

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 9 February 2023.

- 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.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	2
Policy background	3
Executive formation	3
Legal background	4
Territorial extent and application	4
Fast-track legislation	4
Why is fast-tracking necessary?	4
What is the justification for fast-tracking each element of the bill?	4
What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?	4
To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?	5
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?	5
Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?	5
Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?	5
Commentary on provisions of Bill	5
Clauses 1 to 2: Executive formation	5
Commencement	6
Financial implications of the Bill	6
Parliamentary approval for financial costs or for charges imposed	6
Compatibility with the European Convention on Human Rights	6
Related documents	6
Annex A - Territorial extent and application in the United Kingdom	7

Overview of the Bill

- 1 This Bill seeks to retrospectively extend the period for Executive formation in Northern Ireland by 52 weeks from 19 January 2023 to 18 January 2024.
- 2 The Bill also includes a power for the Secretary of State to set a date for an Assembly election before the end of the Executive formation period.

Policy background

- 3 Northern Ireland Assembly elections were held on 5 May 2022, as five years had passed since the previous Assembly was elected. Prior to the election, there was no functioning Executive due to the resignation of the First Minister on 4 February 2022. The First Minister's resignation meant that the deputy First Minister also ceased to hold office and that there was no longer any functioning Executive Committee.
- 4 As a result of the election on 5 May, 90 Members of the Legislative Assembly were elected, forming a new Assembly. The Northern Ireland Act 1998 requires that the Assembly first meets within 8 days of a poll, and that meeting commences the period for filling Ministerial offices.
- 5 The Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022 implemented changes agreed within New Decade, New Approach (NDNA): the agreement that restored the devolved institutions in 2020. These changes include provision for a longer period of time in which to form an Executive, and now allows for an initial period of 6 weeks from the date that the Assembly first meets, followed by 3 successive periods of 6 weeks (i.e. 24 weeks in total), unless the Assembly resolves (with cross-community support) that the period should not be further extended. During this time, NI Ministers who were in post before the election are allowed to remain so in a caretaker capacity.
- 6 The period for filling Ministerial offices after the Assembly election in May initially came to an end on 28 October 2022. As those offices were not filled, the Secretary of State for Northern Ireland fell under a duty to propose a date for a further Assembly election as soon as practicable to take place within 12 weeks. NI Ministers in post before the election also lost office at this stage.
- 7 Parliament subsequently passed the Northern Ireland (Executive Formation etc) Act 2022 which retrospectively extended the period for Executive formation from when it ended on 27 October until 8 December 2022. It also provided a power for the Secretary of State to further extend that period until 19 January 2023 by SI. As the new deadline provided for by the Northern Ireland (Executive Formation etc) Act 2022 has now passed, without the Ministerial offices being filled, he is now under a legal duty to call a further Assembly election in Northern Ireland.

Executive formation

- 8 Following further consultation with the Northern Ireland political parties and the wider public, the Government has assessed that an immediate election would not support the restoration of the devolved institutions. The Bill therefore seeks to further extend the period for Executive formation to 18 January 2024. The Secretary of State will still have the power to call an Assembly election before that date.

Legal background

- 9 The relevant legal background is explained in the policy background section of these Notes.

Territorial extent and application

- 10 The Bill extends to England and Wales, Scotland and Northern Ireland, but only applies in Northern Ireland.
- 11 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Fast-track legislation

- 12 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards¹, 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-tracked².

Why is fast-tracking necessary?

- 13 Following consultation with the Northern Ireland political parties and the wider public after the end of the Executive formation period under the Northern Ireland (Executive Formation etc) Act 2022, the Government has assessed that an immediate election would not support the restoration of the devolved institutions. This Bill therefore includes urgent provisions that would provide a retrospective extension to the Executive formation period by 52 weeks to 18 January 2024.

