

IN CONFIDENCE

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FUNCTIONS OF THE NORTHERN IRELAND DEPARTMENTS AND THE NORTHERN IRELAND OFFICE - PAPER BY THE BRITISH GOVERNMENT

- 1 This paper responds to the request made at the meeting of Strand One on 19 January for an account of the functions of the six Northern Ireland Departments and of the Northern Ireland Office.

The constitutional categories

2. The division of functions reflects categories established under the Northern Ireland Constitution Act 1973:
 - (a) *excepted matters* were set out in Schedule 2. Most of them were ones that of their nature fall to the central authorities: the Crown, Parliament, defence and international relations, etc. They also included elections: special powers relating to terrorism; appointment of judges etc and taxes. The Assembly set up by the Act generally could not legislate about these at all, and the Northern Ireland Departments have no functions in the field. Some of them fall to the Northern Ireland Office, and others to other Whitehall Departments.
 - (b) *reserved matters* were originally set out in Schedule 3 to the Constitution Act. They include matters such as the administration of justice, police and public order, the criminal law, international trade, post, telecommunications, broadcasting etc. It was intended in 1973 that some of these might move to the transferred category later. Other matters have been assimilated to this category since, for example banks, building societies, aspects of pensions, human fertilisation and embryology, the National Lottery. The 1973 Assembly could legislate for these matters only with the Secretary of State's consent and subject to Parliamentary veto. Again, executive functions in the field fall either to the Northern Ireland Office or Whitehall Departments, not to the Northern Ireland Departments.
 - (c) *transferred matters* are all that are not excepted or reserved: they are not formally listed anywhere. They are largely in the economic and social fields, though a few were functions the old Ministry of Home Affairs, like licensing, betting and gaming or the fire service. The 1973 Assembly could legislate freely on these, and executive functions lie largely with the Northern Ireland Departments (a few fall to Whitehall Departments).
3. Under direct rule, legislation may be made by Order in Council in the reserved and transferred fields, and the Northern Ireland Departments discharge their functions subject to the direction and control of the Secretary of State, exercised through her junior Ministers.

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The functions of the Northern Ireland Departments

4. The main functions of the six Departments are set out in the Appendix. Often the bulk of the administrative work in these areas is discharged by public bodies outside the department concerned, or by agencies within its aegis.

Scope for local flexibility

5. The Government has been asked to indicate those functions of the Northern Ireland Departments where scope for local flexibility might be constrained, for example by EU obligations, a policy of parity with the rest of the United Kingdom or a requirement to follow national policy. The Appendix also summarises the position.

The Northern Ireland Office and other Whitehall Departments

6. The Northern Ireland Office's main functions are in the following areas. Again, some are discharged through agencies, and some by organisations operationally independent of the Northern Ireland Office:

- political development in Northern Ireland,
- elections;
- public order;
- police;
- prevention, detection and prosecution of crime;
- criminal law and procedure (in relation both to terrorist and ordinary crime);
- treatment of offenders, including prisons;
- compensation for victims of crime.

7. Other Whitehall Departments discharge functions in Northern Ireland. The Northern Ireland Court Service, which answers to the Lord Chancellor, for example deals with court administration. The Commissioners of Customs and Excise and the Inland Revenue operate here. The Department of Trade and Industry is in charge of regulation of various financial services. Some Departments' responsibilities - such as those of the Department of Media, Culture and Sports for broadcasting or HM Treasury for coinage - are of their nature UK-wide.

Further information

8. The Government would be very happy to provide further information, and/or arrange oral presentations on the work of Departments if participants would find this helpful.