

NORTHERN IRELAND (WELFARE REFORM) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland (Welfare Reform) Bill as brought from the House of Commons on 23 November 2015 (HL Bill 77).

- These Explanatory Notes have been produced 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. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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Overview of the Bill

- 1 This Bill deals with:
 - providing a power by Order in Council to:
 - Legislate for welfare reform in Northern Ireland.
 - Confer power on the Secretary of State or on a Northern Ireland department to make further provision by regulations or order.

Policy background

- 2 The Northern Ireland (Welfare Reform) Bill is a piece of enabling legislation to allow for the delivery of welfare reform in Northern Ireland. Welfare is a devolved matter for Northern Ireland. The Bill is intended to allow the delivery of the Government's welfare reforms in Northern Ireland, including those made in the Welfare Reform Act 2012 and those proposed in the Welfare Reform and Work Bill 2015, as well as the welfare-related flexibilities included in the Stormont House Agreement (SHA). The SHA was reached on 23 December 2014 following 11 weeks of talks between the UK Government, the five largest parties in the Northern Ireland Assembly, and the Irish Government on matters for which they have responsibility, in accordance with the three-stranded approach confirmed in the 1998 Belfast Agreement. Legislating at Westminster allows for the most rapid means to deliver welfare reform in Northern Ireland. The NI Assembly has passed a motion giving their consent to this Bill.
- 3 The SHA committed the Northern Ireland parties to passing a Welfare Reform Bill that would implement the Welfare Reform Act 2012 alongside a series of 'top-up' measures. However, when it was debated in the Assembly in May 2015, the Assembly Bill did not gain the necessary cross-community support and failed to pass. After recent cross-party talks, it was agreed on 17 November that the Government will legislate for welfare reform in Northern Ireland.
- 4 The Bill will implement measures in the SHA that are intended to help place Northern Ireland's finances on a more sustainable footing, and in so doing help ensure the continued viability of Northern Ireland's devolved administration. In enabling the Government to legislate for welfare reform in Northern Ireland, this legislation will play a crucial role in addressing the Northern Ireland Executive's current financial difficulties. The policy objective of the Bill is to implement the SHA by extending the Welfare Reform Act 2012 to Northern Ireland. There is a long standing 'parity' principle that the UK Government will only fund welfare in Northern Ireland up to the same levels as apply in Great Britain. Without welfare reform, welfare payments in Northern Ireland will continue to exceed those paid in Great Britain. The excess over parity levels is currently being deducted from the Northern Ireland block grant which is adding to the pressure on the budget of the devolved Executive. Following the agreement on 17 November, the UK Government is seeking to pass legislation to implement welfare reform in Northern Ireland with the Northern Ireland Assembly's consent.
- 5 This Bill seeks to take a power that would enable the Government to implement other welfare reforms, such as those contained in the Welfare Reform and Work Bill 2015. The Bill will also enable the implementation of the welfare flexibilities included in the Stormont House Agreement.
- 6 This Bill will be followed by an Order in Council which will be based on the Northern Ireland Assembly Welfare Reform Bill referred to above. The Order in Council will contain

regulation-making powers and measures to implement welfare reform in Northern Ireland. These are intended to include: the reforms made in Great Britain by the Welfare Reform Act 2012; various flexibilities as agreed between the Department for Work and Pensions and the NI Department for Social Development, and the amendments agreed by the parties during the passage of the Assembly's Bill; and provisions that allow for the Executive-funded additional measures to be introduced. A draft Order in Council has been published.

Legal background

- 7 Key existing legislation in this area is the Welfare Reform Act 2012.

Territorial extent and application

- 8 This Bill extends to England and Wales, Scotland and Northern Ireland.
- 9 The Sewel convention provides that Westminster will not normally legislate with regard to matters which are within the legislative competence of another legislature without the consent of that legislature. The Northern Ireland Assembly has passed a motion indicating consent for this Bill to be passed at Westminster. The Bill will only apply (have a practical effect) in Northern Ireland and no legislative consent motions are needed in relation to Scotland or Wales. The subject matter of the Bill is reserved in relation to Scotland and not devolved in relation to Wales.

Fast-track legislation

- 10 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report entitled *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

Why is Fast-tracking necessary?

- 11 Following cross-party talks in Northern Ireland, the parties have agreed that welfare reform legislation should be taken forward at Westminster, rather than the Assembly. It is essential that the Bill is Fast-tracked in order to facilitate the quickest possible implementation of welfare reform in Northern Ireland. In short, emergency legislation at Westminster as outlined in this Bill offers the fastest, most secure and effective means of implementing welfare reform in Northern Ireland.

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

- 12 All elements of the Bill require Fast-tracking to achieve the outcome above.