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

- 14 The provisions extend the period for Executive formation from 19 January 2023 to 18 January 2024, and therefore require urgent passage. The Secretary of State is currently under a legal duty to propose a date for a further election as soon as practicable, which must be within 12 weeks of 20 January. Parliament is being asked to consider this Bill urgently in the context of these requirements.

¹ House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I

² House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I, para. 186

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

- 15 The Government has sought to introduce the Bill as soon as the parliamentary timetable allowed.

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

- 16 The Secretary of State for Northern Ireland has been in frequent contact with the Northern Ireland parties, encouraging the parties to elect an Assembly Speaker and form an Executive at the earliest opportunity following the May 2022 Assembly election, and following the passing of the Northern Ireland (Executive Formation etc) Act 2022. The Secretary of State has also engaged with the Opposition on his intended approach.

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?

- 17 The extended period for Executive formation provided for by this Bill is not renewable.

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

- 18 The Government does not believe that mechanisms for post-legislative scrutiny and review are necessary. The Bill provides for a defined extension to the Executive formation period, thereby delaying an election that the Government judges to be unwelcome at this time. It is tightly drafted and is in no way extendable without further primary legislation. The Secretary of State for Northern Ireland is held accountable for the Government's approach to governance in Northern Ireland through the usual mechanisms, for instance parliamentary questions, committee appearances and correspondence.

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

- 19 Under the Northern Ireland Act 1998, as amended by the Northern Ireland (Executive Formation etc) Act 2022, the period for forming an Executive ended after 19 January 2023. As such, new legislation is necessary to extend the Executive formation period.

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

- 20 Due to the need to implement the Bill urgently, the Northern Ireland Affairs Committee has not scrutinised the Bill in draft. However, the Secretary of State has written to the Chair of the Committee offering a briefing after introduction.

Commentary on provisions of Bill

Clauses 1 to 2: Executive formation

- 21 By making amendments to section 1 of the Northern Ireland (Executive Formation etc) Act 2022, these clauses amend the effect of section 16A of the Northern Ireland Act 1998 during the period following the 5 May 2022 elections. The legislation will extend the period for filling Ministerial offices which follows from the elections that took place on 5 May 2022 for a further 52 week period to apply retrospectively (so that it applies from 19 January 2023 until 18 January 2024). The legislation will also provide a discretionary power for the Secretary of State to propose a date for a poll at any time within the extended period for Executive formation.

Commencement

- 22 The Bill will come into force on the day on which this Act is passed.

Financial implications of the Bill

- 23 The Bill will not generate additional expenditure.

Parliamentary approval for financial costs or for charges imposed

- 24 The Bill does not entail any financial costs or charges, so neither a Money Resolution nor a Ways and Means Resolution are necessary.

Compatibility with the European Convention on Human Rights

- 25 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).
- 26 The Secretary of State, the Rt Hon Chris Heaton-Harris MP, has made the following statement:

These Explanatory notes relate to the Northern Ireland (Executive Formation) Bill, as introduced in the House of Commons, 9 February 2023

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

- 27 The Northern Ireland Office does not consider that the provisions of the Bill engage Convention rights.

Local elections

- 28 Separately, the Government has brought forward the Local Elections (Northern Ireland) Order 2023, the effect of which will be to push back local elections from 4 May 2023 to 18 May 2023. This is to avoid a clash with His Majesty’s Coronation.

Related documents

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

- [The New Decade, New Approach Deal](#)
- [The Northern Ireland Act 1998](#)
- [The Northern Ireland \(Executive Formation etc\) Act 2022](#)

Annex A - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
All provisions	Extends to E & W, but does not apply	Extends to E & W, but does not apply	No	Extends to Scotland but does not apply	No	Yes	No

NORTHERN IRELAND (EXECUTIVE FORMATION) BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Northern Ireland (Executive Formation) Bill which was introduced in the House of Commons on 9 February 2023

Ordered by the House of Commons to be printed, 9 February 2023

© Parliamentary copyright 2023

This publication may be reproduced under the terms of the Open Parliament Licence which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS