



An Chartlann Náisiúnta National Archives

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1920 Act and major Constitutional developments
up to March 1972.

The main provisions governing Northern Ireland and its relations with Great Britain were:-

- (a) 1920 Government of Ireland Act and 1922 Irish Free State Constitution Act and Irish Free State (Consequential Provisions) Act 1922.
- (b) 1925 Treaty (Confirmation of Amending Agreement Act).
- (c) 1949 Ireland Act.
- (d) 1969 Downing Street Declaration.
- (e) 1970 Review Body on local Government in Northern Ireland (MacRory Report).
- (f) 1971 Stormont Green Paper on the Future Development of the Parliament and Government of Northern Ireland.
- (g) 1972 Northern Ireland Act (February).
- (h) 1972 Political Settlement - Resignation Speech of Northern Ireland Prime Minister.

The 1920 Act

Range of Powers (introduction)

Under this Act, powers were split into 3 categories:

- Excepted - matters within the exclusive competence of Westminster: these included the Crown, defence and the armed forces, foreign affairs, treason, communications (most aspects).

Reserved - the police forces which were to be transferred with 3 years, parliamentary electoral matters which were to be transferred after 3 years and

- matters which might be transferred to a future all Ireland Parliament: a range of tax powers, the post office, Supreme-Appeal Courts.

Transferred - matters which might be legislated on by the Northern Ireland Parliament, "laws for the peace order and good Government of Northern Ireland in respect of matters exclusively relating to the portion of Ireland within their jurisdiction, or some part thereof".

(a) Security

This has always been a problem area. The 1920 Act provided that management and control of the RIC and DMP (together with the appointment and removal of magistrates dealt with in RIC/DMP legislation) were reserved and would not be transferred for up to 3 years (or immediately on Irish union). All military and defence forces were excepted matters. In fact the police were transferred quickly to the N.I. Government, who established the 'B' specials as 'police' to stay within the terms of the 1920 Act.

The N.I. Parliament operated with considerable freedom in the area of security and it was only in 1972, with the case of Regina (Hume and others) that the limitations stipulated by the 1920 Act became apparent - Stormont had no power to legislate for the British Army. Following this case, the Northern Ireland (temporary provisions) 1972 Act was passed legalising retrospectively the operations of the BA in Northern Ireland. Shortly afterwards, the British Government decided to resume statutory responsibility for law and order matters and the Stormont Government fell (March 1972).

(b) Financial

The taxation powers given under the 1920 Act were extremely limited, and excluded powers to levy any of the major taxes viz income and company tax or customs and excise. These were known confusingly as reserved taxes although it was envisaged only that customs and excise might pass to an all-Ireland Parliament. Northern Ireland was, however, entitled to a share of the revenue from the reserved taxes based on the amount attributable to Northern Ireland. A Joint Exchequer Board was established between Belfast and London to determine the attributable share. This share together with whatever it might raise from non-reserved taxes constituted the Northern Ireland revenue and the amounts were paid into a separate N.I. Exchequer, N.I. expenditure was to be determined by its Government and met from its revenues as described above, after meeting the N.I. share of the Imperial Contribution i.e., a contribution to imperial services such as defence etc. The 1920 Act provided for a review in 2 years of the Imperial Contribution and the first review, in 1923, showed that the basis of the system was breaking down, as Northern Ireland revenues were unable to sustain a continuation of the level of services existing prior to 1920. The principle of subsidisation began and the amounts of subsidies increased over the period 1923-1972 under an increasingly complex set of financial arrangements (see Chapter 29 of the Kilbrandon Report (Annex 1) for details).

(c) Other

The formal powers in other areas were extensive: the 1920 Act provided that London Ministries could have the Northern Ireland Department act for them on an agency basis even in relation to non-transferred powers. The Kilbrandon Report (1973) was very positive (Annex 1) on the Northern Ireland use of devolved structures in making government less remote (so too was the UK and Northern Ireland Ombudsman in 1971) and on the use of its powers to make provisions for special situations in Northern Ireland to correct mistakes made in previous

Westminster legislation or to take the initiative in other areas. It indicated in quantitative terms the extent to which legislation for Northern Ireland differed from that of Great Britain and this has often been used subsequently by commentators to show the usefulness of Stormont. However, the 1972 discussion paper on Northern Ireland (The Future of Northern Ireland) suggested that the differences between Britain and Northern Ireland related to social and regulatory fields and in particular law and order or to failing to make the changes made in Britain in relation to citizens' rights (Annex 3).

(d) Limitations on powers

The 1920 Act gave Stormont no exclusive powers. Section 75 stated

"Notwithstanding the establishment of the Parliament of Northern Ireland or anything contained in this Act, the supreme authority of the Parliament of the UK shall remain unaffected and undiminished over all persons, matters and things in Ireland and every part thereof".

Section 6 stated that

"(1) The Parliament of Northern Ireland shall (not) have the power to repeal or alter any provision of this Act (except as is specially provided by this Act) or of any Act passed by the Parliament of the United Kingdom after the appointed day and extending to the part of Ireland within (its) jurisdiction, although that provision deals with a matter with respect to which the parliament has power to make laws.