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

- 13 The Bill was published in draft shortly before introduction.

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

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

- 14 The Bill will deliver agreements on welfare reached between the Government and the NI parties over the course of talks lasting 11 weeks in 2014 and 10 weeks in 2015. The measures due to be implemented under the powers conferred in this Bill have been extensively debated in Parliament in the context of their application to Great Britain and voted on a number of times in that context. Extensive support has been expressed in Parliament for the Stormont House Agreement of which implementation of welfare reform was a key part.

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?

- 15 The Bill includes a provision which provides that no Order in Council about welfare in NI may be made after 31 December 2016.

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

- 16 The Bill will be followed by an Order in Council and further regulations implementing the welfare reform. These will be subject to Parliamentary scrutiny. The Bill itself is simply a paving provision and provides that any Order in Council cannot be made after 31 December 2016.

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

- 17 Yes. Because welfare is currently devolved to the NI Assembly, existing legislation is not sufficient to deal with the issues in question.

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

- 18 A draft of the Bill has been made available to the Work and Pensions Select Committee and the Northern Ireland Affairs Committee, though the emergency nature of the Bill means the Committee would be unable to report before introduction.

Commentary on provisions of Bill

Clause 1: Power to make provision in connection with social security, child support maintenance and arrangements for employment in Northern Ireland

- 19 Subsections (1) and (2) allow for provision about social security, child support maintenance and arrangements for employment in Northern Ireland to be made by the United Kingdom Government by Order in Council. Such an Order can also provide for further details to be set out in regulations or orders made by the Secretary of State or a Northern Ireland department. The provision does not prevent, for example, the Department for Social Development in Northern Ireland from making their own legislation on these matters in future provided that the Northern Ireland Assembly can pass such legislation.
- 20 Subsection (3)(a) to (d) will allow for an Order in Council made under this Bill, and any regulations or orders made under an Order in Council, to: amend or repeal an enactment; apply any enactment as drafted or with relevant modifications; allow a person to exercise a discretion when dealing with any matter; and create or amend criminal offences or impose or amend penalties for non-compliance.
- 21 Subsection (3)(e) enables an Order in Council or orders or regulations to make different provision for different cases or purposes. For example, this could be used in the implementation and delivery of welfare reform if, as in the rest of the United Kingdom, Universal Credit is rolled out gradually in Northern Ireland.
- 22 Subsection (3)(f) enables an Order in Council or orders or regulations to make incidental, supplementary, consequential, transitory or transitional provisions or savings. For example, the 'consequential' part of the power will allow for provision to be made on any matter which is necessary in consequence of changes or reforms implemented under the Bill. The 'savings' provisions can be used to limit the extent of a repeal and 'save' some provisions (i.e. keep them in force) in relation to certain cases/ classes/ jurisdiction.
- 23 Subsection (4) sets out the procedure for making the regulations or orders that are made under the powers contained in the Order in Council.
- 24 Subsection (5) provides that the Order in Council is subject to the affirmative resolution procedure.
- 25 Subsection (6) provides definitions.

Clause 2: Section 1: supplementary provision

- 26 Subsection (1) provides that Orders in Council made under section 1 are to be treated as an Act of the Assembly for the purposes of references in other enactments, except for the purposes of section 6 of the Northern Ireland Act 1998. "Enactments" are defined in subsection (3).

Clause 3: Extent, commencement, sunset and short title

- 27 This clause sets out the territorial extent of the provisions in the Bill, commencement on Royal Assent and the citation for the Bill. It also provides that no Order in Council made under this power can be made after 31 December 2016.

Commencement

28 Clauses 1 to 3 will come into force on Royal Assent.

Financial implications of the Bill

29 The Bill is expected to reduce pressures on the Northern Ireland block grant.

Compatibility with the European Convention on Human Rights

30 The Bill is compatible with the European Convention on Human Rights. The Bill itself provides only a paving power to legislate by Order in Council so does not directly engage any Convention rights. Explanation of the human rights implications of secondary or tertiary legislation made under the Bill will be explained at the time of introduction of that legislation. The Minister in charge of the Bill in the Lords, Lord Dunlop, has made a section 19 statement confirming compatibility with Convention rights.

Related documents

31 The following documents are relevant to the Bill and can be read at the stated locations:

- The Stormont House Agreement
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf
- The Stormont Agreement and Implementation Plan
<https://www.gov.uk/government/news/a-fresh-start-for-northern-ireland>

Annex A - Territorial extent and application

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 required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
Clause 1	No	No	No	Yes	No	Yes	Yes
Clause 2	No	No	No	Yes	No	Yes	Yes
Clause 3	No	No	No	Yes	No	Yes	Yes

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