

NORTHERN IRELAND (INTERIM ARRANGEMENTS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland (Interim Arrangements) Bill as introduced in the House of Commons on 27 April 2023 (Bill 300).

- 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.

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Overview of the Bill

- 1 In summary, this Bill will:
 - a. provide for a continuation of existing powers allowing the senior officers of Northern Ireland departments to exercise the functions of those departments when in the public interest, notwithstanding the ongoing lack of Northern Ireland Ministers;
 - b. confer on the Secretary of State the power to commission advice or request information from Northern Ireland departments, for the purpose of developing options for raising more public revenue in Northern Ireland or otherwise improving the sustainability of public finances in Northern Ireland;
 - c. confer on the Secretary of State the power to direct Northern Ireland departments to carry out consultations, for the purpose of developing options for raising more public revenue in Northern Ireland or otherwise improving the sustainability of public finances in Northern Ireland; and
 - d. require certain accounts, reports and other financial documents that must be laid in the Northern Ireland Assembly to also be laid in Parliament when the Northern Ireland Assembly is not functioning.

Policy background

- 2 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.
- 3 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.
- 4 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 allowed 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, Northern Ireland Ministers who were in post before the election were allowed to remain so in a caretaker capacity.
- 5 The period for filling Ministerial offices after the Assembly election in May 2022 initially came

to an end on 27 October 2022, with Northern Ireland Ministers ceasing to hold office 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.

- 6 Parliament subsequently passed the Northern Ireland (Executive Formation etc) Act 2022 (NIEFA 2022), providing for powers that allow the senior officers of Northern Ireland departments to exercise the functions of those departments when in the public interest, notwithstanding the ongoing lack of Northern Ireland Ministers. NIEFA 2022 also retrospectively extended the period for Executive formation from when it ended on 27 October until 8 December 2022, and for the powers to be extended until 19 January 2023 by regulations. The Secretary of State exercised that power on 7 December, thereby extending the period for Executive formation until 19 January 2023. The period was further extended until 18 January 2024 by the Northern Ireland (Executive Formation and Organ and Tissue Donation) Act 2023.
- 7 To date, the UK Government has made limited interventions to ensure financial stability and respond to the governance situation in Northern Ireland including NIEFA 2022, legislating to set the level of regional rates for 2022-23, giving indicative budget allocations and providing a full Northern Ireland Budget for 2022-23, and enabling a reduction in pay for Members of the Northern Ireland Assembly. These have largely been direct legislative interventions, rather than transferring to UK Ministers powers normally exercised by Northern Ireland Ministers, with the exception of the power to issue guidance and to make specified public appointments under NIEFA 2022.
- 8 In the context of ongoing political instability in Northern Ireland, and the expiry of the senior official decision-making powers on 5 June 2023, further legislation is required to manage the governance gap in Northern Ireland.

Decision-making

- 9 In 2018, the case of *Buick*¹, which concerned the approval of planning permission for a major waste disposal incinerator by the Department for Infrastructure, the Court of Appeal upheld the High Court's judgment that powers exercisable by departments in the absence of Ministers are subject to limitations. In particular – and for the purposes of that appeal – it held that departments may not exercise functions in respect of matters that would normally be required to be referred to the Executive Committee of the Assembly because they are cross-cutting, significant or controversial. It also observed that Northern Ireland departments cannot take decisions that would normally, as a matter of convention or otherwise, go before a Northern Ireland Minister for approval.

¹ [2018] NICA 26

- 10 The conclusions of *Buick*² were considered again in the case of *JR80* which considered whether the Secretary of State for Northern Ireland was legally obliged to establish a scheme of redress for victims of historical institutional abuse as recommended by the independent inquiry during the then ongoing collapse of the devolved institutions. The Court of Appeal confirmed the court's findings in *Buick* as to the limitations on decisions that can be made by Northern Ireland departments in the absence of Ministers, subject to the effect of the primary legislation passed in response to that case.
- 11 The effect of *Buick* and *JR80* meant that legislation was required to clarify that departments could continue to exercise functions in the absence of Ministers where it is in the public interest to do so. This was considered necessary so as to ensure the continued delivery of public services in Northern Ireland and to provide clarity and certainty about decision making while efforts are made to restore the Executive. NIEFA 2022 therefore clarified that a senior officer of a Northern Ireland department is not prevented from exercising functions of the department, where it is in the public interest to do so, during the period for Executive formation or 6 months from the day on which NIEFA 2022 was passed. These existing senior officer decision-making provisions expire on 5 June 2023. This Bill will provide for the continuation of these arrangements during the current period where there is no Executive and will continue to require the Secretary of State to publish guidance about the exercise of departments' functions.

Advice, information and consultation

- 12 Northern Ireland departments operate under the direction and control of their Ministers, and in the absence of those Ministers, the Government considers it necessary to make provision for the Secretary of State to request advice and information on developing options for a sustainable approach to public finances, including revenue raising.
- 13 The Bill therefore provides that the Secretary of State may direct Northern Ireland departments to provide advice and information, and to carry out consultations, for the purpose of developing options for raising more public revenue in Northern Ireland or otherwise improving the sustainability of public finances in Northern Ireland. These powers will expire on the formation of a Northern Ireland Executive.
- 14 Consistent with the approach taken to other advice to Ministers, the Bill does not provide for a direction for the provision of advice or information given to a Northern Ireland Department by the Secretary of State to be published or for public notification to be given.

Accounts and reports

- 15 In periods where the Northern Ireland Assembly is not functioning, relevant Assembly Committees cannot conduct the normal scrutiny of accounts, reports, and other documents

² [2019] NICA 58

laid before the Assembly by Northern Ireland departments. This is despite those accounts continuing to be laid by Northern Ireland departments in accordance with their legal duties.

- 16 The Government considers that transparency and scrutiny is important to the good management of public money, and the operation of the system of accountability that governs that expenditure by public authorities. The Bill would therefore require the Secretary of State to lay the accounts of Northern Ireland departments before the House of Commons in periods where there is no functioning Assembly.
- 17 Similar provision has been made in law previously for periods in which the Northern Ireland institutions have been suspended, including under the Northern Ireland Act 2000. At present, there is no requirement for the House of Commons to be informed of the accounts and reports of Northern Ireland departments and for scrutiny to be conducted in accordance with the Standing Orders.
- 18 House of Commons Standing Order No. 148 provides for the House of Commons Public Accounts Committee to scrutinise accounts laid before Parliament as the Committee may think fit. It will be a matter for the Public Accounts Committee to consider whether they wish to do so in respect of Northern Ireland departments.
- 19 Under the terms of this provision, if the Northern Ireland Assembly is sitting, then reports and the accounts of Northern Ireland Departments will only be laid before the Assembly. If the Northern Ireland Assembly is not sitting, accounts, reports and other relevant documents may be laid in duplicate before the House of Commons and the Assembly.

Legal Background

- 20 The relevant legal background is explained in the Policy Background and Decision-making Powers sections of these Notes.

Territorial extent and application

- 21 This Bill extends to England and Wales, Scotland and Northern Ireland, but only applies in Northern Ireland. This Act affects matters within the devolved (transferred) competence of the Northern Ireland Assembly. The Sewel Convention sets out that the UK Parliament 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 functioning Assembly, it is not possible for the Assembly to provide a Legislative Consent Motion. The Government is satisfied that the circumstances of this Act come within the exception allowed by the Convention.
- 22 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Fast-track legislation

- 23 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards³, 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-tracked⁴.

Why is fast-tracking necessary?

- 24 The current governance arrangements under the Northern Ireland (Executive Formation etc) Act 2022 will expire on 5 June. Should an Executive not be formed before the current governance arrangements expire, this legislation is being taken forward to avoid any decision-making gap and to enable the necessary decisions to be made which could not otherwise be taken by civil servants.

