

# NORTHERN IRELAND (EXECUTIVE FORMATION) BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

- 1 These Explanatory Notes relate to Lords Amendments to the Northern Ireland (Executive Formation) Bill (Bill 425) as brought from the House of Lords on 17 July 2019.
- 2 These Explanatory Notes have been prepared by the Northern Ireland Office in order to assist the reader of the Bill on the Lords Amendments, and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords Amendments themselves, refer to the Bill as first printed for the Lords (HL Bill 190).
- 4 These Explanatory Notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords Amendments.
- 5 Lords Amendment 1 was tabled by Lord Anderson of Ipswich and was opposed by the Government. The Amendment was added to the Bill after a vote.
- 6 Lords Amendment 2 was tabled by Lord Bruce of Bennachie and was agreed to by the Government.
- 7 Lords Amendment 3 was tabled by Lord Adonis and was agreed to by the Government.
- 8 Lords Amendment 4 was tabled by Lord Bishop of St Albans and was agreed to by the Government.
- 9 Lords Amendments 5, 6, 7, 8 and 9 were tabled by Lord Empey and agreed to by the Government.
- 10 Lords Amendment 10 was tabled by Lord Hayward. The Government allowed a free vote on this amendment which was added to the Bill after a vote.
- 11 Lords Amendment 11 and 14 were tabled by Baroness Barker which were agreed to by the Government.
- 12 Amendment 12 was tabled by Lord Hain and agreed to by the Government.
- 13 Lords Amendments 13, 17 and 18 were tabled by the Government.
- 14 In the following Commentary, an asterisk (\*) appears in the heading of any paragraph that deals with a non-Government amendment.

# Commentary on Lords Amendments

## Lords Amendments to Clause 3: Progress Reports

### \*Lords Amendment 1

15 Amendment 1 sets out the following additional requirements that the Secretary of State must make arrangements for when laying the report on progress (towards forming an Executive) in Parliament:

- to lay a copy of each progress report in both the House of Commons and the House of Lords, no later than the day on which the reports are published; and
- to table both a Commons and Lords motion to the effect that once both Houses have considered the reports, those motions must be debated within five calendar days of the reports being published.

### \*Lords Amendment 2

16 Amendment 2 (subsection (5)) would require the report on progress towards forming an Executive in Northern Ireland to also include a report on progress made towards preparing legislation to provide for transparency of political donations and loans from 1 January 2014. Legislation currently permits the disclosure of information about political donations and loans received by Northern Ireland political parties and regulated donees on or after 1 July 2017.

### \*Lords Amendment 3

17 Amendment 3 (subsection (6)) would require the report on progress towards forming an Executive in Northern Ireland to also include:

- a report on the improvement of higher education provision in Northern Ireland; and
- a report on the establishment of a university whose principal campus is based in Derry/Londonderry.

### \*Lords Amendment 4

18 Subsection (10) was included by amendment in the House of Commons. It requires the report on progress towards forming an Executive in Northern Ireland to also include a report on progress made in Northern Ireland on various matters relating to gambling and gaming. This amendment adds delivering regulatory alignment between Northern Ireland and the rest of the United Kingdom in relation to gambling to the list of matters that must be reported on.

### \*Lords Amendments 5-9

19 Amendments 5 to 8 would require the Secretary of State to publish reports on or before 21 October 2019, unless an Executive has already been formed, on the following matters:

- Progress made towards publishing a report on the progress on the establishment of a Renewable Heat Incentive Hardship Unit in the Department for the Economy;
- Progress on libel legislation in Northern Ireland and any plans to align Northern Ireland legislation with libel legislation in the rest of the United Kingdom;
- Progress of the implementation of the Protect Life 2 – Strategy for Suicide Prevention in Northern Ireland; and

- An assessment of how much demand there is for elective care services and how this is exceeding health service capacity for both new and existing patients across Northern Ireland, and detailing each of the current measures being taken to reduce health and social care waiting times, as well as those that are planned, and the impact of NHS waiting times on children.
- 20 Amendment 9 would require the Secretary of State to publish a report on or before 1 December 2019 on the future welfare mitigation support measures that will be in place after March 2020 (unless an Executive is formed on or before 1 December 2019).

## **Lords Amendments to Clause 8: Marriage of same-sex couples in Northern Ireland**

### **\*Lords Amendment 10**

- 21 Amendment 10 requires the legalisation of same sex marriage and opposite-sex civil partnerships in Northern Ireland, and sets out provisions to extend the eligibility criteria in relation to both same sex marriage and opposite sex civil partnerships.
- 22 Subsection (1) requires the Secretary of State to make regulations to change the law relating to marriage and civil partnership in Northern Ireland to provide that:
- marriage between same-sex couples is lawful; and
  - opposite-sex civil partnerships is lawful.
- 23 Subsection (3) enables regulations to make appropriate provision to ensure that same-sex marriage and opposite-sex civil partnership in Northern Ireland are accompanied by a comprehensive regime of rights, benefits and obligations which are equivalent to those available for opposite-sex marriage and same-sex civil partnerships.
- 24 These regulations must be in force no later than 13 January 2020 (subsection (2)).
- 25 Subsection (3) enables regulations to make appropriate provision to ensure that same-sex marriage and opposite-sex civil partnership in Northern Ireland are accompanied by a comprehensive regime of rights, benefits and obligations which are equivalent to those available for opposite-sex marriage and same-sex civil partnerships.
- 26 Subsection (4) provides in particular for the regulations under subsection (3) to deal with parenthood and parental responsibility, gender recognition, the financial consequences of marriage and civil partnership (such as pensions and social security), and for the recognition in Northern Ireland of marriages, civil partnerships and similar relationships formed in the rest of the UK and overseas.
- 27 Subsection (5) enables regulations to make provision for conversion from marriage to a civil partnership and vice-versa.
- 28 Subsection (6) is self-explanatory.
- 29 Subsection (7) enables regulations made under clause 8 to set fees and to confer discretion, for example on the Registrar General for Northern Ireland, who currently has power to determine the form and particulars of certain applications in connection with marriage. Subsection (7) also enables the regulations to sub-delegate regulation-making and fee-setting powers to ensure that, where appropriate the relevant Northern Ireland department can make administrative provision in regulations and set fees without the need for recourse to the Assembly each time.
- 30 By virtue of subsection (8) a reference to marriage or forming a civil partnership in Northern

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Ireland in clause 8 includes forces and consular marriages and civil partnerships that take place outside the UK.

## **Lords Amendment to Clause 9: International obligations in respect of CEDAW**

31 Clause 9 would require the Secretary of State to make regulations to give effect to the recommendations in the 2018 Committee on the Elimination of Discrimination against Women (CEDAW) Report.

### **\*Lords Amendment 11**

32 Amendment 11 would replace that clause with the following provisions:

33 Subsection (1) requires the Secretary of State to ensure that recommendations 85 and 86 of the 2018 CEDAW Report are implemented.

34 Subsection (2) would repeal sections 58 and 59 the Offences Against the Person Act 1861 (“OAPA”) (attempts to procure abortion) in Northern Ireland.

35 Subsection (3) would prevent any new investigations and criminal proceedings being commenced under those sections. Any existing proceedings must also be discontinued.

36 Subsection (4) requires the Secretary of State to make any other changes as may be required to give effect to the requirement in subsection (1) by regulations. Those regulations must, in particular, make provision for the purposes of regulating abortions in Northern Ireland and that must include the circumstances in which an abortion may take place (subsection (5)).

37 Subsection (6) requires regulations under subsection (4) to come into force by 13 January 2020. However this does not limit the re-exercise of power if needed.

38 Subsection (7) requires the Secretary of State to exercise the duties imposed on her by clause 9 expeditiously while recognising the importance of doing so for protecting the human rights of women in Northern Ireland.

39 Subsection (8) enables the Secretary of State to make provision by regulations that appear to be appropriate in view of the repeal of sections 58 and 59 OAPA and the prohibition and discontinuation of investigations and criminal proceedings for offences under those sections.

40 By virtue of subsection (9) regulations under clause 9 (whether under subsection (4) or (8)) may make any provision that could be made by an Act of the Assembly. This would mean, for example, that regulations could delegate functions to Northern Ireland Departments or amend other legislation (matters which would normally require a specific power).

## **New Clause Victims’ payments**

### **\*Lords Amendment 12**

41 Amendment 12 requires the Secretary of State to establish, by regulations, a scheme of payments for individuals injured in the Troubles. This is further to the commitment set out in paragraph 28 of the 2014 Stormont House Agreement to find a way to provide a “pension” for those most seriously injured in the Troubles.

