

NORTHERN IRELAND BUDGET BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland Budget Bill as introduced in the House of Commons on 13 November 2017 (Bill 123).

- These Explanatory Notes have been prepared by the Northern Ireland Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	2
Policy background	2
Legal background	3
Territorial extent and application	3
Fast-track legislation	3
Commentary on provisions of Bill	6
Clause 1 – Issue of sums out of the Consolidated Fund for year ending 31 March 2018 and appropriation of that sum	6
Clause 2 – Power of the Department of Finance to borrow	6
Clause 3 – Use of resources (other than accruing resources) in the year ending 31 March 2018	6
Clause 4 – Limits on use of certain accruing resources in the year ending 31 March 2018	6
Clause 5 – Act to take effect as if it were a Budget Act of the Assembly etc	7
Clause 6 – Repeal of spent provisions	7
Schedule 1 – Sums granted for the year ending 31 March 2018	7
Schedule 2 – Amounts of resources authorised for use and amounts of accruing resources which may be used in year ending 31 March 2018	7
Commencement	7
Financial implications of the Bill	7
Parliamentary approval for financial costs or for charges imposed	8
Compatibility with the European Convention on Human Rights	8
Annex A - Territorial extent and application in the United Kingdom	9
Subject matter and legislative competence of devolved legislatures	9

Overview of the Bill

- 1 The Bill deals with matters arising from the lack of a 2017-18 Budget Act passed by the Northern Ireland Assembly, as a result of the continued absence of a Northern Ireland Executive following the Assembly election on 2 March 2017.
- 2 It authorises Northern Ireland departments and certain other bodies to incur expenditure and use resources for the financial year ending on 31 March 2018, as detailed in the corresponding Estimates volume and summarised in the Schedules to the Bill.

Policy background

- 3 Ordinarily the passage of a Budget Bill to authorise the issue of sums from the Consolidated Fund of Northern Ireland is a devolved matter, taken through the Northern Ireland Assembly following the agreement of a budget by the Northern Ireland Executive.
- 4 While the budget-setting process for the year ending 31 March 2018 was begun by the previous Executive, this process was not completed prior to the resignation of the then deputy First Minister and the election of 2 March. Since then, there has been no functioning Executive able to agree a budget. From 31 March 2017, therefore, public services in Northern Ireland have been funded using authorisations by the Permanent Secretary of the Northern Ireland Department of Finance under section 59 of the Northern Ireland Act 1998 and section 7 of the Government Resources and Accounts Act (Northern Ireland) 2001.
- 5 The point at which the authorisations available under these powers will be exhausted is approaching. Section 59 of the Northern Ireland Act 1998 and section 7 of the Government Resources and Accounts Act (Northern Ireland) 2001 do not enable the use of accruing resources, which means that the resources available to departments are in reality significantly less than 95% of the previous year's provision. In combination with the broader requirement to provide funding for public services, the legal limit of spending is now approaching.
- 6 This Bill would provide authority for departments and other public bodies in Northern Ireland to deliver public services for the remainder of the year ending 31 March 2018. This would supersede the authorisations provided up to this point under the powers described above.
- 7 This is a minimal step and has been delayed until now in order to provide space to enable an Executive to be formed and power-sharing government to return to Northern Ireland. It leaves in place the requirement for devolved spending decisions to be made by the Northern Ireland Executive or, in the absence of Ministers, the Northern Ireland Civil Service. In addition the allocations set out in the Bill are on the advice from the Head of the Northern Ireland Civil Service and the Northern Ireland Civil Service Board.
- 8 No new money would be voted as a result of the Bill. Instead it will appropriate sums already in the Consolidated Fund of Northern Ireland, consisting of monies already appropriated by Parliament through the Supply and Appropriation (Main Estimates) Act 2017, together with revenue generated locally within Northern Ireland under the Assembly's devolved powers. It therefore functions as though it were a Budget Act passed by the Assembly.

