and Schs 2, 3 and 4.

The assembly was summoned to meet on Friday, November 24, 2006, with the DUP and Sinn Féin required to indicate an intention to nominate at some point in the future. Commentators would describe the proceedings, which had to be adjourned to Monday, November 27, 2006 (because of a paramilitary attack on Parliament Buildings by Michael Stone, a convicted loyalist, who had been released from prison under the Belfast Agreement), as resembling Alice in Wonderland.

First, Dr Paisley read out a statement, less a key sentence agreed with the UK Prime Minister. Second, Gerry Adams stated an intention to nominate Martin McGuinness, and the latter was even permitted to speak. Third, the speaker, reading from a text prepared by the Secretary of State, pronounced that the requisite intentions had been indicated. Four, the DUP showed the first signs of splitting, when a faction - dubbed the dirty dozen - put out a statement denying that Dr Paisley had done any such thing. Five, Dr Paisley, clearly under pressure from 10 Downing Street, added the sentence back in, in a personal press release later that day. He said it, but not in the assembly.

#### *The Parties Move In*

Sometime in early December 2006, the Northern Ireland Office ("NIO") - with no working assembly much less an executive - moved aides to Dr Paisley and Martin McGuinness into the rooms in Parliament Buildings, formerly occupied by David Trimble and Mark Durkan as first minister and deputy first minister respectively.

Later still, their staffs were moved to rooms in Stormont Castle, from where the Secretary of State ran Northern Ireland.

#### *Sinn Féin and Policing*

In mid-January 2007, Sinn Féin published a resolution to be put to a special ard fheis or conference. It referred to civic policing, to be distinguished from MI5 security work. The resolution referred to "support for the PSNI and the criminal justice system". Few commitments were given:

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(1) to join the Policing Board; and (2) to take the pledge of office for ministers. The resolution concluded: “the ardhomhairle [or executive] is mandated to implement this motion only when the powersharing institutions are established and when the ardhomhairle is satisfied that the policing and justice powers will be transferred.”

On Friday and Saturday, January 26 and 27, 2007 a convention of the IRA was held in Dublin. The following day, Sinn Féin - including considerable numbers of IRA members - held its ard fheis. The party formally came out in support of policing, but the terms of the commitment were as above.

##### *Assembly Elections*

These were held on March 7, 2007. The extremes prevailed further over the centre parties. The DUP came back with 36 seats and Sinn Féin with 28: that is, 64 of the 108 members. The formerly dominant Ulster Unionist Party and Social Democratic and Labour Party had respectively 18 and 16 seats. There were seven Alliance members and three independents.

##### *Devolution or Not?*

Day was intended to be Monday, March 26, 2007. The weekend before, the DUP and Sinn Féin did a deal. This was symbolized by the Paisley/Adams photograph, in the members’ dining room at Stormont. There would be no meeting of the assembly that day. However, the DUP would share power with Sinn Féin. It would go live on Tuesday, May 8, 2007.

##### *The Government’s Response*

The government had threatened devolution or dissolution (the DUP claiming that the Secretary of State had used this phrase 56 times in public). On Sunday, March 25, 2007, the Secretary of State prepared his exit route: if the parties could do it, then the UK and Irish governments would help.

The Secretary of State denied that legislative amendment was possible. Suddenly, on Tuesday, March 27, 2007 the Northern Ireland (St Andrews Agreement) (No.2) Bill (“the Bill”) was presented to parliament. It was enacted between 15.51 and 21.11, just over five hours.

However, the 2006 Act had generated the following action by the Secretary of State: a restoration order on March 26, 2007, restoring the assembly on that day; but for this Act, he would have had to have revoked that order, because no executive was formed, on March 27, 2007.

#### COMMENCEMENT

There is no commencement provision. The Act, therefore, became law at royal assent on March 27, 2007.

