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NORTHERN IRELAND ORDERS IN COUNCIL 1995-1997: PAPER BY HMG

Introduction

1. Following a brief discussion of law-making powers for a Northern Ireland Assembly at the Strand I meeting on Monday, 2 February, the Government undertook to provide a list of Northern Ireland Orders in Council over the past 3 years to illustrate the potential for a local administration to set its own policy approach in a range of areas currently covered by Northern Ireland Departments.
2. This paper fulfils that commitment.

Types of Orders in Council

3. By way of background, parties will recall that currently the 3 main categories of legislation for Northern Ireland can be summarised as follows:
  - (a) excepted matters - those matters which it would not be appropriate to devolve (for example, international relations and defence);
  - (b) reserved matters - those matters for which responsibility might at some point in the future be devolved to a Northern Ireland administration (for example, public order and the criminal law);
  - (c) transferred matters - those matters which fall into neither of the above 2 categories and, being virtually all the matters for which Northern Ireland Departments are currently responsible, could be legislated for by a local administration.
3. In the absence of a devolved administration, the Government legislates for the third category by way of an Order in Council under the Northern Ireland Act 1974. This constitutes the bulk of legislation for Northern Ireland.

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### Parliamentary Procedure

4. The parliamentary procedure for Orders in Council covering the functions of Northern Ireland Departments can be divided into 3 main types:

(a) **Affirmative Resolution**

A Proposal for a draft Order is first issued for consultation to the Northern Ireland political parties and various interested bodies. At the end of an agreed consultation period the Proposal for the draft Order is laid in Parliament (Commons and Lords) and debated.

(b) **Affirmative Resolution (Shortened)**

This is a fast-track procedure with a debate in Parliament but no consultation period. It is used for routine financial Orders where there is no scope for public discussion and, very occasionally, when an Order is deemed to be of pressing importance.

(c) **Negative Resolution**

The negative resolution procedure can only be used to replicate GB Bills. There is no consultation period and no debate unless "prayed against" in Parliament within a specified period (usually 40 sitting days) after being made.

### Scope for Policy Variation

5. The attached Appendices provide broad details of Northern Ireland Orders-In-Council listed in the legislative programme from 1995 to 1997. They fall in to the following four broad categories:

- (a) those Orders which reflect particular local circumstances in Northern Ireland;

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- (b) those Orders which Ministers have decided should mirror or bring Northern Ireland closer into line with Government policy, although there is no legal or overriding policy imperative to do so;
  - (c) those Orders necessary to comply with EC Directives over which there is no local or national discretion possible but where separate Northern Ireland provision is required; and
  - (d) those Orders over which there is no local discretion (eg there is a UK-wide approach to social security) and Ministers are obliged to follow national policy.
6. In some cases an Order contains provisions which fall in to 2 or more of these categories. Where this is the case the Order has been located under the category which covers the majority of its provisions, although the accompanying text explains any divergence.
7. The Appendices illustrate scope for significant policy variation in a range of areas, at least in theory even if the practice has been somewhat different. In procedural terms, for example, some 35 out of an overall total of 51 Orders (which excludes Appropriation and Financial Provision Orders) were put out for full consultation in Northern Ireland, with a view to assessing and responding to local opinion where this was considered appropriate.
8. In terms of the categorisation in the Appendices, some 15 out of the overall total of 51 Orders (or at the very least some of the provisions of the Orders) introduced over the last three years give effect to a policy approach in Northern Ireland separate or distinct from the rest of the United Kingdom; and while a further 20 replicate GB legislation to varying degrees there could nevertheless have been room for local manoeuvre in either policy or administrative arrangements or both in the relevant areas under a local administration, depending in some instances on the flexibility of financial arrangements

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for the administration. A separate paper on finance is being tabled for participants' consideration.

9. There was little or no scope for manoeuvre in some 16 of the total, either because of the need to implement EC Directives (2 Orders) or because of an obligation to follow Government policy (14).

**Conclusion**

10. The Government hopes that participants will find this information helpful in further debate. We would be willing to bring forward a further more general paper on the scope for policy variation locally, if participants would find that helpful.

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