

FROM: DAVID FERGUSON
1 APRIL 1999

cc Mr McCusker
Mrs Devlin
Mr Sweeney

Mr Semple

JUNIOR MINISTERS

1. You asked the other day for a paper on Junior Ministers, following a discussion with David Lavery and Colm Larkin.
2. I am very grateful to Linda Devlin (with Denis McCartney's assistance) for the attached note. I hope it meets your needs.

David Ferguson

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JUNIOR MINISTERS - LEGAL BASIS

Appointment

1. After devolution, the appointment of junior Ministers would require a determination under section 19 of the Northern Ireland Act 1998, by the First and deputy First Ministers acting jointly and approved by resolution of the Assembly. Pre-devolution, an additional Standing Order would need to be determined by the Secretary of State.

2. A determination under section 19 would need to include:-
 - (a) the number of junior Ministers to be appointed;
 - (b) the procedures for appointment, i.e. any formulae or rules to be applied in making the appointment(s);
 - (c) the functions to be exercised by each junior Minister;
 - (d) the circumstances in which a junior Minister would cease to hold office, along with a procedure for filling vacancies, and
 - (e) provision that a junior Minister could not take up office until he/she had affirmed the pledge of office.

3. Standing Order 41 of the current version of the report of the Standing Orders Committee provides that, where a determination is made under section 19, the procedures specified therein shall be applied within 7 days of the date on which the determination takes effect, i.e. is approved by resolution of the Assembly.

Functions

4. The functions to be conferred on a junior Minister will be those specified in the determination made by the First and deputy First Ministers. These could be of a general, non-statutory nature, for example, providing assistance to a departmental Minister, overseeing the day to day running of a particular part of a department or, possibly, dealing with a cross-departmental portfolio. An example of the latter would be the appointment of a junior Minister for Europe, who would advise and assist all Ministers on European matters.

5. Section 52 of the Northern Ireland Act 1998 also makes specific reference to junior Ministers in the context of participation in the North South Ministerial Council. A junior Minister may be nominated by the First and deputy First Ministers to attend the NSMC and may be authorised by a departmental Minister to enter into agreements or arrangements in respect of matters for which the departmental Minister is responsible. As with departmental Ministers, a junior Minister participating in the NSMC must act in accordance with any decisions of the Assembly or the Executive Committee.

6. A determination under section 19 could provide for a junior Minister to exercise departmental functions, in relation to a department as a whole or to a particular part of a department. This would be possible because the Departments (NI) Order 1999 makes provision for the exercise of the functions of a department by the Minister, by a senior civil servant or, if specified in a determination, by a junior Minister. These functions

would include, for example, signing statutory rules, contracts, minutes of appointment, licences, certificates etc.

Constraints

7. In Northern Ireland, most statutory functions are vested in departments rather than Ministers. However, these functions can only be exercised under the direction and control of the departmental Minister. There is no provision for this power of direction and control to be delegated, either in whole or in part. Therefore a junior Minister could, if it was so determined, exercise departmental functions - but he/she would do so subject to the direction and control of the Minister, just as a senior civil servant would.

8. Section 22 of the Northern Ireland Act 1998 specifically prevents statutory functions being conferred on a junior Minister by name. This preserves the pre-eminence of the departmental Minister by ensuring that all statutory functions are vested either in a department or a departmental Minister. In practice, very few functions are specifically vested in Ministers, but section 22 means that these could not be delegated to a junior Minister.

Central Secretariat

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