42 Subsection (1) requires the Secretary of State to establish, by regulations, a scheme of payments in

respect of individuals injured in the Troubles. Under Subsection (2) the first such regulations must be made before the end of January 2020 and come into force before the end of May 2020 - in practice this means that the scheme should be operational by that later date.

- 43 Subsection (3) provides that regulations made under subsection 1 may include specific criteria for eligibility to receive such a payment, including:
- Nature or extent of injury (for example, setting a threshold for entry to the scheme).
  - How, when, or where the injury was sustained (for example, whether the injury was sustained through the individuals own fault, or what time period the scheme covers).
  - Nationality and residence.
  - Whether or not an individual has been convicted of an offence (for example, this could be linked to how the injury was sustained whether the applicant was convicted for an offence, having been convicted of, assisted in or actively and willingly facilitated the occurrence of or contributed to the incident from which the injury arose).
- 44 Subsection (4) allows the regulations to provide for costs incurred during the making of an application under the scheme, to be reimbursed.
- 45 Subsection (5) allows the regulations to make provisions: determining the size of payments (subsection (5)), for payments for periods before the Act was made (for instance back payments), for when payments would need to be reduced (for example where the applicant is already in receipt of similar payments) or repaid (for example in cases of fraud); and how the payments be treated by other legislative schemes, such as social security benefits.
- 46 Subsection (6) requires that the regulations must provide for backdated payments to be payable to individuals who are eligible for the scheme who make an application within a period specified in the scheme (which must be at least two years). The payments those individuals receive are required to reflect the amount that would have been payable to them had the scheme existed since December 2014 (when the Stormont House Agreement was agreed).
- 47 Subsection (7) enables the regulations to make many of the detailed provisions it is expected that the regulation would cover including administration of the scheme, its funding from the NI block grant, provisions to enable information sharing between public authorities (to build evidence bases for claims), standards of proof and evidence required, processes and procedures, opportunities to seek reviews of decisions and appeals, and support to be given to applicants such as information, advice and assistance.
- 48 Subsection (8) provides that the regulations can confer discretion on a person under subsection (8). This might, for instance, allow the scheme administrator to make discretionary decisions in special circumstances such as terminal illness or other special cases.
- 49 Subsection (9) specifies that the regulations may amend other primary legislation (including UK legislation, NI legislation, Scottish parliament legislation and National Assembly of Wales Acts and Measures), which are expected to be used to make consequential amendments to relevant legislation such as to the Freedom of Information Act 2000 or Northern Ireland social security legislation.
- 50 Subsection (10) requires the Secretary of State to have regard to advice from the Commissioner for Victims and Survivors for NI in making the first set of regulations.

## **New Clause Regulations: supplementary**

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## Lords Amendment 13

- 51 Amendment 13 specifies that the power to make regulations may be used to make different provision for different purposes. This is a standard provision.

## New Clause Regulations: procedure

### \*Lords Amendment 14

- 52 Amendment 14 consolidates the various provisions on regulation procedure. Regulations made in clause 9 (international obligations in respect of CEDAW) will now be subject to the made affirmative procedure, rather than the negative procedure, which requires that they must be approved by Parliament within the period of 28 days beginning with the date on which they are made. Regulations under clauses 8 and 10 (same sex marriage and opposite sex civil partnership for victims' payments) remain subject to the negative procedure).

## Clause 10: Extent, commencement and short title

### \*Lords Amendments 15 and 16

- 53 Amendment 15 provides for the territorial extent of the Bill. Clause 9 extends to Northern Ireland only, with the remainder of the Bill extending to England and Wales, Scotland and Northern Ireland.
- 54 Amendment 16 provides that all provisions of the Bill, with the exception of clauses 8, 9, New Clause victims' payments, New Clause Regulations: supplementary, and New Clause Regulations: procedure, would come into force on the day on which the Bill is passed with the other provisions coming into force on 22 October 2019, unless an Executive is formed before then, in which case they would not come into force at all.

## Lords Amendment 17

- 55 Amendment 17 is self-explanatory.

## In the Title

### Lords Amendment 18

- 56 Amendment 18 amends the long title to reflect the subject matter of the Bill as amended.

## Financial Effects of Lords Amendment

- 57 Further consideration is being given to the financial implications of the Bill as amended in the House of Lords. No financial resolutions are required in the House of Commons.

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