

NORTHERN IRELAND (MINISTERIAL APPOINTMENTS AND REGIONAL RATES) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland (Ministerial Appointments and Regional Rates) Bill as brought from the House of Commons on 24 April 2017 (HL Bill 126).

- These Explanatory Notes have been prepared 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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Overview of the Bill

- 1 The Bill deals with two matters arising from the continued absence of a Northern Ireland Executive following the Assembly election on 2 March 2017.
- 2 It sets the amounts of the regional domestic and non-domestic rates for the assessment of rates and the billing of ratepayers in Northern Ireland for the financial year ending on 31 March 2018.
- 3 It also makes provision to extend the period for filling Ministerial offices in the Northern Ireland Executive following the Northern Ireland Assembly election on 2 March 2017 to enable an Executive to be formed. The period previously expired on Monday 27 March. The Bill extends that period to Thursday 29 June.

Policy background

- 4 On 10 January 2017, the then deputy First Minister of Northern Ireland resigned, which under the provisions of the Northern Ireland Act 1998 also resulted in the First Minister ceasing to hold office. With no re-nomination to office of a deputy First Minister within the seven day deadline set out in the 1998 Act, the Secretary of State for Northern Ireland fell under a duty to propose a date for the next Assembly election. He proposed that an election be held on 2 March, which was confirmed by Order in Council.
- 5 The Assembly subsequently met for the first time at 4pm on 13 March, starting a 14 day statutory period under the 1998 Act in which a new Northern Ireland Executive must be formed. Where an Executive is not formed by the end of that period, the Secretary of State falls under a duty to propose a date for a further Assembly election. That period ended on 27 March.
- 6 Discussions between the Northern Ireland parties, and the UK and Irish Governments, have been ongoing in the period since the 2 March election. However it was not possible for an Executive to form by 27 March and no agreement has yet been reached. As a result, the duty to propose a date for a further election has arisen. And under the 1998 Act, with the 14 day period having expired, it is not now possible for an Executive to be formed unless a further election is held.
- 7 The Bill proposes to extend the statutory period for the formation of an Executive retrospectively. This will enable an Executive to be formed and power-sharing government to return to Northern Ireland at the earliest opportunity. It extends the statutory period to 108 days from the first sitting of the Assembly. This period would expire on 29 June, allowing time for Northern Ireland Ministers to be appointed prior to the UK Parliamentary General Election on 8 June and also providing parties with the space, if necessary, to resume talks and appoint Ministers after that election.
- 8 The Bill also sets regional rates for domestic and non-domestic property for the 2017-18 rating year. It does so by stipulating a regional rate for domestic and non-domestic property, expressed in terms of "pence per pound of rateable value". Regional rates are normally set through an Order subject to the affirmative resolution procedure in the Assembly and made under Article 7 of the Rates (Northern Ireland) Order 1977 (SI 1977/2157). It is necessary to proceed by means of a Bill at Westminster in this instance because, in the continued absence of an Executive, these rates could not otherwise be set.

- 9 The rates laid out in Clause 2 reflect a 1.6% increase, for both domestic and non-domestic ratepayers, equivalent to the current level of inflation as measured using the most recent GDP deflator. This inflationary measure has been the standard method used by the Northern Ireland Executive for providing for inflationary uplifts in this context since the restoration of the devolved institutions in 2007. It is also the inflation adjustment used in setting the Northern Ireland public expenditure budget.