Legal background

- 9 In a situation where no Budget Act has been passed by the Northern Ireland Assembly, section 59 of the Northern Ireland Act 1998 provides for the authorised officer of the Northern Ireland Department of Finance to authorise the issue of sums out of the Consolidated Fund of Northern Ireland for that year, up to a maximum of 95 percent of the total amount appropriated by Act for the preceding year.
- 10 Similarly, section 7 of the Government Resources and Accounts Act (Northern Ireland) 2001 provides for the authorised officer of the Northern Ireland Department of Finance to authorise the use of resources for that year up to a maximum of 95 percent of the total amount appropriated by Act for the preceding year. In both Acts, the “authorised officer” is the Permanent Secretary, or another officer nominated by the Permanent Secretary.
- 11 As no Budget Act has been passed by the Northern Ireland Assembly for the year ending 31 March 2018, the Permanent Secretary of the Northern Ireland Department of Finance has exercised his powers under these two Acts to authorise the issue of sums to, and the use of resources by, Northern Ireland departments and certain other bodies to allow public services to continue to be delivered in the short term.
- 12 In the continuing absence of a Northern Ireland Executive, and the consequent inability of the Northern Ireland Assembly to pass a Budget Act, this Bill would provide the required authorisations and appropriations. It would be deemed for those purposes to be an Act of the Assembly. To that end, instead of the usual Assembly process, an Estimates document is being laid alongside this Bill and this would be deemed to be equivalent to the Assembly supply process.
- 13 The Bill would provide authorisations and appropriations for departments and other public bodies in Northern Ireland and would leave spending decisions, within the overall totals voted (and the more detailed totals in the Estimates document), to these departments.

Territorial extent and application

- 14 The Bill extends across the United Kingdom but applies only to Northern Ireland.

Fast-track legislation

- 15 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report, *Fast-track Legislation: Constitutional Implications and Safeguards*, the House of Lords Select Committee on the Constitution recommended that the Government should provide more information as to why a piece of legislation should be fast-tracked.¹

¹ [House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I](#), para. 186

Why is Fast-tracking necessary?

- 16 It is necessary to fast-track this Bill to safeguard the continued delivery of public services and provide clarity for departments to safeguarding public finances and therefore it cannot be delayed further in the absence of a Northern Ireland Executive and a sitting Assembly.
- 17 If there is delay in authorising the issue of sums and use of resources for the full financial year ending 31 March 2018 there is a risk that government departments and other bodies in Northern Ireland will reach the limits of cash and resources which may be authorised by the Permanent Secretary of the Northern Ireland Department of Finance, and that services would cease to be delivered as a result.

What is the justification for Fast-tracking each element of the bill?

- 18 The provisions of this Bill are required to provide the necessary authorisations and appropriations to allow public services to continue to be delivered for the remainder of the financial year ending 31 March 2018. As described below, it would not have been appropriate for the UK Government to bring forward this Bill earlier as it was hoped that a restored Executive would take undertake the usual Budget process.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

- 19 The Government has sought to defer legislation for as long as possible to enable final decisions on the allocations contained to be made by a restored Executive. The need for this Bill arises from the lack of an agreement and the appointment of an Executive within the timescale required for a Budget Bill to be brought through the Northern Ireland Assembly. It is being taken forward at the latest possible point before the risk to public services could manifest. In the circumstances, therefore, it has not been possible to give Parliament more time to scrutinise this Bill, without risking the delivery of public services in Northern Ireland.

To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

- 20 The Bill is being introduced in the absence of any Northern Ireland Executive. The amounts being authorised and appropriated in this Bill are based on a budget position which has been put forward by the Head of the Northern Ireland Civil Service in conjunction with the Northern Ireland Civil Service Board.

Does the bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their inclusion is not appropriate?

- 21 The Bill does not contain a sunset clause. However, the Bill only applies to the financial year ending 31 March 2018.

Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?

