

NORTHERN IRELAND (EXECUTIVE FORMATION) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland (Executive Formation) Bill as introduced in the House of Commons on 04 July 2019 (Bill 417).

- These Explanatory Notes have been prepared by the Northern Ireland Office in order to assist the reader of the Bill and 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.

Revised Explanatory Notes

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These Explanatory Notes relate to the Northern Ireland (Executive Formation) Bill as introduced in the House of Commons on 4 July 2019 (Bill 417)

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Overview of the Bill

1. The Bill:

- Amends section 1 of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 so as to extend the period provided in the Northern Ireland Act 1998 (“1998 Act”) for Northern Ireland Ministers to be appointed until 21 October 2019 following the Assembly election held on 2 March 2017.
- Confers a power on the Secretary of State exercisable by regulations to further extend the period for forming an Executive from 21 October 2019 until 13 January 2020. This may be exercised once only so as to extend the period until 13 January 2020.
- Requires the Secretary of State to publish and lay before Parliament a report, on or before 21 October 2019, on the progress that has been made towards forming an Executive (if one has not been formed).

Policy background

The Northern Ireland (Executive Formation and Exercise of Functions) Act 2018

2. The Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 (“2018 Act”) was passed on 1 November 2018 to facilitate an extended legal period for formation of an Executive in Northern Ireland. The Act:
 - Extended the period during which Northern Ireland Ministers could be appointed following the election of the Northern Ireland Assembly on 2 March 2017 (“the period for Executive formation”) so as to expire on 26 March 2019;¹ and
 - Clarified that Northern Ireland departments are not prevented from exercising their functions in the absence of NI Ministers during the period for Executive formation, so long as they are satisfied that it is in the public interest to do so and they have regard to guidance published by the Secretary of State.

Collapse of the Northern Ireland Executive

3. There has been no functioning Northern Ireland Executive since 9 January 2017, when the then deputy First Minister of Northern Ireland resigned, which also resulted in the First

¹ Subsequently extended until 25 August 2019.

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Minister ceasing to hold office. All other Northern Ireland Ministers ceased to hold office when an extraordinary Assembly election was held on 2 March 2017.

The period for the appointment of Ministers to form an Executive after that election was extended to 29 June 2017 by the Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017 (“MARRA”), but no Ministers were appointed.

Talks to restore the Northern Ireland Executive

4. In February 2018, Northern Ireland’s main political parties embarked on a new phase of talks aimed at restoring the Northern Ireland Executive and Assembly. However, after 2 months of talks, the DUP and Sinn Féin (who, as the two largest parties, are entitled to the First and deputy First Minister posts respectively) were unable to reach an agreement.
5. On 26 April 2019, the UK Government and the Irish Government announced a fresh round of political talks. The talks between the UK Government, the Irish Government and the five Northern Ireland political parties, in accordance with the three-stranded approach set out in the Belfast/Good Friday Agreement, commenced on 7 May.² Following extensive discussion and negotiation, as of 3 July 2019, the talks have not yet been able to reach conclusion. In light of the significant uncertainty ahead across the UK the Government believes that an extended window is needed.

Extension of Executive formation period

6. Section 16A of the 1998 Act provides for a 14 day period after the first meeting of the Assembly following an election in which Northern Ireland Ministers – including the First Minister and deputy First Minister – must be appointed. If they are not, then the Secretary of State is required to propose a date for another election under section 32(3). That period initially expired on 27 March 2017 but was extended by the MARRA so as to expire on 29 June 2017.
7. The 2018 Act extended the time under section 16A of the 1998 Act for Ministers to be appointed until 26 March 2019, conferring a power on the Secretary of State to extend that period by regulations on one occasion only for up to 5 months. On 20 March 2019 the Secretary

² The 2019 talks aimed at restoring the Northern Ireland Executive have consisted of five working groups each discussing key issues central to making progress. They cover: a programme for government; transparency, accountability and the operation of the Executive; reform of the Petition of Concern; rights, language and identity issues; and improving the sustainability, stability and operation of the Belfast/Good Friday Agreement institutions as a whole.