Legal background

- 10 Section 16A(3) of the Northern Ireland Act 1998 sets a 14 day period, beginning with the first sitting of the Assembly after an Assembly election, for the appointment of Northern Ireland Ministers and thus the formation of an Executive. Following that period, the Secretary of State comes under a duty (under section 32(3)(a) of the 1998 Act) to propose a date for a new Assembly election. Section 16A(8) precludes an Executive being formed after the 14 day period without a further election being held. Clause 1 amends section 16A, as set out in the commentary below, to enable an Executive to be formed later than the existing 14 day statutory period, with effect only in relation to the Assembly election of 2 March 2017.
- 11 Regional rates are normally set through an Order under powers conferred by Article 7(1) and (3) of the Rates (Northern Ireland) Order 1977 (as amended), subject to affirmative resolution by the Northern Ireland Assembly. The 1977 Order sets out the framework for the levying of rates in Northern Ireland, but leaves the level of the rates to be set each year. As no Northern Ireland Executive has been formed following the 2 March 2017 Assembly election, these rates could not otherwise be set. Clause 2 is required in order to set the rates for the year ending 31 March 2018 in the absence of the usual rates Order.

Territorial extent and application

- 12 The Bill extends only to Northern Ireland.

Fast-track legislation

- 13 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report, *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?

- 14 It is necessary to fast-track Clause 2 to safeguard public revenues in the absence of a Northern Ireland Executive, and to protect the interests of the business and household ratepayers who normally pay by 10 instalments. If there is delay in setting the 2017-18 regional rates beyond the first week of May, ratepayers will be presented with fewer instalments of a higher cost each time. This could cause financial hardship and lead to a demonstrable reduction in the total revenue collected.
- 15 Furthermore, as is mentioned in the policy background section above, the deadline for the parties in Northern Ireland to appoint Ministers has passed and Ministerial appointments have not been made. In the absence of the provisions in Clause 1, it is not possible for any agreement between the Northern Ireland political parties to form an Executive to be implemented without a further election being held. Any delay in passage would further defer the point before a functioning Executive can return beyond the 8 June UK Parliamentary General Election, even if an agreement is reached in the coming weeks. Further legislation would then be needed after the General Election to enable an Executive to be formed at that point, adding further uncertainty and delay into the process.

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

- 16 The Bill is brief and each provision is necessary to give effect to the two policy aims of the Bill. As set out above, there is a clear need for fast-tracking the Bill to support economic and political stability in Northern Ireland. Any delay to Clause 2 beyond early May could cause financial hardship to citizens and lead to a demonstrable reduction in the total revenue collected by the Executive. Clause 1 is required in order for Ministers to be appointed and a new Executive to be formed at the earliest opportunity should an agreement between the parties be reached in the coming weeks or following the UK Parliamentary General Election.

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

- 17 The Government has sought to defer legislation for as long as possible to permit decisions in the devolved space to be made by the devolved institutions. The need for this Bill arises from the lack of an agreement and the appointment of Ministers within the timescale set out in the 1998 Act. In the circumstances, therefore, it has not been possible to give Parliament more time to scrutinise this short Bill.

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

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

- 18 The Bill is being introduced in the absence of any Northern Ireland Executive. Clause 2 sets the regional rates for both domestic and non-domestic properties. It is deliberately restricted to an inflationary uplift only, using the inflation index employed in previous years, to minimise the involvement of the UK Government in an otherwise devolved matter. This follows engagement with the Northern Ireland Civil Service.
- 19 Over recent weeks, the UK Government has engaged extensively with the Northern Ireland parties and the Irish Government about the formation of an Executive. It is the shared intent on all sides that an Executive will be formed, in line with the principles of the Belfast Agreement. Without this Bill in force, no Executive could be formed should an agreement be reached in the coming weeks or until further legislation was passed after the UK Parliamentary General Election, unless another Assembly election was held.

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?

- 20 The Bill does not contain a sunset clause. However, Clause 1 applies only to the process for forming an Executive following the Northern Ireland Assembly election on 2 March 2017, to ensure that the future approach to Executive formation is not affected. And Clause 2 sets the regional rates for both domestic and non-domestic properties in Northern Ireland only for the year ending 31 March 2018.

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

- 21 As noted above, the Bill makes provision only in relation to the process of forming an Executive following the Northern Ireland Assembly election on 2 March 2017 and the rates level for the year ending 31 March 2018.

