2
UK Government and Northern Ireland

Introduction

This chapter describes the role, powers and operation of the UK Government over Northern Ireland matters, as it functions alongside devolved government. The analysis here focuses on the overall sovereignty and legislative power of the UK Government; the responsibility of the UK Government for reserved and excepted matters under the devolution settlement and the Northern Ireland Act 1998; and financial functions. The exercise of the powers of UK Government institutions is described, including the role of the Secretary of State and the Northern Ireland Office, and that of the UK Parliament and its committees in their legislative and scrutiny roles over non-devolved matters. The area of overlapping powers and areas of collaboration are noted, for example, in those covering welfare reform, vehicle licensing, human rights and the Parades Commission. The operation of a number of UK government departments in Northern Ireland, staffed by UK home civil servants, is also described. In addition, consideration is given to the mechanism for the introduction of Direct Rule by Westminster over Northern Ireland and, finally, the limited potential for the MLG 2 type of governance at this level is discussed.

The UK Government occupies the role of a sovereign government and determines the powers of the other key levels of governance, particularly the direct powers of devolved government. The division of powers between the UK Government and other levels of governance are normally determined in ordinary legislation passed by the UK Parliament; this is a consequence of the lack of a written constitution. The devolved Northern Ireland Government thus sits constitutionally in a subordinate position to the national UK Government. The powers that the UK
Government exercises over Northern Ireland operate on the exclusion principle, meaning that the powers of the UK Government are set out in legislation, known as excepted and reserved matters, and everything that is not listed is deemed to be devolved. For the purposes of clarification and analysis, it is useful to describe the UK Government’s powers under three headings:

- sovereign and constitutional powers;
- excepted and reserved powers;
- financial powers.

It is possible to identify some areas of overlap and confusion concerning these powers, which generate a need for cooperation and which, on occasions, can cause conflict.

**Sovereign and constitutional powers**

The UK Government has the responsibility for drawing up and enacting the legislation which makes provision for the government of Northern Ireland and for setting down the legislative basis for the institutions and operation of devolved governance. The Northern Ireland Act 1998 brought into existence a comprehensive system of devolution after the long period of suspension of the previous Stormont system of devolution. The UK Government was the vehicle for the implementation of the agreement at the multi-party talks between the political parties and the British and Irish Governments. The distribution of powers between the UK Government and a devolved government was not a new exercise, and the original allocation was made in the Government of Ireland Act 1920, using the principle of exclusion and setting out excepted and reserved matters. Any particular matter which was not listed has the status of a devolved or transferred matter. This principle was repeated in the provisions of the 1973 Constitution Act; thus the basis for the scope and operation of a specific level of UK governance over Northern Ireland has been recognised for a considerable length of time. The same constitutional legislation passed at Westminster sets out the functions of the Executive and Assembly.

Changes in the constitutional arrangements or changes in the list of excepted and reserved powers also require new primary or secondary legislation enacted at Westminster. Since the 1998 Act, other significant constitutional legislation has been passed by the UK Parliament, particularly the St Andrews Agreement Act 2006, which imposed new