

NORTHERN IRELAND (STORMONT AGREEMENT AND IMPLEMENTATION PLAN) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland (Stormont Agreement and Implementation Plan) Bill as brought from the House of Commons on 10 March 2016 (HL Bill 105).

- 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.

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These Explanatory Notes relate to the Northern Ireland (Stormont Agreement and Implementation Plan) Bill as brought from the House of Commons on 10 March 2016 (HL Bill 105)

Overview of the Bill

- 1 This Bill gives effect to a number of commitments contained in '*A Fresh Start: The Stormont Agreement and Implementation Plan*' ("the Fresh Start Agreement")¹. These include provisions aimed at ending continued paramilitary activity and measures to promote fiscal transparency.

Policy background

- 2 The Fresh Start Agreement was reached on 17 November 2015 after 10 weeks of cross party talks between the UK Government, the five largest parties of the Northern Ireland Assembly and the Government of Ireland on matters for which they have responsibility, in accordance with the three-stranded approach reflected in the 1998 Belfast Agreement. The Fresh Start Agreement followed a period of political instability in Northern Ireland. This largely stemmed from two disputes within the Northern Ireland Executive: an impasse on implementation of the Stormont House Agreement and the alleged involvement of members of the Provisional IRA in a murder. This had led to a breakdown in relations within the Executive leading to a real risk of the devolved institutions collapsing and a return to direct rule. The aim of the cross-party talks was to secure the implementation of the December 2014 Stormont House Agreement² and deal with the impact of continued paramilitary activity connected with Northern Ireland. The Fresh Start Agreement seeks to make progress towards fulfilling these objectives.
- 3 There are a number of aspects of the Fresh Start Agreement which require UK legislation, including those elements that are contained within this Bill. The Northern Ireland (Welfare Reform) Act 2015 gave effect to the commitments in the Agreement on the implementation of welfare reform.

Legal background

- 4 The Independent Reporting Commission will be established in an international treaty between the UK Government and Government of Ireland. Much of the legislation relating to the Commission, including provisions for the functions of the Commission and how it will be structured in order to deliver those functions, is therefore new. However, the following existing primary legislation is relevant to the Bill provisions:
 - Northern Ireland Act 1998
 - International Organisations Act 1968
- 5 The commentary on the Bill clauses and schedules explains any additional relevant legal background.

¹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf

² <https://www.gov.uk/government/publications/the-stormont-house-agreement>

Territorial extent and application

- 6 This Bill extends to England and Wales, Scotland and Northern Ireland.
- 7 However, the application of a Bill (which is about where a Bill produces a practical effect) can be narrower than its extent and all of the measures will primarily only be applicable in Northern Ireland.
- 8 The Bill covers matters which are devolved as well as matters that are reserved or excepted. In line with the convention that the UK Parliament will not normally legislate on a devolved matter without the consent of the devolved legislature, the Government is seeking a Legislative Consent Motion from the Northern Ireland Assembly in respect of the devolved and transferred matters.
- 9 In the case of the Independent Reporting Commission, which will be established in an international treaty between the UK Government and Government of Ireland, corresponding legislation will be needed in the Oireachtas to ensure it can operate in Ireland. The Government of Ireland has committed to taking this forward.

Fast-track legislation

- 10 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In its report on fast-track Legislation: Constitutional Implications and Safeguards,³ 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.⁴

Why is Fast-tracking necessary?

- 11 In the Government's view, Royal Assent and early commencement of provisions, is needed before the newly elected Northern Ireland Assembly is formed after the forthcoming elections (to take place on 5 May) to ensure that the measures relating to the pledge of office, the MLA undertaking, and extension of the time available for allocation of Ministerial appointments are in place in time for the Assembly's return. To achieve this, the Bill would require an expedited passage through Parliament, proceeding faster than the normal minimum timescales between stages.
- 12 In addition, the establishment of the Independent Reporting Commission was a key part of the section of the Fresh Start Agreement on tackling paramilitarism. By fast-tracking the Bill, the government aims to enable the Independent Reporting Commission to be established as soon as possible, to oversee implementation of the Executive's strategy to end paramilitarism (which is due for publication in June 2016). Fast-tracking is also aimed at ensuring that the draft budget clause is in force before the next budgetary cycle.

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

- 13 The Government believes that there will be sufficient time available for Parliamentary scrutiny.

