

NORTHERN IRELAND BUDGET (ANTICIPATION AND ADJUSTMENTS) (NO.2) BILL 2019

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland Budget (Anticipation and Adjustments) (No.2) Bill as brought from the House of Commons on 6 March 2019 (HL Bill 164).

- These Explanatory Notes have been prepared by the Northern Ireland Office (NIO) 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 Budget (Anticipation and Adjustments) (No.2) Bill as brought from the House of Commons on 6 March (HL Bill 164)

Overview of the Bill

- 1 The Bill deals with matters arising from the continued absence of a Northern Ireland Executive, and the consequent inability of the Northern Ireland Assembly to pass legislation to provide the authority for departmental expenditure following the Assembly election on 2 March 2017.
- 2 It authorises Northern Ireland departments and certain other bodies to incur expenditure and use resources for the financial year ending on 31 March 2019, as detailed in the corresponding Spring Supplementary Estimates volume and summarised in the Schedules to the Bill. It also provides for a vote on account to allow those departments and public bodies to continue to deliver public services into the first half of the 2019-20 financial year.

Policy background

- 3 As a devolved matter, ordinarily the passage of a Budget Bill to authorise the issue of sums from the Consolidated Fund of Northern Ireland would be taken through the Northern Ireland Assembly by Ministers in the Northern Ireland Executive. However, there has been no 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 Northern Ireland Assembly has not met since its first post-election meeting in March 2017. Without an Executive to agree a Budget and a sitting Assembly to pass Budget Bills, it falls to Parliament to legislate to provide authority for expenditure in Northern Ireland.
- 4 Budget Bills are normally passed twice during each financial year when the devolved institutions are in place. The first is done based on the opening budget position for the financial year following the agreement of a Budget. The second is done at the end of the financial year to seek authority for the changes which have been made to the budget allocations during the course of the financial year. The Northern Ireland Budget Act 2018 was passed by Parliament in July 2018 in order to provide the required authorisations and appropriations for the full 2018-19 financial year based on the 2018-19 Budget announced in Parliament for the Northern Ireland departments by the Secretary of State on 8 March 2018, adjusted for the distribution of some centrally held funding, and technical transfers between departments for items such as central HR functions.
- 5 Since then, Northern Ireland departments have continued to manage the delivery of services in Northern Ireland. This has involved the reallocation and reprioritisation of some budgets, and also the allocation of new funding which has become available to the Northern Ireland administration as a result of the funds being authorised by Parliament in the UK Estimates process. This Bill now seeks Parliament's authorisation for these revisions
- 6 This Bill would provide authority for departments and other public bodies in Northern Ireland to deliver public services for the remainder of the year ending 31 March 2019 based on the Northern Ireland Civil Service's final budget plans. This would supersede the authorisations provided in the Northern Ireland Budget (Anticipation and Adjustments) Act 2018 and the Northern Ireland Budget Act 2018.
- 7 In addition to providing the authorisations and appropriations for the revised amounts required for the full 2018-19 financial year, the Bill also provides authorisations and appropriations for a vote on account. This is to allow Northern Ireland departments and other public bodies to continue to deliver public services into the first half of the 2019-20 financial year.

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- 8 This vote on account is a normal process for any Supply and Appropriation Bill and does not imply the setting of a 2019-20 Budget for the Northern Ireland departments and other public bodies. Its purpose is to provide access to cash and resources, approximately 70% of the amount authorised for the previous financial year, to ensure that services can continue to be delivered pending the consideration of a Budget Bill for the full 2019-20 financial year. This could be taken forward in due course by a restored Executive, or at Westminster in its absence.
- 9 This Bill is a minimal step to ensure that public services continue to be provided in Northern Ireland. It leaves in place the requirement for devolved spending decisions to be made by the Northern Ireland Executive or, in the ongoing absence of Ministers, the Northern Ireland Civil Service. In addition the revised allocations set out in the Bill continue to be based on the advice of the Head of the Northern Ireland Civil Service and the Northern Ireland Civil Service Board, as was the case for the Northern Ireland Budget Act 2018.
- 10 No new money would be voted as a result of the Bill. Instead it will appropriate sums already in the Consolidated Fund of Northern Ireland, together with revenue generated locally within Northern Ireland under the Assembly's devolved powers.

Legal background

- 11 In the continuing absence of a Northern Ireland Executive, and the consequent inability of the Northern Ireland Assembly to pass a Budget Act, this Bill would provide the required authorisations and appropriations based on the final Budget plans, which are based on the advice from the Head of the Northern Ireland Civil Service and the Northern Ireland Civil Service Board. It would be deemed for those purposes to be an Act of the Assembly. To that end, instead of the usual Assembly process, a Spring Supplementary Estimates document is being laid alongside this Bill and this would be deemed to be equivalent to the Assembly Supply process.
- 12 The Bill will provide authorisations and appropriations for departments and other public bodies in Northern Ireland and will leave spending decisions, within the overall totals voted (and the more detailed totals in the Spring Supplementary Estimates document), to these departments.

Territorial extent and application

- 13 The Bill extends across the United Kingdom but applies only to Northern Ireland.
- 14 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Fast-track legislation

- 15 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

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

Why is fast-tracking necessary?

- 16 It is necessary to fast-track this Bill to safeguard the continued delivery of public services and provide clarity for departments to safeguard public finances and therefore it cannot be delayed further in the absence of a Northern Ireland Executive and a sitting Assembly.
- 17 If there is delay in authorising the issue of sums and use of resources for the full financial year ending 31 March 2019 there is a risk that government departments and other bodies in Northern Ireland will reach the limits of cash and resources authorised for them by the Northern Ireland Budget (Anticipation and Adjustments) Act 2018 and the Northern Ireland Budget Act 2018, and that services would cease to be delivered as a result.
- 18 Similarly a delay in authorising the issue of sums and use of resources for the financial year ending 31 March 2020 would mean that the Permanent Secretary of the Department of Finance in Northern Ireland would be required to exercise the powers under section 59 of the Northern Ireland Act 1998 and section 7 of the Government Resources and Accounts (Northern Ireland) Act 2001 in order to allow services to continue to be delivered in Northern Ireland beyond 31 March 2019, which risks creating uncertainty around public finances.

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

- 19 The provisions of this Bill are required to provide the necessary authorisations and appropriations to allow public services to continue to be delivered for the remainder of the financial year ending 31 March 2019 and into first half of the 2019-20 financial year. As described below, it would not have been appropriate for the UK Government to bring forward this Bill earlier as it was hoped that a restored Executive would undertake the usual Budget process.

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

- 20 The Government has sought to defer legislation for as long as possible to enable final decisions on the allocations to be made by a restored Executive. The need for this Bill arises from the lack of an agreement and the appointment of an Executive within the timescale required for a Budget Bill to be brought through the Northern Ireland Assembly. It is taken forward at the latest possible point before the risk to public services could manifest. In the circumstances, therefore, it has not been possible to give Parliament more time to scrutinise this Bill, without risking the delivery of public services in Northern Ireland or the work towards talks aimed at restoring an Executive.

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

- 21 The Bill is being introduced in the absence of any Northern Ireland Executive. The amounts being authorised and appropriated in this Bill are based on a budget position which has been put forward by the Head of the Northern Ireland Civil Service in conjunction with the Northern Ireland Civil Service Board.

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?

- 22 The Bill does not contain a sunset clause. However, the Bill only applies to the financial year ending 31 March 2019 (clauses 1, 2 and 3) and the financial year ending 31 March 2020 (clauses 4, 5 and 6).

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

- 23 As noted above, clauses 1, 2 and 3 only make provision for the issue of sums and the authorisation of the use of resources for the financial year ending 31 March 2019. Clauses 4 and 6 which make provision for the issue of sums and the authorisation of the use of resources for the financial year ending 31 March 2020 are a vote on account only, and do not imply the setting of a 2019-20 Budget for the Northern Ireland departments and other public bodies. Its purpose is to provide access to cash and resources (approximately 70% of the amount authorised for the previous financial year) to ensure that services can continue to be delivered pending the consideration of a Budget Bill for the full 2019-20 financial year. It is hoped that the Bill would be taken forward by the Northern Ireland Assembly in due course, or at Westminster in its absence. While there is no review mechanism, the figures it would set out would be superseded by a Budget Bill for 2019-20.

