

NORTHERN IRELAND ASSEMBLY MEMBERS (PAY) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland Assembly Members (Pay) Bill as brought from the House of Commons on 22 March 2018 (HL Bill 94).

- These Explanatory Notes have been prepared by the Northern Ireland Office and the Northern Ireland Civil Service 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 empowers the Secretary of State to make a determination on the pay and allowances of Members of the Northern Ireland Assembly (MLAs) during the current period without a Northern Ireland Executive or sitting Assembly.

Policy background

- 2 There has been no Northern Ireland Executive since 9 January 2017, when the then deputy First Minister of Northern Ireland resigned, which also resulted in the First Minister ceasing to hold office. The period for the appointment of ministers to form an Executive after the extraordinary Assembly election in March 2017 was extended to 29 June (by the Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017)), but no ministers were appointed. The Northern Ireland Assembly has not met since its first post-election meeting on 13 March 2017.
- 3 In the absence of a sitting Assembly the continued payment of full salaries for MLAs has been the subject of intensive public comment. There is, however, no body or person capable of making determinations on MLA pay and allowances: the term of office of the first Independent Financial Review Panel, which fulfils that function, expired in July 2016 and no successor panel has been appointed. In November 2017, the then Secretary of State for Northern Ireland asked Trevor Reaney, a former clerk and chief executive of the Assembly, to provide him with advice on salaries and allowances for MLAs in the current circumstances. This advice - which was published on 20 December 2017 on the Northern Ireland Office website (see Related Documents) - included a series of recommendations about the appropriate level of salary, allowances and other expenses for MLAs and officeholders.
- 4 This Bill enables the Secretary of State to determine the salary and allowances payable to MLAs during the current period where there is no Executive. It also enables her to make a determination as to the allowances or gratuities that are payable to MLAs who cease to hold office (MLAs are, for example, entitled to a resettlement allowance based on their salary as at the date of dissolution). The Secretary of State may only exercise the power in the period after this Bill is passed and before Ministerial offices are filled following the March 2017 election. Any determination may, however, also apply during similar periods where there is no Executive, unless revoked by a later panel determination. When there is an Executive in place, the 2016 determination will apply again as normal.

Legal background

- 5 By virtue of sections 47 and 48 of the Northern Ireland Act 1998 (the "1998 Act"), the pay, allowances and pensions for MLAs and persons who have ceased to be MLAs are devolved matters and provision for them is made, pursuant to the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (the "2011 Act"), by the Independent Financial Review Panel (the panel) established by that Act. The panel is required to make a determination once in respect of each Assembly and normally does so immediately prior to the election of that Assembly.
- 6 Members of the panel are appointed by the Assembly Commission. In July 2016 the terms of appointment of the then panel members came to an end, and since then no new members of the panel have been appointed. There are, therefore, at present, no members of the panel, and as such it cannot sit nor make any determinations. The determination that currently applies is therefore the determination issued by the panel in March 2016, immediately before the May

2016 Assembly election and there is no panel in place now to make any further determination. The Bill would thus provide for the Secretary of State to be empowered to make determinations to set MLA pay and allowances.

Territorial extent and application

- 7 The Bill extends to England and Wales, Scotland and Northern Ireland since it relates to sections 47 and 48 of the Northern Ireland Act 1998, which have UK-wide extent, but it applies only in Northern Ireland.
- 8 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Fast-track legislation

- 9 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?

- 10 The Bill provides the power to set MLA pay. This is a pressing issue in public discourse as a result of the ongoing absence of devolved government in Northern Ireland. It is particularly acute presently as there is a scheduled £500 increase in pay for each MLA on 1 April 2018. To not have the power to make a decision on whether that increase should be progressed would jeopardise public confidence unacceptably, and so swift action is required.

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

- 11 The Bill deals solely with MLA pay and allowances and the reasons for fast-tracking are set out above.

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

- 12 The Government has sought to defer legislation for as long as possible to permit decisions with regard to devolved matters to be made by the devolved institutions. It is only the ongoing absence of an Executive and sitting Assembly that make this Bill necessary. In the circumstances, 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?

- 13 The Bill follows the publication of independent advice on the appropriate pay and allowances for MLAs. In this advice, Trevor Reaney states that:

“This advice has been prepared following consideration of relevant reports and academic research and information provided by all Political Parties represented in the Assembly and the independent MLA; the Speaker; the former Chair of the Independent Financial Review Panel; other parliaments and parliamentary pay review bodies; and officials of the Northern Ireland Assembly (NIA). I have also been provided with some background information from the Northern Ireland Office (NIO).”