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

The Bill contains 11 clauses and two schedules and has been subject to discussion as part of the cross-party talks that culminated in the Fresh Start Agreement in November. In relation to the Independent Reporting Commission, the Bill contains a regulation-making power to give full effect to the international agreement between the UK Government and the Government of Ireland which will establish the Independent Reporting Commission. These regulations will be subject to the affirmative resolution procedure. The treaty itself will also be available to Parliament before or at the same time as asking Parliament to approve any regulations to be made under this power and will itself be subject to Parliamentary scrutiny under the Constitutional Reform and Governance Act 2010.

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

- 14 The Bill seeks to deliver the measures in the Fresh Start Agreement which require UK legislation. The Agreement itself was the result of over 10 weeks of cross-party talks between the UK Government, the five largest parties of the Northern Ireland Assembly and the Government of Ireland on matters for which they have responsibility, in accordance with the three-stranded approach reflected in the 1998 Belfast Agreement.

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

- 15 Some of the provisions in the Bill will be followed by further regulations. These will be subject to Parliamentary scrutiny.

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

- 16 Yes. Various options were considered including whether the standing orders of the Northern Ireland Assembly could be used to establish the new undertaking for members of the Assembly. However, existing provisions under the Northern Ireland Act 1998 mean that new legislation is required to establish this undertaking.

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

- 17 Due to timing constraints, the Northern Ireland Affairs Committee have not been given the opportunity to scrutinise the draft Bill.

Commentary on provisions of Bill

Clause 1: The Commission

- 18 Clauses 1 to 5 seek to give effect to the treaty between the UK Government and the Government of Ireland which would establish the Independent Reporting Commission ("the Commission"). The overarching objective of the Commission (reflected in subsection (1) of clause 2) is to promote progress towards ending paramilitary activity connected with Northern Ireland. Its functions, as described in paragraph 5.1 of the [Fresh Start Agreement](#), are to:
- Report annually on progress towards ending continuing paramilitary activity connected with Northern Ireland (or on such further occasions as required);
 - Report on the implementation of the relevant measures of the three administrations [i.e. the UK Government, the Government of Ireland, and the Northern Ireland Executive]; and
 - Consult the UK Government and relevant law enforcement agencies and, in Northern Ireland, the Executive, the Police Service of Northern Ireland ("the PSNI"), statutory agencies, local councils, communities and civic society organisations.
- 19 Clause 1 enables the First Minister and deputy First Minister jointly to nominate two of the four Commissioners. The other two are to be nominated by the UK Government and Government of Ireland, respectively. Clause 1 also provides for the Commission to have the legal capacities of a body corporate and allows for the Secretary of State to provide appropriate resources for the Commission to carry out its functions.

Clause 2: Exercise of functions

- 20 Subsection (3) places a statutory duty on the Commission not to do anything in carrying out its functions which is might put at risk the national security of Ireland or the UK, the lives or safety of individuals, the prevention, investigation or detection of crime, or any legal proceedings, including proceedings which the Commission considers are likely to be brought in future. Similar statutory duties were placed on the Independent Monitoring Commission (the "IMC") which considered the activities of paramilitary groups and was established under the Northern Ireland (Monitoring Commission etc.) Act 2003. The duties placed on the IMC have been expanded in relation to the new Commission to ensure the prevention, investigation or detection of crime is not prejudiced. This has been included to cover cases where, for example, the work of the Police Service of Northern Ireland to prevent crime does not lead to a prosecution and therefore may not be covered by the Commission's duty to avoid having a prejudicial effect on legal proceedings.
- 21 Subsections (5) to (8) require the Secretary of State to provide and publish guidance for the Commission in relation to information, the disclosure of which might (a) prejudice the national security interests of the United Kingdom, or (b) put at risk the life or safety of any person. This is likely to include guidance about the appropriate handling and use of such information.

Clause 3: Legal privileges etc

- 22 Clause 3 provides for the Commission to have certain privileges and immunities.
- 23 Subsection (1) provides for the Commission to have immunity from suit and legal process. This means that it will not be subject to legal claims or legal process, including civil claims and judicial review.