#### ABBREVIATIONS

“the 2006 Act”:	Northern Ireland (St Andrews Agreement) Act 2006 (c.53)
“the Act”:	Northern Ireland (St Andrews Agreement) Act 2007 (c.4)
“the Bill”:	Northern Ireland (St Andrews Agreement) (No.2) Bill
“IRA”:	Irish Republican Army
“NIO”:	Northern Ireland Office
“PSNI”:	Police Service of Northern Ireland

### **1. Modification of the Northern Ireland (St Andrews Agreement) Act 2006**

- (1) The Northern Ireland (St Andrews Agreement) Act 2006 (c. 53) shall have effect, and shall be deemed always to have had effect, as if-
  - (a) each reference in the Act to 25 March 2007 were a reference to 7 May 2007,
  - (b) each reference in the Act to 26 March 2007 were a reference to 8 May 2007,

- (c) the reference in the Act to 27 March 2007 were a reference to 9 May 2007, and
  - (d) each reference in the Act to 28 March 2007 were a reference to 10 May 2007.
- (2) Accordingly, in particular,-
- (a) the order made by the Secretary of State on 25 March 2007 by virtue of section 2(2) of the Act shall be deemed not to have been made (and the Northern Ireland Act 2000 (Suspension of Devolved Government) Order 2002 (S.I. 2002/2574) shall be deemed not to have been revoked),
  - (b) Part 2 (including Schedules 5 to 7) of the Act and Schedule 2 to the Act (and the amendments and repeals made by those provisions) shall be deemed not to have come into force on 26 March 2007,
  - (c) section 1(1)(b) of the Act (purpose of the Transitional Assembly) shall have effect subject to the modifications in subsection (1) above,
  - (d) any order made by the Secretary of State on 27 March 2007 by virtue of section 2(3) of the Act shall be deemed not to have been made, and
  - (e) Schedule 3 to the Act (and the amendments and repeals made by it) shall be deemed not to come into force (or not to have come into force) on 28 March 2007 (and section 21 of the Act, and the amendments made by it, shall have effect accordingly).

#### GENERAL NOTE

This section does not technically amend the 2006 Act. It comprises a set of deeming provisions. This is clear from the long title: “An Act to modify the effect of the [2006 Act].”

#### *Subsection (1)*

This simply changes the four dates of March 25, 26, 27 and 28, 2007 to May 7, 8, 9 and 10, 2007.

#### *Subsection (2)*

The order of March 25, 2007 was a restoration order. This appears never to have been published. Under s.2(2) of the 2006 Act, the restoration order had to provide for: s.1 of the Northern Ireland Act 2000 (c.1) (the suspension act) ceasing to have effect on March 26, 2007 (through the order next mentioned); and for Sch.2 of the 2006 Act (restoration of devolved government) coming into force. The reference to the 2002 order in para.(a) is to the order which last suspended devolution. Paragraph (b) refers to amendments to the Northern Ireland Act 1998 (c.47) and to the schedule restoring devolved government on March 26, 2007. Paragraph (c) extends the existence of the transitional assembly. And para.(d) refers to s.2(3) of the 2006 Act, which provided for an order on March 27, 2007 if ministerial positions were not filled. Though it was never stated, the Secretary of State did not make such an order - because this Act received the Royal Assent before midnight on March 27, 2007. Schedule 3 of the 2006 Act is non-compliance with the St Andrews Agreement timetable. The reference to s.21 is to the proposed abolition of the 11 plus examination, and to further delay to accord with the shift from March 26, 2007 to May 8, 2007.

The Explanatory Notes on the Bill (Bill 84-EN) indicate that there were no extensions regarding a ministerial code and assembly standing orders. Paragraphs 4 and 5 of Sch.1 of the 2006 Act provided for these to be agreed before March 24, 2007. The ministerial code was agreed; the standing orders were not. Standing orders were imposed by the Secretary of State on March 25, 2007.

**4**            *Northern Ireland (St Andrews Agreement) Act 2007*

**2. Short title**

This Act may be cited as the Northern Ireland (St Andrews Agreement) Act 2007.

# INDEX

## References are to sections

<b>NORTHERN IRELAND ACT 2000 (SUSPENSION OF DEVOLVED GOVERNMENT) ORDER 2002 (SI 2002/2574),</b> deemed not to have been revoked, 1	<b>NORTHERN IRELAND (ST ANDREWS AGREEMENT) ACT 2006,</b> modification of, 1
	<b>SHORT TITLE, 2</b>