(2) Where any Act of the Parliament of Northern Ireland deals with any matter with respect to which that Parliament has power to make laws which is dealt with by any Act of the Parliament of the United Kingdom passed

after the appointed day and extending to the part of Ireland within its jurisdiction, the Act of Parliament of Northern Ireland shall be read subject to the Act of Parliament of the UK, so far as it is repugnant to that Act but no further, shall be void". [The appointed day was the day for bringing the Act into effect].

Northern Ireland required royal assent:-

12. "The Lord Lieutenant (later the Governor of Northern Ireland) shall give and withheld the assent of His Majesty to Bills passed by the Senate and House of Commons of Northern Ireland subject to the following limitations:-

(1) He shall comply with any instructions given by His Majesty in respect of any such Bill, and

(2) He shall, if so directed by His Majesty, reserve any such Bill.... for the signification of His Majesty's pleasure, and a Bill so reserved shall not have any force unless and until within 1 year from the day on which it was presented to the Governor for His Majesty's assent the Governor makes known that it has received His Majesty's assent".

Excepted and reserved matters are outlined in the introduction above.

Two further restrictions may be noted:

S.5(i) "In the exercise of their power to make laws under this Act, the Parliament of Northern Ireland shall (not) make a law so as either directly or indirectly to establish or endow any religion, or prohibition or restrict the free exercise thereof, or give a preference, privilege or disadvantage, or impose any disability or disadvantage, an account of religious belief...."

S.65(1) "It is hereby declared that existing enactments relative to unlawful oaths and unlawful assemblies in Ireland do not apply to the meetings or proceedings of the Grand Lodge of Free and Accepted Masons of Ireland..."

(2) The Parliament of Northern Ireland shall not have the power to abrogate or affect prejudicially any privilege or exemption of the Grand Lodge of Freemasons in Ireland..."

S.65(2) Was repealed by the 1973 Constitution Act.

The limitations were extensive in law but in practice were by and large not exercised by the British Government in the period 1922-1972. (One of the few occasions when such powers were used was in 1922 when Royal Assent to the changing of the local Government franchise from PR to the straight vote was delayed for 2 months.

B. Executive

The Act provided the framework within which the British type of Cabinet style Government with collective responsibility could develop. The first Government had 7 Ministers - the P.M. whose office co-ordinated the Northern Ireland Ministries and acted as a channel of communication to London, Finance, Home Affairs, Education, Labour, Agriculture and Commerce. The last Stormont Government there were 8 Ministers - P.M. (also in charge of Home Affairs with a Minister of State (J. Taylor)), Finance, Health and Social Services, Development, Education, Agriculture, Commerce, Community Relations, who together with the leaders of the Senate and Commons formed the Cabinet. The Unionist Party governed throughout the period and this, together with the generally poor quality of Parliamentary Representatives, put the Cabinet in a very strong position vis-a-vis the Northern Ireland Parliament.

C. Parliament and Electoral System

The Northern Ireland Parliament consisted of two Houses: a House of Commons comprising 52 members elected by P.R. (until 1929 when the straight vote was introduced) and a Senate comprising 26 members elected by P.R. and two (Lord Mayors of Belfast and Derry) sitting ex officio. Senators were elected for 8 years, one half retiring every 4th year. In the event of continuing disagreement between the two Houses, the Lord Lieutenant could call a joint sitting which would vote on the disputed call and amendments.

The boundaries of the Commons constituencies were changed by the Government in 1929 and remained unaltered throughout the life of the Northern Ireland Parliament.

There was a public accounts committee but no other committees to exert any influence on policy. In 1971 Stormont produced a green paper proposing the establishment of Parliamentary Functional Committees (see below).

Council of Ireland

To consist of:- ~~Res~~ident - nominated by Lord Lieutenant
- to cast a vote only in the event of a tie.

40 others 7 from Senate and 13 from
Commons of S. Ireland

7 from Senate and 13 from
Commons of N. Ireland.

elected by their Houses to hold office so long as they remained members of thier Hquses.

The N/S Parliaments could by passing identical Acts change the constitution powers, and election proceedings of the Council of Ireland.

The Council could make order in respect of matters which, if they applied to one part of Ireland only could be dealt with by its Parliament and matters normally treated by way of private bill in London.

Irish Parliament

This could be established by identical Acts agreed in by an absolute majority of members of each House of Commons in lieu of a Council of Ireland. It would have such powers as the Parliaments transferred to it, and also the reserved powers set out in the 1920 Act.

1922 (Irish Free State Constitution) Act and consequential Provisions Act

These made provision for the Treaty and deleted the redundant provisions of the 1920 Act as regards the Southern Parliament and those setting up an all-Ireland High Court of Appeal. The Treaty terms (scheduled to the 1922 Act) included the provision:-

"Until the expiration of one month from the passing of the Act of Parliament for the ratification of this instrument, the powers of the Parliament and the Government of the Irish Free State shall not be exercisable as respects Northern Ireland and the provisions of the 1920 Government of Ireland Act shall so far as they relate to Northern Ireland remain in full force and effect....