22 As noted above, the Bill only makes provision for the issue of sums and the authorisation of the use of resources for the financial year ending 31 March 2018.

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all the issues in question?

23 Yes. In the absence of a Budget Act, the only existing legislation which allows for the issue of sums from the Consolidated Fund of Northern Ireland and for the authorisation of the use of resources are section 59 of the Northern Ireland Act 1998 and section 7 of the Government Resources and Accounts Act (Northern Ireland) 2001 respectively. As explained above, the limitation as to how much can be authorised and appropriated under these powers is limited and, once exhausted, would mean that delivery of public services would cease before the end of the financial year. New legislation is therefore required in order to allow public services to continue to be delivered in Northern Ireland for the remainder of the year up to and including 31 March 2018.

Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?

24 Due to the need to implement the Bill urgently, the Northern Ireland Affairs Committee has not scrutinised the Bill in draft.

Commentary on provisions of Bill

Clause 1 – Issue of sums out of the Consolidated Fund for year ending 31 March 2018 and appropriation of that sum

25 Clause 1 authorises the issue out of the Consolidated Fund of Northern Ireland the sum of £16,166,048,000 for the purposes set out in Schedule 1. This authorisation supersedes those amounts previously authorised by the Permanent Secretary of the Northern Ireland Department of Finance under section 59 of the Northern Ireland Act 1998. This is not new money, as it is an authorisation for issue from the Consolidated Fund of Northern Ireland as would normally be done by the Assembly. The sums referred to are those already appropriated by Parliament through the Supply and Appropriation (Main Estimates) Act 2017, together with revenue generated locally within Northern Ireland under the Assembly's devolved powers.

Clause 2 – Power of the Department of Finance to borrow

26 Clause 2 authorises the temporary borrowing by the Northern Ireland Department of Finance of approximately half the sum covered by Clause 1. This is normal safeguard against the possibility of a temporary deficiency arising in the Consolidated Fund of Northern Ireland and any such borrowing is to be repaid by 31 March 2018.

Clause 3 – Use of resources (other than accruing resources) in the year ending 31 March 2018

27 Clause 3 authorises the use of resources amounting to £18,007,637,000 in the year ending 31 March 2018 by the bodies listed in clause 3(2) for the purposes specified in column 1 of Schedule 2; the amount authorised is set out in column 2 of that Schedule. This authorisation supersedes those amounts previously authorised by the Permanent Secretary of the Northern Ireland Department of Finance under Section 7 of the Government Resources and Accounts Act (Northern Ireland) 2001. As with clause 1 above this an authorisation to use resources which would normally be provided by the Northern Ireland Assembly in relation to money already authorised by Parliament through the Supply and Appropriation (Main Estimates) Act 2017, together with revenue generated locally within Northern Ireland under the Assembly's devolved powers.

28 There is a distinction between the cash sum authorised for issue in clause 1, and the amount of resources authorised for use in clause 3. The cash sum in clause 1 includes cash used to finance capital investment, and also takes into account movement in working capital and payments based on provisions created in previous years. These do not constitute resource consumption. The resources authorised in clause 3 exclude those items, but include non-cash items, mainly the depreciation of assets and creation of new provisions.

Clause 4 – Limits on use of certain accruing resources in the year ending 31 March 2018

29 Clause 4 sets limits on the accruing resources, including both operating and non-operating accruing resources, which may be used for the purposes specified in column 1 of Schedule 2 in the year ending 31 March 2018. These limits are set out in column 3 of that Schedule.

Clause 5 – Act to take effect as if it were a Budget Act of the Assembly etc

30 Clause 5 provides for this Bill to have the same effect as if it were an Act of the Northern Ireland Assembly for the year ending 31 March 2018. This includes references in other legislation to the Northern Ireland Estimates which would normally form part of the Assembly's supply process, including the consideration of the estimates by the Assembly's committees and the approval of the estimates document by a vote in the Assembly. For those purposes an Estimates document laid before Parliament, which will accompany the introduction of the Bill, is deemed equivalent to those Assembly processes. Clause 5(3) would require the Northern Ireland Audit Office and the Northern Ireland Public Service Ombudsman to prepare their accounts in accordance with the Estimates laid before Parliament.