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

- 24 Yes. As a Northern Ireland Budget Act for the 2018-19 year has been passed by Parliament in July 2018, no power exists to amend the provisions contained in that Act for the issue of sums from the Consolidated Fund of Northern Ireland and for the authorisation of the use of resources for the year ending 31 March 2019, other than this Bill, or equivalent legislation passed by the Assembly. In the absence of an Executive and sitting Assembly, legislation in Parliament is the only way to deliver the objectives of this Bill.
- 25 The only existing legislation which allows for the issue of sums from the Consolidated Fund of Northern Ireland and for the authorisation of the use of resources for the year ending 31 March 2020 is section 59 of the Northern Ireland Act 1998 and section 7 of the Government Resources and Accounts Act (Northern Ireland) 2001 respectively. These powers can only be exercised if no Budget Act has been passed by three working days before the end of the financial year. This would be an unsatisfactory situation given that Parliament has the ability to provide for this vote on account in legislation now.
- 26 New legislation is therefore required in order to allow public services to continue to be delivered in Northern Ireland for the remainder of the year up to and including 31 March 2019, and into the first half of the new financial year.

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

- 27 Due to the need to implement the Bill urgently, the Commons Northern Ireland Affairs Committee has not scrutinised the Bill in draft, although members were offered engagement sessions with NIO officials, which were availed of by several members.

Commentary on provisions of Bill

Clause 1 – Issue of sums out of the Consolidated Fund for the year ending 31 March 2019 and appropriation of that sum

- 28 Clause 1 authorises the issue out of the Consolidated Fund of Northern Ireland of the sum of £16,822,319,000 for the purposes set out in Schedule 1. This authorisation supersedes those amounts previously authorised by the Northern Ireland Budget (Anticipation and Adjustments) Act 2018 and the Northern Ireland Budget Act 2018. This is not new money, as it is an authorisation for issue from the Consolidated Fund of Northern Ireland as would normally be done by the Assembly. The sums referred to are those already appropriated by Parliament through the UK Estimates process, together with revenue generated locally within Northern Ireland under the Assembly's devolved powers.

Clause 2 – Use of resources (other than accruing resources) in the year ending 31 March 2019

- 29 Clause 2 authorises the use of resources amounting to £20,032,419,000 in the year ending 31 March 2019 by the bodies listed in clause 2(3) for the purposes specified in column 1 of Schedule 2; the amount authorised is set out in column 2 of that Schedule. This authorisation supersedes those amounts previously authorised by the Northern Ireland Budget (Anticipation and Adjustments) Act 2018 and the Northern Ireland Budget Act 2018. As with clause 1 above this is an authorisation to use resources which would normally be provided by the Northern Ireland Assembly in relation to money already authorised by Parliament through the UK Estimates process, together with revenue generated locally within Northern Ireland under the Assembly's devolved powers.
- 30 There is a distinction between the cash sum authorised for issue in clause 1, and the amount of resources authorised for use in clause 2. The cash sum in clause 1 includes cash used to finance capital investment, and also takes into account movement in working capital and payments based on provisions created in previous years. These do not constitute resource consumption. The resources authorised in clause 2 exclude those items, but include non-cash items, mainly the depreciation of assets and creation of new provisions.

Clause 3 – Limits on use of certain accruing resources in the year ending 31 March 2019

- 31 Clause 3 sets limits on the accruing resources, including both operating and non-operating accruing resources, which may be used for the purposes specified in column 1 of Schedule 2 in the year ending 31 March 2019. These limits are set out in column 3 of that Schedule. This authorisation supersedes those amounts previously authorised by the Northern Ireland Budget Act 2018.

Clause 4 – Issue of sums out of the Consolidated Fund for year ending 31 March 2020 and appropriation of that sum

- 32 Clause 4 authorises the issue out of the Consolidated Fund of Northern Ireland of the sum of £11,852,037,000 for the purposes set out in Schedule 3. This authorisation is a vote on account to allow public services to continue to be delivered into the first half of the new financial year. This is a normal process for any Supply and Appropriation Bill and does not imply the setting of a Budget for the 2019-20 year. Its purpose is to provide access to cash to ensure that services can continue to be delivered pending the consideration of a Budget Bill for the full 2019-20

financial year, which should be done by the Northern Ireland Assembly based on a Budget position agreed by the Northern Ireland Executive or at Westminster in its absence.

Clause 5 – Power of the Department of Finance to borrow

- 33 Clause 5 authorises the temporary borrowing by the Northern Ireland Department of Finance of approximately half the sum covered by Clause 4. This is to safeguard against the possibility of a temporary deficiency arising in the Consolidated Fund of Northern Ireland and any such borrowing is to be repaid by 31 March 2020.