- 14 In her statement to the House of Commons on 12 March 2018, the Secretary of State stated that she was minded to follow Mr Reaney’s recommendations on MLA pay and allowances (which this Bill would enable her to do) and invited the Northern Ireland political parties to make full and final representations to her on the subject.

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 This Bill enables a determination to be made only in the period after the Bill is passed and before an Executive is next formed. While a determination itself may also apply during any future periods where there is no Executive, that will only be the case if it is not otherwise revised or revoked by the relevant devolved body (the Independent Financial Review Panel).

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 No post-legislative scrutiny is planned as the power to make a determination is limited to the current period without an Executive (see above).

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

- 17 Yes, legislation is required. As set out above, MLA pay, allowances and pensions are devolved and under the 2011 Act may only be determined by the Independent Financial Review Panel. No panel exists at the moment and primary legislation is necessary for any other person or body to make a determination.

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

- 18 Due to the need to allow as long as possible for an agreement by the parties to be reached to allow these matters to be dealt with by the devolved institutions, the Northern Ireland Affairs Committee has not scrutinised the Bill in draft.

Commentary on provisions of Bill

Clause 1: Remuneration of Northern Ireland Assembly members

- 19 This clause allows the Secretary of State to make a determination on MLAs' pay, allowances, and gratuities. This determination may apply during the current period without Ministers and, unless replaced, it would also apply during any future period in which the deadline for appointing Ministers after an election or the resignation of the First Minister or deputy First Minister passes without those appointments having been made. Subsection (3) restricts the power to make a determination to the current period (from the passage of the Bill until all the Ministerial offices are next filled), but allows any determination to apply again in any subsequent such period. Once Ministers are in office, the power to make a determination would return to being exercised solely by the Independent Financial Review Panel under the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (the "2011 Act").
- 20 Subsection (8) clarifies the position of determinations made by the Secretary of State and by the panel. Any determination made under this Bill may amend a panel determination, and in turn the panel may revoke the Secretary of State's determination - for example to establish its own set of provisions for periods without Ministers. Subsection (7) ensures that MLAs' pensions are not affected by any change to their salaries under the Secretary of State's determination.
- 21 Subsections (4) and (5) echo section 14 of the 2011 Act, requiring any determination to be made in writing and to be provided to the Assembly Commission, who must publish it. Subsection (6) applies section 12 of the 2011 Act to any determination made by the Secretary of State in respect of salaries and allowances payable under section 47 of the Northern Ireland Act 1998. In particular it enables the Secretary of State to determine that members and office holders should be paid different amounts and requires her to ensure that a member who is also a member of the European Parliament does not also receive a salary as a member of the Assembly.

Commencement

- 22 The Bill would come into force on Royal Assent.

Financial implications of the Bill

- 23 Clause 1 itself does not have any impact on public expenditure, but any determination made under it may. Any reduction in MLA pay would represent a saving for the Assembly (which is required to pay members' salaries and allowances), itself funded from the Northern Ireland Consolidated Fund. There is the possibility, though, of provision being required from the Northern Ireland Consolidated Fund to meet any gap in pension contributions, which are

treated as if not reduced for the purposes of the Bill. The Bill may thus affect public expenditure from the Northern Ireland Consolidated Fund, for which money has been voted by Parliament; the impact would therefore be on Northern Ireland expenditure and not UK expenditure.

Parliamentary approval for financial costs or for charges imposed

24 No money resolution is required.

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 Lord Duncan of Springbank, Parliamentary Under-Secretary of State for Northern Ireland, has made the following statement:

"In my view, the provisions of the Northern Ireland Assembly Members (Pay) Bill are compatible with Convention rights."

Related documents

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

- Trevor Reaney's advice to the Secretary of State on MLA pay, published on the NIO website on 20 December 2017: <https://www.gov.uk/government/news/mla-pay-advice-recommendations>

Annex A - Territorial extent and application in the United Kingdom

28 The Bill extends to England and Wales, Scotland and Northern Ireland and applies only in Northern Ireland.²

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	No	No	Yes	No
Clause 2	No	No	No	Yes	No	No	Yes	No

Subject matter and legislative competence of devolved legislatures

29 This Bill 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 sitting Assembly, 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.

² 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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