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

- 25 The Bill is a relatively short Bill with 7 clauses. Given that the current governance arrangements expire on 5 June 2023, it is necessary to introduce this Bill to avoid the emergence of a governance gap. This is to continue to clarify the existing powers of NI senior officers to exercise departmental functions.
- 26 In the absence of an Executive, this Bill allows the Secretary of State for Northern Ireland to commission advice from Northern Ireland Departments, and direct them to consult on options to raise revenue and improve the sustainability of public finances in Northern Ireland.
- 27 In terms of the provisions regarding the laying of accounts and reporting, the Government is acutely aware that, in the absence of a functioning Assembly, an immediate means of appropriate scrutiny for how public money is being spent is required. In respect of the commissioning of advice and consultation powers, the intent of this provision is to ensure that unnecessary time to consider options for revenue raising and improving the sustainability of Northern Ireland's finances is not lost.

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

- 28 The Government has sought to introduce the Bill as soon as the parliamentary timetable allows. It has always been the Government's intention that locally elected politicians in Northern Ireland should be taking decisions; we have sought to allow as much time as possible for that to happen before introducing this Bill.

To what extent have interested parties and outside groups been given an

³ House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I

⁴ House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I, para. 186

opportunity to influence the policy proposal?

- 29 The Secretary of State for Northern Ireland has been in frequent contact with the Northern Ireland parties, encouraging the parties to form an Executive at the earliest opportunity following the conclusion of the Windsor Framework. 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?

- 30 All provisions in this Bill will expire on Executive formation, except the duty on the Secretary of State to lay certain Northern Ireland departments' accounts, reports and relevant documents that would be laid in the Assembly in Parliament. This provision will apply in periods in which the Assembly is not functioning, and is intended to enable more scrutiny of how public money is spent in the absence of an Assembly.

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

- 31 The Government does not believe that mechanisms for post-legislative scrutiny and review are necessary, given these are temporary powers and/or only occur in periods when there is no functioning Assembly. 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?

- 32 There has been no sitting Assembly in Northern Ireland since elections took place in May 2022. This Bill is therefore being introduced as an emergency measure to enable the proper governance of NI in the absence of NI Ministers and a sitting Assembly.
- 33 Executive functions in Northern Ireland are conferred on departments rather than NI Ministers (s.22 Northern Ireland Act 1998). However, under Article 4 of the Departments (Northern Ireland) Order 1999 they must "at all times" exercise their functions subject to the direction and control of the Minister in charge of the department. Following the decision in *Buick*, it is accepted that a.4 of the Order continues to apply even when Ministers are not in office, meaning that departments are limited to carrying on only 'business as usual' type functions and cannot make decisions which would require approval from an NI Minister or the Executive Committee of the Assembly.

- 34 This severely restricts the ability of departments to exercise their functions, to ensure continued delivery of public services in NI, and to address the difficult decisions required to ensure departments operate within budgetary constraints. It also creates great uncertainty around what day to day decisions can be made and exposes departments to a high risk of legal challenge if they exercise any functions in the absence of Ministers. As these current powers will expire on 5 June 2023, further legislation is required in order to prevent the development of a governance gap.

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

- 35 It has not been possible to engage with the Northern Ireland Affairs Committee in the time available before introduction. The Committee will be briefed before the Bill's Commons stages.

Commentary on provisions of Bill

Clause 1: Exercise of functions by Northern Ireland departments

- 36 This clause extends existing provisions in NIEFA 2022 which clarify the exercise of Northern Ireland departmental functions by senior officers. This provision will continue to apply during the current period where there is no Executive, until the NI Ministerial offices are next filled.
- 37 This ensures that the absence of Ministers does not prevent a senior officer of a Northern Ireland department from exercising a function of the department if she or he is satisfied that it is in the public interest to do so until an Executive is next formed. The Secretary of State remains under a requirement to publish guidance about the exercise of these departmental functions, including guidance as to the principles to be taken into account in deciding whether or not to exercise a function, and senior officers of departments are required to have regard to that guidance.