Clause 6 – Use of resources (other than accruing resources) in the year ending 31 March 2020

- 34 Clause 6 authorises the use of resources amounting to £13,047,979,000 in the year ending 31 March 2020 by the bodies listed in clause 6(3) for the purposes specified in column 1 of Schedule 4; the amount authorised is set out in column 2 of that Schedule. As with clause 4, this authorisation is a vote on account to allow public services to continue to be delivered into the first half of the new financial year. This is a normal process for any Supply and Appropriation Bill and does not imply the setting of a Budget for the 2019-20 year. Its purpose is to provide access to resources to ensure that services can continue to be delivered pending the consideration of a Budget Bill for the full 2019-20 financial year which should be done by the Northern Ireland Assembly based on a Budget position agreed by the Northern Ireland Executive or at Westminster in its absence.

Clause 7 – Act to take effect as if it were a Budget Act of the Assembly

- 35 Clause 7 provides for this Bill to have the same effect as if it were an Act of the Northern Ireland Assembly for the year ending 31 March 2019.

Schedule 1 – Sums granted for the year ending 31 March 2019

- 36 Schedule 1 sets out the purpose and sums of money granted to Northern Ireland departments and other bodies under this Bill (under clause 1 for the period up to 31 March 2019).

Schedule 2 – Amounts of resources authorised for use and amounts of accruing resources which may be used in year ending 31 March 2019

- 37 Schedule 2 sets out the amount of resources authorised for use by Departments and other bodies (see clause 2), and the limits to use of accruing resources (clause 3).

Schedule 3 – Sums granted for the year ending 31 March 2020

- 38 Schedule 3 sets out the purpose and sums of money granted to Northern Ireland departments and other bodies under this Bill (under clause 4).

Schedule 4 – Amounts of resources authorised for use in the year ending 31 March 2020

- 39 Schedule 4 sets out the amount of resources authorised for use by Departments and other bodies (see clause 6).

Commencement

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

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Financial implications of the Bill

- 41 This Bill will authorise the issue of the sum of £16,822,319,000 from the Consolidated Fund of Northern Ireland and the use of resources to the amount of £20,032,419,000 for the year ending 31 March 2019; and the issue of the sum of £11,852,037,000 from the Consolidated Fund of Northern Ireland and the use of resources to the amount of £13,047,979,000 for the year ending 31 March 2020 by Northern Ireland departments and other public bodies.

Parliamentary approval for financial costs or for charges imposed

- 42 This Bill will authorise the issue of sums to and the use of resources by Northern Ireland departments and other public bodies. This is not new money, as it is an authorisation for issue from the Consolidated Fund of Northern Ireland and use of resources by departments and other public bodies in Northern Ireland that would normally be done by the Assembly and is money already appropriated by Parliament in the UK Estimates process, together with revenue generated locally within Northern Ireland under the Assembly's devolved powers.

Compatibility with the European Convention on Human Rights

- 43 We do not consider that the provisions of this Bill engage any rights under the European Convention of Human Rights.
- 44 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).
- 45 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 Budget (Anticipation and Adjustments) (No.2) Bill 2019 are compatible with Convention rights."

Annex A – Territorial extent and application in the United Kingdom

46 The Bill extends across the United Kingdom but applies 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?	Legislative Consent Motion needed?
Clause 1	No	No	No	Yes	No
Clause 2	No	No	No	Yes	No
Clause 3	No	No	No	Yes	No
Clause 4	No	No	No	Yes	No
Clause 5	No	No	No	Yes	No
Clause 6	No	No	No	Yes	No
Clause 7	No	No	No	Yes	No
Clause 8	No	No	No	Yes	No
Clause 9	No	No	No	Yes	No
Schedule 1	No	No	No	Yes	No
Schedule 2	No	No	No	Yes	No
Schedule 3	No	No	No	Yes	No
Schedule 4	No	No	No	Yes	No

Subject matter and legislative competence of devolved legislatures

47 All of the content of this Bill affects matters within the devolved (transferred) competence of the Northern Ireland Assembly. The Sewel Convention sets out that the UK Government 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, and given the pressing need to ensure that public services can continue to be delivered within Northern Ireland, there is neither the time available nor the practical ability for the Assembly to provide a Legislative Consent Motion. The UK Government is clear, therefore, that the circumstances in which this Act will be introduced would come within the exception allowed by the Convention.

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