Clause 6 – Repeal of spent provisions

31 Clause 6 removes from the statute book two Budget Acts of the Northern Ireland Assembly, relating to 2013-2014 and 2014-2015, which are no longer operative.

Schedule 1 – Sums granted for the year ending 31 March 2018

32 Sets out the purpose and sums of money granted to Northern Ireland departments and other bodies under this Bill (under clause 1).

Schedule 2 – Amounts of resources authorised for use and amounts of accruing resources which may be used in year ending 31 March 2018

33 Sets out the amount of resources authorised for use by Departments and other bodies (see clause 3), and the limits to use of accruing resources (clause 4).

Commencement

34 The Bill will come into force on the day on which it is passed.

Financial implications of the Bill

35 This Bill will authorise the issue of the sum of £16,116,048,000 from the Consolidated Fund of Northern Ireland and the use of resources to the amount of £18,007,637,000 for the year ending 31 March 2018 by Northern Ireland departments and other public bodies.

36 As described above this is not new money, as it is an authorisation for issue from the Consolidated Fund of Northern Ireland and use of resources by departments and other public bodies in Northern Ireland that would normally be done by the Assembly. It is money already appropriated by Parliament through the Supply and Appropriation (Main Estimates) Act 2017, together with revenue generated locally within Northern Ireland under the Assembly's devolved powers.

Parliamentary approval for financial costs or for charges imposed

37 As described above, this Bill will authorise the issue of sums to and the use of resources by Northern Ireland departments and other public bodies. This is not new money, as it is an authorisation for issue from the Consolidated Fund of Northern Ireland and use of resources by departments and other public bodies in Northern Ireland that would normally be done by the Assembly and is money already appropriated by Parliament through the Supply and Appropriation (Main Estimates) Act 2017, together with revenue generated locally within Northern Ireland under the Assembly's devolved powers.

Compatibility with the European Convention on Human Rights

38 Section 19 of the Human Rights Act 1998 requires a minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with Convention rights (as defined by section 1 of that Act).

39 The Bill Minister has made the following statement:

"In my view, the provisions of the Northern Ireland Budget Bill 2017 are compatible with Convention rights."

Annex A - Territorial extent and application in the United Kingdom

40 The Bill extends only to Northern Ireland.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	No	No	No	Yes	N/A	N/A	Yes	No
Clause 2	No	No	No	Yes	N/A	N/A	Yes	No
Clause 3	No	No	No	Yes	N/A	N/A	Yes	No
Clause 4	No	No	No	Yes	N/A	N/A	Yes	No
Clause 5	No	No	No	Yes	N/A	N/A	Yes	No
Clause 6	No	No	No	Yes	N/A	N/A	Yes	No
Clause 7	No	No	No	Yes	N/A	N/A	Yes	No
Clause 8	No	No	No	Yes	N/A	N/A	Yes	No
Schedule 1	No	No	No	Yes	N/A	N/A	Yes	No
Schedule 2	No	No	No	Yes	N/A	N/A	Yes	No

Subject matter and legislative competence of devolved legislatures

41 All of the content of this Bill affects matters within the devolved (transferred) competence of the Northern Ireland Assembly. The Sewel Convention sets out that the UK Government will not normally legislate in an area of devolved competence without the agreement of the devolved legislatures. In the absence of the Executive and a sitting Assembly, and the pressing need to ensure that public services can continue to be delivered within Northern Ireland, there is neither the time available nor the practical ability for the Assembly to provide a Legislative Consent Motion. We are clear, therefore, that the circumstances in which this Bill will be introduced would come within the terms of the Convention.

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Ordered by the House of Commons to be printed, 13 November 2017

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