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of State exercised that power and the period for Executive formation was extended so as to expire on 25 August 2019.³

8. This Bill extends the period again so as to expire on 21 October 2019 and enables the Secretary of State to further extend that period until 13 January 2020 (by regulations subject to the made affirmative procedure). The made affirmative procedure will enable the Secretary of State to make the regulations and extend time without the prior approval of Parliament but requires the subsequent approval of Parliament, ensuring Parliamentary scrutiny of how and why she has exercised the power. Extending the period for forming an Executive means that if agreement is reached to form an Executive after 25 August 2019, Ministers can be appointed right away without the need for further legislation. This also has the effect that section 3 of the 2018 Act continues to apply and Northern Ireland departments may continue to exercise their functions in accordance with that section.⁴

Legal background

9. The relevant legal background is set out in the policy background to these notes.

Territorial extent and application

10. Clause 4 sets out the territorial extent of the Bill, that is the jurisdictions in which the Bill forms part of the law. The extent of an Act can be different from its application. Application is about where the Act produces a practical effect. The Bill would extend to England and Wales, Scotland and Northern Ireland, but it applies to Northern Ireland only.

See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

³ Northern Ireland (Extension of Period for Executive Formation) Regulations 2019 (SI 2019/616).

⁴ Which provides for the exercise of NI departmental functions in the absence of Ministers.

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Commentary on provisions of Bill

Section 1: Extension of period for forming an Executive

11. Clause 1 amends section 1(1) of the 2018 Act so as to extend the period for Executive formation. It enables Northern Ireland Ministers to be appointed without the need for further legislation at any point until 21 October 2019.

Section 2: Limited power to further extend period for Executive formation

12. Clause 2 substitutes a new section 2 in the 2018 Act. As substituted that section will confer a power on the Secretary of State to extend the period for forming an Executive by regulations until 13 January 2020. This means that if Ministers have not been appointed, but the Secretary of State is of the view that further time is needed to enable this, she may extend the period without further primary legislation.
13. The Secretary of State may only exercise the power on or before 21 October 2019 and if she does, may only extend the period so as to expire on 13 January 2020 (subsections (1) and (2) of new section 2).
14. The regulations will be subject to the made affirmative procedure in Parliament. That is to say, they may be made without the prior approval of Parliament. They must however be approved by Parliament within 28 days of having been made and if they are not will cease to have effect. The 28 days is calculated so as to exclude any days when Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days (subsections (5) and (8) of new section 2).
15. If the regulations are not approved within 28 days and cease to have effect on or before 21 October 2019 then the period for forming an Executive will be treated as ending on that date (subsection (6) of new section 2). If the regulations are not approved within 28 days and cease to have effect after 21 October, then the period for forming an Executive is treated as ending when they cease to have effect (subsection (7) of new section 2).

Section 3: Progress report

16. Clause 3 will require the Secretary of State to report on or before 21 October 2019 on the progress that has been made towards forming an Executive in Northern Ireland. She must publish that report and lay it before Parliament.

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Section 4: Extent, commencement and short title

17. These clauses are self-explanatory.

Commencement

18. The Act will come into force on the day on which it is passed.

Financial implications of the Bill

19. The Bill does not have financial implications.

Parliamentary approval for financial costs or for charges imposed

20. The Bill does not have financial implications.

Compatibility with the European Convention on Human Rights

21. We do not consider that the provisions of this Bill engage any rights under the European Convention on Human Rights.

22. 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).

23. The Right Hon. Karen Bradley, Secretary of State for Northern Ireland, has made the following statement:

"In my view, the provisions of the Northern Ireland (Executive Formation) Bill are compatible with Convention rights."

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Related documents

The following documents are relevant to Northern Ireland (Executive Formation) Bill:

- Guidance on decision-making for Northern Ireland Departments during the temporary period for Northern Ireland Executive formation:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/754029/Cm9725_Guidance_on_decision-making_for_NI_Dpts.pdf

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Annex A - Territorial extent and application in the United Kingdom

15. The Bill extends across the United Kingdom but applies 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?
Clause 1	No	No	No	Yes
Clause 2	No	No	No	Yes
Clause 3	No	No	No	Yes
Clause 4	No	No	No	Yes

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