12. If before the expiration of the said month, an address is presented to His Majesty by both Houses of the Parliament of Northern Ireland to that effect, the Powers of the Parliament and Government of the Irish Free State shall no longer extend to Northern Ireland and the provisions of the Government of Ireland Act 1920 (including these relating to the Council of Ireland) shall so far as they relate to Northern Ireland continue to be of full force and effect...

Provided if an address is so presented, a commission consisting of 3 persons, one to be appointed by the Government of the Irish Free State, are to be appointed by the Government of Northern Ireland and one who shall be Chairman to be appointed by the British Government shall determine, in accordance with the wishes of the inhabitants so far as may be compatible with economic and geographic conditions the boundaries between Northern Ireland and the rest of Ireland and for the purposes of the Government of Northern Ireland Act 1920 and of this instrument, the boundary of Northern Ireland shall be such as may be determined by such Commission".

Boundary Commission Agreement

The Treaty Amending Agreement of 1925 confirmed the 1920 boundaries and the Council of Ireland provisions were revoked:

"1. The powers conferred by the provision to Article 12 of the said Articles of Agreement and the Commission therein mentioned are hereby revoked and the extent of Northern Ireland for the purposes of the Government of Northern Ireland Act 1920, and of the said Articles of Agreement shall be such as was fixed by that Act.

5. The powers in relation to Northern Ireland which by the Government of Ireland Act 1920 are made powers of the Council of Ireland shall be and are hereby transferred to and shall become powers of the Parliament and Government of Northern Ireland: and the Governments of the Irish Free State and of Northern Ireland shall meet together when necessary for the purposes of considering matters of common interest arising out of or connected with the exercise and administration of the said powers".

1949 Ireland Act

The formal pledge on Northern Ireland status was first made in 1948 by Attlee the Prime Minister. It echoed the arrangement which applied in the Treaty, giving Northern Ireland the right to opt out:-

"The view of the H.M. Government has always been that no change should be made in the constitutional status of Northern Ireland without Northern Ireland's free agreement."

The 1949 Act contained the statutory declaration

"It is hereby declared that Northern Ireland remains part of His Majesty's dominions of the United Kingdom and it is hereby affirmed that in no event will Northern Ireland or any part thereof cease to be part of His Majesty's dominions and of the United Kingdom without the consent of the Parliament of Northern Ireland".

The was repealed and replaced by the 1973 Constitution Act.

1969 Downing Street Declaration

- Reaffirmed Northern Ireland status and declared the affairs of N.I. to be a domestic issue.
- Announced the sending in of troops to Northern Ireland.
- Noted reaffirmation by N.I. Government to take account of U.K. Government's wishes in relation to status and rights of citizens
- Welcomed reforms being introduced.
- Reaffirmed entitlement to equality of treatment or freedom from discrimination.
- Confirmed determination to take steps to restore normality to Northern Ireland.

In November 1971, Prime Minister Heath put the pledge in somewhat different terms:-

"Many Catholics in Northern Ireland would like to see Northern Ireland unified with the South. That is understandable. It is legitimate that they should seek to further that aim by democratic and constitutional means. If at some future date the majority of the people in Northern Ireland want unification and express that desire in the appropriate constitutional manner, I do not believe any British Government would stand in the way. But that is not what the majority want today".

1971 Stormont Green Paper on Future Developments of Parliament and Government of Northern Ireland

Proposed

- Establishment of Parliamentary Functional Committees to consider policy, and review execution of policy and perhaps consider legislation: 2 of 4 major committees to be chaired by opposition and Committees to be representative of House.
- Increase in size of House of Commons from 52 to 72-80.
- Increase Senate to 40, and change in representation to include more local authorities' representatives.

Raised for Consideration

- P.R. for House of Commons elections.
- Inclusion of some persons at discretion of P.M. in cabinet in order to broaden its base.

1970 Review Body in Northern Ireland (MacRory)

Recommended:-

- the centralisation of many services, (planning, roads, water sewerage) and the transfer of some (education, health, social services) to area boards acting under Central Departments. (It had already been decided to centralise housing).

- Reducing the total number of local authorities from 73 to 26.
- Splitting local rates into a regional part, which would be uniform for all of Northern Ireland to cover services to be centralised, and a local part for the district councils.

Legislation enacted in 1972 introduced the structure recommended by MacRory. The 'MacRory gap' refers to the lack of democratic control resulting from the transfer of the services from local to central Government which was then abolished under direct rule.

1972 Northern Ireland Act

Emergency legislation passed to validate all the acts of the British Army carried out under Northern Ireland legislation, following a Court ruling that the Northern Ireland Parliament had no power under the 1920 Act to make law in respect of the British Army.

1972 Political Settlement

B. Faulkner's reasons for resigning as given to Stormont - loss of statutory responsibility for law and order.

Etain Doyle.

October 1986.

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