- 24 Subsection (2) provides for the Commission's official archives and premises to be inviolable in the same way as inviolability is accorded to a diplomatic mission as set out in the Vienna Convention on Diplomatic Relations 1961. This means, for example, that the Commission's premises cannot be subject to search or requisition.
- 25 However, there may be instances where the Commission decides it is appropriate to waive these immunities in a particular case. For instance, if a staff member wanted to make a claim to an employment tribunal, the Commission could choose to waive its immunity from legal process to allow the staff member to pursue the claim. Subsections (1) and (2) therefore allow the Commission to waive these protections.
- 26 Subsection (3) enables the Secretary of State to make regulations to confer further privileges on the Commission, in addition to those conferred by subsections (1) and (2), provided that they are listed in Part 1 of Schedule 1 to the International Organisations Act 1968 ("the 1968 Act"). Subsection (3) also permits the Secretary of State to make regulations to confer on Commissioners, staff of the Commission (including relevant other persons such as agents of the Commission), and members of their families who form part of their household, the privileges and immunities set out in Parts 2, 3 and 5 of Schedule 1 to the 1968 Act with any modifications required. The Secretary of State can also make provision in the regulations for the waiver of these privileges and immunities. These regulations would be subject to the negative procedure.
- 27 Similar provision to that contained in subsection (3) was made in respect of the Independent Commission for the Location of Victims' Remains and the Independent Monitoring Commission (see section 2(1) of the Northern Ireland (Location of Victims Remains) Act 1999 and section 1(2) of the Northern Ireland (Monitoring Commission etc.) Act 2003 respectively).

Clause 4: Interpretation and supplementary provision

- 28 This clause sets out the key terminology used for clauses 1 to 5.
- 29 It also gives the Secretary of State a power to make regulations that will ensure that the treaty with the Government of Ireland on paramilitary activity is given full effect. This might include, for example, provision about accounts and audit and provision about decision making and quorum. Regulations under this clause would be subject to the affirmative procedure.

Clause 5: Conclusion of the Commission's work

- 30 Clause 5 provides the Secretary of State with powers to wind up the Commission. Before making any regulations to wind up the Commission, subsection (2) requires the Secretary of State to consult with the First Minister and deputy First Minister in Northern Ireland, the Minister of Justice and Equality in the Government of Ireland, (or with such other Minister in that Government as the Secretary of State considers appropriate), with the First Minister and deputy First Minister, and with any other person Secretary of State considers appropriate. These regulations may make provision relating to the destruction of information held by the Commission once it has ceased to operate. Regulations under this clause would be subject to the affirmative procedure.

Clause 6 and Schedule 1: Extension of period for appointment of Ministers

- 31 Currently, Northern Ireland Executive Ministerial positions must be allocated within seven calendar days following the first meeting of the Assembly after an election. Clause 6 will extend the time available to allocate Ministerial positions from seven calendar days to 14 calendar days after the Assembly first sits following an election. This would allow Northern Ireland parties more time to agree a Programme for Government prior to the allocation of Ministerial positions. The change puts into effect the provisions in paragraph 61 of the

December 2014 Stormont House Agreement and is aimed at promoting a more bipartisan approach to the Programme for Government.

- 32 Subsection 2 (that inserts Schedule 1) is a transitional provision. As a result of subsection (1), the First Minister and deputy First Minister and other Ministerial offices will be appointed within a period of 14 days beginning with the first meeting of the Assembly. However, following the reduction in the number of Northern Ireland departments under the Northern Ireland Departments Act 2016, it is possible that there will be a reduction in the number of Ministers to be appointed to the Executive. The transitional provision in Schedule 1 ensures that the 14 day period for appointment of Ministerial offices is not shortened to 7 days by virtue of a reduction in Ministerial offices which takes effect during that 14 day period.

Clause 7: Pledge of office by Ministers

- 33 Clause 7 amends the existing pledge of office, as set out in Schedule 4 to the Northern Ireland Act 1998, which all Ministers are required to affirm before taking up Ministerial office. Under this clause, all Northern Ireland Executive Ministers are required to make seven new commitments as part of the pledge, and therein, as conditions of taking Ministerial office. These commitments are self-explanatory and relate to the commitments set out in paragraph 2.6 of the 'A Fresh Start: the Stormont Agreement and Implementation Plan' on ending paramilitarism.

Clause 8 and Schedule 2: Undertaking by Members of the Legislative Assembly

- 34 Clause 8(1) inserts new section 40A into the Northern Ireland Act 1998. This establishes a new undertaking that members of the Assembly must take before taking their seat in the Northern Ireland Assembly. This provides that they cannot participate in any proceedings of the Assembly, or have any of the other rights or privileges members of the Assembly accrue when they take their Assembly seat, until they have made the undertaking. Subsection (1) sets out the wording of the undertaking which relates to the commitments set out in paragraph 2.7 of 'A Fresh Start: the Stormont Agreement and Implementation Plan' on ending paramilitarism.
- 35 Subsections (2) to (4) of section 40A deal with the procedure for a member of the Assembly giving the undertaking. Subsections (2) and (3) set out that this procedure shall be provided by the Assembly in its standing orders, but that the procedure should not include any time bar after which the member cannot make the undertaking.
- 36 Clause 8(2) sets out the relationship between the new section 40A and section 77 of the Northern Ireland Act 1998.
- 37 Clause 8(3) and Schedule 2 provide transitional provision, setting out the process by which members elected at the 2016 election will give the undertaking. This is required from a timing perspective, to ensure that a process is in place in time for members elected in 2016.