Clause 2: Power to direct departments to provide advice and information, and to carry out consultations

- 38 Clause 2 confers powers on the Secretary of State to direct Northern Ireland departments to provide advice and information, and/or to carry out consultations, for the purpose of developing options for raising more public revenue in Northern Ireland or otherwise improving the sustainability of public finances in Northern Ireland, during the current period in which there is no Executive.
- 39 A direction for advice or information under this clause may include provision about the manner or form in which such advice or information is to be provided, or the timing of doing so. Where a direction is given to provide information that is not within a Northern Ireland

department's possession, the provision requires the department to take reasonable steps to obtain the information for the purpose of complying with the direction.

- 40 A direction to carry out a consultation may include provision about who is to be consulted, how the consultation is to be carried out, the content of the consultation (including provision requiring the approval of the Secretary of State to whatever is consulted on), and the consultation timetable.
- 41 The power in Clause 2 may be exercised so as to require two or more Northern Ireland departments to provide joint advice or collate information.
- 42 Clause 2 provides that a direction under this section would lapse at the end of the current period in which there is no Executive, and provides that disclosures from Northern Ireland departments under must not contravene relevant data protection legislation.

Clause 3: Exception to assembly power to call for witnesses and documents

- 43 This clause disapplies the Assembly's power in s.44 of the Northern Ireland Act 1998 to require a person to provide evidence in respect of Ministers of the Crown or those in Crown employment (which includes Northern Ireland civil servants) in connection with the exercise of certain functions conferred under this Bill. Specifically, the exercise of functions in connection with the giving of a direction to a Northern Ireland department to provide advice or information or launch a consultation; or the exercise of a function in accordance with any such direction.

Clause 4: Accounts etc to be laid before House of Commons

- 44 Clause 4 requires that the Secretary of State be sent a copy of any minutes, accounts, reports, or other documents that would be laid before the Assembly under the terms of relevant provisions in law, during a period in which the Assembly is not functioning. The relevant provisions are contained within the Government Resources and Accounts Act (Northern Ireland) 2001 and the Financial Provisions (Northern Ireland) Order 1993.
- 45 Clause 4 also places the Secretary of State under a legal duty to lay before the House of Commons any documents received under the terms of this provision.

Commencement

- 46 This Bill will come into force on the day on which it is passed.

Financial implications of the Bill

- 47 The provisions of this Bill will not generate additional expenditure or raise additional revenue.

Parliamentary approval for financial costs or for charges imposed

- 48 The Bill does not entail any financial costs or charges, so neither a Money Resolution nor a Ways and Means Resolution will be needed in the House of Commons.

Compatibility with the European Convention on Human Rights

- 49 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).
- 50 The Secretary of State, the Rt Hon Chris Heaton-Harris MP, has made the following statement:
- “In my view, the provisions of the Northern Ireland (Interim Arrangements) Bill are compatible with Convention rights.”
- 51 The Northern Ireland Office does not consider that the provisions of the Bill engage Convention rights.

Environmental law for the purposes of the Environment Act 2021

- 52 The Secretary of State for Northern Ireland is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Related documents

- 53 The following documents are relevant to the Northern Ireland (Interim Arrangements) Bill:
- [Financial Provisions \(Northern Ireland\) Order 1993](#)
 - [The Northern Ireland Act 1998](#)
 - [Government Resources and Accounts Act \(Northern Ireland\) 2001](#)
 - [The Northern Ireland \(Executive Formation etc Act\) 2022](#)
 - [The Budget Act \(Northern Ireland\) 2022](#)
 - [Northern Ireland \(Executive Formation and Organ and Tissue Donation\) Act 2023](#)

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	No	No	No	No	No	Yes	No

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