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

- 22 Yes. The current timeframe for the filling of the Ministerial Offices following an election is set out in primary legislation. The only way to extend the statutory timeframe for the appointment of Ministers is with a further piece of primary legislation. Clause 2 directly addresses the issues caused by the absence of regional rates for the purposes of non-domestic and domestic rating within Northern Ireland. Under the Rates (Northern Ireland) Order 1977, the regional rate must be set each year. The rate set for 2016-17 expired on 31st March 2017 and does not carry forward. New legislation is required in order to set the rate for 2017-18.

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

- 23 Due to the need to implement the Bill urgently to provide certainty of regional rates and to enable a Northern Ireland Executive to be formed in early May, the Northern Ireland Affairs Committee has not scrutinised the Bill in draft. However the Secretary of State for Northern Ireland engaged with the Chair and members of the Committee in advance of the Bill's publication in relation to its content.

Commentary on provisions of Bill

Clause 1 – Extension of period for filling Ministerial offices

- 24 Clause 1 extends the period for filling Ministerial offices in the Northern Ireland Executive. Subsection (1) makes clear that this relates only to the first occasion that those offices must be filled following the Northern Ireland Assembly election on 2 March 2017. It provides a 108 day statutory period for offices to be filled after the Assembly has first met, rather than the current 14 day period. This has the effect of requiring an Executive to be formed by 29 June, enabling a deal reached by the parties to be implemented by that point. Subsection (2) retrospectively applies subsection (1), such that the new deadline is treated as having been in place since 2 March. Subsection (3) clarifies that the offices in question are the offices of the First Minister and deputy First Minister for Northern Ireland and the other Ministers in the Northern Ireland Executive.

Clause 2 – Regional rates

- 25 This clause fixes the levels of the regional domestic and regional non domestic rates that are to be used in the assessment of rates and the billing of ratepayers in Northern Ireland for the year ending 31 March 2018. Subsection (3) sets the domestic regional rates, expressed in terms of ‘pence per pound of rateable value’, at 0.4177 pence and subsection (2) sets the non-domestic regional rate at 32.92 pence.
- 26 Subsection (4) clarifies that the Department of Finance in Northern Ireland may subsequently vary the rates set by this Bill, using the established procedure of an Order under the Rates (Northern Ireland) Order 1977. Subsection (5) makes clear that any such order may only be made after the formation of an Executive after 1 April 2017 and that it may set the rates for the whole of the year in which the Order is made. This clarifies that the same power that the Department of Finance would ordinarily have to vary a regional rate, if it had been set by means of a Rates Order, applies following the passage of this Bill.

Commencement

- 27 The Bill will come into force on the day on which it is passed.

Financial implications of the Bill

- 28 No costs are imposed. Clause 1 simply makes provision to extend the period in which an Executive can be formed. Under Clause 2, for the purposes of funding public expenditure by Northern Ireland Departments, the 2017-18 regional domestic and non-domestic regional rates will both be increased by 1.6%. The expected net revenue from the rate would be in excess of £580m.

Parliamentary approval for financial costs or for charges imposed

- 29 No money resolution is required.

Compatibility with the European Convention on Human Rights

30 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).

31 The Bill Minister has made the following statement:

"In my view, the provisions of the Northern Ireland (Ministerial Appointments and Regional Rates) Bill are compatible with Convention rights."

Annex A – Territorial extent and application in the United Kingdom

32 The Bill extends only to Northern Ireland.

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	No	No
Clause 2	No	No	No	Yes	N/A	N/A	Yes	No

Subject matter and legislative competence of devolved legislatures

33 Clause 1 relates to an excepted matter (under paragraph 22 of Schedule 2 to the Northern Ireland Act 1998) and is therefore outside the competence of the Northern Ireland Assembly.

34 Clause 2 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 (which cannot form without Clause 1 of this Bill being in force) and a sitting Assembly, and given the pressing need for the regional rates level to be set, there is neither the time available nor the practical ability for the Assembly to provide a Legislative Consent Motion. We are satisfied that the circumstances of this Bill come within the exception allowed by the Convention.

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