Clause 9: Draft budgets

- 38 This clause seeks to introduce more transparency into the budgetary process by providing for the Minister of Finance and Personnel to lay a statement before the Assembly, at least 14 days in advance of laying a draft budget. The statement will specify the amount of UK funding for the financial year as notified by the Secretary of State.
- 39 New subsection (1B), to be inserted in to section 64 of the Northern Ireland Act 1998, will require a further statement to be laid alongside the draft budget showing that the amount of UK funding required by the draft budget will not exceed the amount available and set out in the first statement.
- 40 New subsections (1C) to (1E) provide for circumstances where the Secretary of State notifies

the Minister that the amount of UK funding has been revised for that year. The Minister must lay a statement before the Assembly, within 4 months of the notification, showing the revisions to the expenditure proposals where changes are required as a result of the notification, which must not exceed the revised amount of UK funding for that year.

Clause 10: Regulations

41 This clause is self-explanatory.

Clause 11: Short title, commencement and extent

42 This clause is self-explanatory.

Commencement

43 Clauses 6, 7, 8, 10, 11 and schedules 1 and 2 come into force at Royal Assent. Clause 9 will come into force 2 months after Royal Assent. All other provisions will be brought into force by way of regulations and there may be different days appointed for different purposes.

Financial implications of the Bill

44 In the Government's view, the main financial implication of the Bill is a small increase in public expenditure resulting from the setting up and ongoing running costs of the Independent Reporting Commission. A full impact assessment will be published alongside the draft regulations that will provide legal effect to the new international body. As the Commission will be set up through an international treaty between the UK Government and Government of Ireland, both will sponsor the Commission and provide funding.

45 The Government does not expect the remaining provisions of the Bill to have any direct financial implications. The Government expects the draft budget clause to promote fiscal transparency and responsibility. This provision is expected to improve the effectiveness of the budget-setting process; and to ensure that where spending plans by the Northern Ireland departments relies on funding from HM Treasury, that those plans can be reconciled to the available funding.

46 In the Government's view, there are no direct costs to business or civil society organisations as a result of this Bill.

Compatibility with the European Convention on Human Rights

47 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).

48 Lord Dunlop, the Lords Spokesperson on Northern Ireland, has made the following statement:

49 "In my view, the provisions of the Northern Ireland (Stormont Agreement and Implementation Plan) Bill are compatible with Convention rights."

50 The Government has published a separate memorandum of ECHR issues with an assessment of the compatibility of the Bill's provisions with Convention rights. This memorandum is available on the Government website:

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500829/NI_Stormont_Agreement_and_Implementation_Plan_Bill_-_ECHR_memo.pdf

Related documents

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

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

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Annex A - Territorial extent and application in the United Kingdom

52 This Bill extends to England and Wales, Scotland and Northern Ireland. This Bill primarily applies to Northern Ireland. None of the clauses or schedules in this Bill applies exclusively to England or to England and Wales. The extent and application of the provisions are summarised in the table below.⁵

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?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	No	No	No	Yes	N/A	N/A	N/A	Yes, NI in relation to clause 1(4).
Clause 2	No	No	No	Yes	N/A	N/A	N/A	No
Clause 3	No	No	No	Yes	N/A	N/A	N/A	No
Clause 4	No	No	No	Yes	N/A	N/A	N/A	No
Clause 5	No	No	No	Yes	N/A	N/A	N/A	No
Clause 6	No	No	No	Yes	N/A	N/A	N/A	No
Clause 7	No	No	No	Yes	N/A	N/A	N/A	No
Clause 8	No	No	No	Yes	N/A	N/A	N/A	No
Clause 9	No	No	No	Yes	N/A	N/A	N/A	Yes, NI
Clause 10	No	No	No	Yes	N/A	N/A	N/A	No
Clause 11	No	No	No	Yes	N/A	N/A	N/A	No
Schedule 1	No	No	No	Yes	N/A	N/A	N/A	No
Schedule 2	No	No	No	Yes	N/A	N/A	N/A	No

⁵ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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