House of Commons

Northern Ireland Affairs Committee

Work of the Committee in 2003: Government's Response to the Committee's First Report of Session 2003-04

Second Special Report of Session 2003–04

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The Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

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The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/northern_ireland_affairs.cfm.

Committee staff

The current staff of the Committee are Dr John Patterson (Clerk), Hugh Farren (Attached Clerk), Dr Aileen O'Neill (Committee Specialist), Tony Catinella (Committee Assistant), Camilla Brace (Secretary).

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Second Special Report

The Committee published its First Report of Session 2003–2004 on 15 January 2004. The response from Rt Hon Paul Murphy MP, Secretary of State for Northern Ireland, was received in the form of a letter dated 12 March 2004, and is published as the appendix to this report.

Appendix

Thank you for copying to me your first report of the Session 2003/04 entitled "The Committee's Work in 2003". I am very appreciative of the Committee's work, and have enjoyed and learned from our encounters.

There are two points raised in this report on which I understand the Committee would like me to respond formally. The first concerns the operation of the 1998 and 2000 Northern Ireland Acts, the second the preparation of the Departmental Annual Report.

On the first issue, your report repeats the criticism made in your letter to me of 18 June 2003 in which you argued that the Government should still be legislating for reserved matters under section 85 of the Northern Ireland Act 1998 instead of under the Schedule to the 2000 Act. On this I am afraid that the Government's position remains the same as that set out in my reply to you of 3 July 2003. For ease of reference the key points are set out in the attached Annex.

I am anxious to do what I can to meet the committee's concerns in relation to consultation. We have of course accepted that there should generally be widespread consultation on proposals for draft Orders in Council before they are laid (the transitional programme of legislation immediately after the suspension of the Assembly was of course a special case, and not the template for the future). In general we would hope to permit twelve weeks for such consultation, as well as giving the Committee advance warning of forthcoming legislation through our six weekly "Core Tasks" returns.

On the second issue (the Committee's comments on the preparation of the Departmental Annual Report) our response to the various detailed points the Committee has made are also set out in the attached Annex. In summary, we accept the constructive criticisms from the Committee and have put in train procedures to improve the process. Careful proof-reading will be a priority for the office in the production of the 2004 Departmental Report. Any further suggestions about ways in which we could make the report more helpful to the Committee, and to other readers, would be welcome.

I trust that you and the Committee find this response useful, and look forward to our working together in the next year: though I would be very happy to see the range of my responsibilities much reduced through resumed devolution, as I am sure would the Committee.

Annex 1

OPERATION OF THE 1998 AND 2000 NI ACTS

Paragraph 20 of the NIAC Report

It remains wrong in principle that Parliament should lose its statutory rights of consultation over matters it has for the time being reserved for itself, simply because of a technical flaw in the NI Act 2000 … If the flaw in the 2000 Act indeed makes the procedure under s.85 of the 1998 Act inoperable during suspension … the error must be corrected without delay.

Whilst it is true that section 85 of the 1998 Act gives power to legislate for Northern Ireland on a limited range of reserved matters (including criminal justice), the Government considers that section 85 is intended for use in the situation where the Assembly is up and running.

This we believe is clear from the structure of section 85 itself:

- document containing a draft of the proposed order must be referred to the Assembly for consideration (s 85(4)(b));
- the Assembly may report to the Secretary of State on the proposals (s 85(5));
- A copy of that report must be laid with the draft Order when it is laid at Westminster.

Although section 85 could probably be made to work during suspension (by disapplying those subsections which refer to the Assembly), the Government takes the view that it would simply not be appropriate to use it in this way when an alternative is available in the form of the 2000 Act.

When the Assembly is suspended, as at present, the Northern Ireland Act 2000 gives power to legislate for Northern Ireland by Order in Council, on any matter which would not be outside the Assembly's legislative competence. Orders in Council under the 2000 Act may therefore cover the entire range of transferred matters (e.g. housing, planning) but also the full range of reserved matters, such as criminal justice, since the Assembly may legislate on those with consent.

The Government considers that Parliament intended the power conferred by the 2000 Act to provide a comprehensive basis for legislating in the transferred and reserved field for Northern Ireland during suspension. We therefore think it more appropriate to bring forward orders under the 2000 Act.

The Committee may wish to note that the provision in the 2000 Act, under which orders may be made, mirrors that in the Schedule to the Northern Ireland Act 1974, under which legislation was made for Northern Ireland by Order in Council throughout the period of direct rule which lasted from 1974 until 1999.

Annex 2

Paragraph 23 of the NIAC Report

The main points made in paragraph 23 of the Northern Ireland Affairs Committee's Report on the Departmental Report and the Government's responses to them are as follows:

a) On reviewing the 2003 Report, NIAC found errors in the financial tables which on occasion made them extremely difficult for a lay person to understand.

The main difficulty occurred in Table 2.1 - Breakdown of the Northern Ireland Office Expenditure by Directorate and Agency. The table's headings were misaligned during the final printing stage; this in turn made the tables difficult to interpret. The format and alignment of table within the 2004 Departmental Report will be correct.

b) Changes in the Department's targets under its Public Service Agreement from 2000 to 2002 were poorly explained, and presented in such a way that it was difficult either to identify the changes, or to determine the Department's progress in pursuit of its targets.

This criticism has been reflected upon, and we improved on this section for the Autumn Performance Report and will take this through to the 2004 Departmental Report.

c) There was considerable variation in the quality and quantity of the information provided by the NIO's offices, agencies and executive NDPBs for insertion in the Departmental Report.

Of necessity, the completion of a report of this nature covering the activities of a Department with the diversity of tasks undertaken by the NIO, is of a complex nature. We are trying to refine the process further by providing the NDPBs and Agencies with a template to standardise the format of the Report. To ensure consistence we have asked the core Directorates within the NIO to use a similar template.

d) Presentation of the Report was marred by a lack of careful proofreading.

Ensuring that contributions are presented in a consistent format is designed to improve the ease of proof reading and final quality of the 2004 Departmental Report.