

# NORTHERN IRELAND (EXECUTIVE FORMATION) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Northern Ireland (Executive Formation) Bill as brought from the House of Commons on 9 July 2019 (HL Bill 190).

- 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.

# Table of Contents

Subject	Page of these Notes
<b>Overview of the Bill</b>	<b>3</b>
<b>Policy background</b>	<b>4</b>
The Northern Ireland (Executive Formation and Exercise of Functions) Act 2018	4
Collapse of the Northern Ireland Executive	4
Talks to restore the Northern Ireland Executive	4
Extension of Executive formation period	5
<b>Legal background</b>	<b>5</b>
<b>Territorial extent and application</b>	<b>5</b>
<b>Commentary on provisions of Bill</b>	<b>6</b>
Clause 1: Extension of period for forming an Executive	6
Clause 2: Limited power to further extend period for Executive formation	6
Clause 3: Progress reports	6
Clause 4: Law on gambling and support for those experiencing problem gambling in Northern Ireland – debate	7
Clause 5: Assistance and support for victims of human trafficking in Northern Ireland – debate	7
Clause 6: Pension for victims and survivors of Troubles-related incidents – debate	8
Clause 7: Historical institutional abuse in Northern Ireland	8
Clause 8: Marriage of same-sex couples in Northern Ireland	8
Clause 9: International obligations in respect of CEDAW	8
Clause 10: Extent, commencement and short title	8
<b>Commencement</b>	<b>8</b>
<b>Financial implications of the Bill</b>	<b>8</b>
<b>Compatibility with the European Convention on Human Rights</b>	<b>9</b>
<b>Related documents</b>	<b>9</b>
<b>Annex A – Territorial extent and application in the United Kingdom</b>	<b>10</b>
Minor or consequential effects	10

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# Overview of the Bill

## 1 The Bill:

- Amends section 1 of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 so as to extend the period provided in the Northern Ireland Act 1998 (“1998 Act”) for Northern Ireland Ministers to be appointed until 21 October 2019 following the Assembly election held on 2 March 2017.
- Confers a power on the Secretary of State exercisable by regulations to further extend the period for forming an Executive from 21 October 2019 until 13 January 2020. This may be exercised once only so as to extend the period until 13 January 2020.
- Requires the Secretary of State to publish and lay before Parliament a report, on or before 4 September, on the progress that has been made towards forming an Executive in Northern Ireland (if one has not been formed) and to publish a second report on the progress made towards forming an Executive on or before 9 October 2019, and at least every fourteen calendar days thereafter until 18 December 2019 (or until an Executive is formed). Those fortnightly reports must include:
  - a report on progress towards protecting veterans from repeated investigations into Troubles-related incidents by a presumption of non-prosecution in the absence of compelling new evidence;
  - a report on progress towards developing prosecution guidance by the Attorney General for Northern Ireland in respect of certain Troubles-related incidents where the alleged offender had been unlawfully supplied with a weapon; and
  - a review of the current legal framework on abortion in Northern Ireland with an analysis of how that framework could be amended by Parliament during the period when there is no Executive in order to comply with human rights obligations.
- Requires the Secretary of State to publish reports on or before 4 September 2019 on progress in respect of each of the following:
  - the law on gambling, including online gambling, problem gambling and available support;
  - providing assistance and support in relation to victims of human trafficking and exploitation;
  - implementing a pension for those severely injured as a result of Troubles-related incidents;
  - implementing recommendations made by the Report of the Inquiry into Historical Institutional Abuse in Northern Ireland between 1922 and 1995; and

Within two sitting days of these reports being published, the Secretary of State must table a Commons motion to the effect that the report is approved; that motion must be debated within seven sitting days of the report being published. A parallel ‘take note’ motion must be tabled and debated in the Lords to the same timescale.

- Requires the Secretary of State to publish a report on or before 4 September 2019 on progress on the use of discretionary powers to provide assistance and support under section 18(9) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act. Within two sitting days of these reports being published, the Secretary of State must table a Commons motion to the effect that the report is

approved; that motion must be debated within seven sitting days of the report being published. A parallel 'take note' motion must be tabled and debated in the Lords to the same timescale.

- Requires the Secretary of State to publish report on or before 4 September 2019 on progress whether the definition of "victim" in Article 3 of the Victims and Survivors (Northern Ireland) should be revised.
- Requires the Secretary of State to publish report on or before 4 September 2019 on progress in respect preparing legislation to apply the Armed Forces Covenant in Northern Ireland.
- Requires the Secretary of State to make regulations to change the law relating to marriage in Northern Ireland to provide that marriage between same-sex couples is lawful.
- Requires the Secretary of State to make regulations to give effect to the recommendations of the Report of the Inquiry concerning the UK under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

## Policy background

### The Northern Ireland (Executive Formation and Exercise of Functions) Act 2018

- 2 The Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 ("2018 Act") was passed on 1 November 2018 to facilitate an extended legal period for formation of an Executive in Northern Ireland. The Act:
  - Extended the period during which Northern Ireland Ministers could be appointed following the election of the Northern Ireland Assembly on 2 March 2017 ("the period for Executive formation") so as to expire on 26 March 2019;<sup>1</sup> and
  - Clarified that Northern Ireland departments are not prevented from exercising their functions in the absence of NI Ministers during the period for Executive formation, so long as they are satisfied that it is in the public interest to do so and they have regard to guidance published by the Secretary of State.

### Collapse of the Northern Ireland Executive

- 3 There has been no functioning 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. All other Northern Ireland Ministers ceased to hold office when an extraordinary Assembly election was held on 2 March 2017.
- 4 The period for the appointment of Ministers to form an Executive after that election was extended to 29 June 2017 by the Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017 ("MARRA"), but no Ministers were appointed.

### Talks to restore the Northern Ireland Executive

- 5 In February 2018, Northern Ireland's main political parties embarked on a new phase of talks aimed at restoring the Northern Ireland Executive and Assembly. However, after 2 months of

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<sup>1</sup> Subsequently extended until 25 August 2019.

talks, the DUP and Sinn Féin (who, as the two largest parties, are entitled to the First and deputy First Minister posts respectively) were unable to reach an agreement.

- 6 On 26 April 2019, the UK Government and the Irish Government announced a fresh round of political talks. The talks between the UK Government, the Irish Government and the five Northern Ireland political parties, in accordance with the three-stranded approach set out in the Belfast/Good Friday Agreement, commenced on 7 May.<sup>2</sup> Following extensive discussion and negotiation, the talks have not yet been able to reach a conclusion. In light of the significant uncertainty ahead across the UK the Government believes that an extended window is needed.

### Extension of Executive formation period

- 7 Section 16A of the 1998 Act provides for a 14 day period after the first meeting of the Assembly following an election in which Northern Ireland Ministers – including the First Minister and deputy First Minister – must be appointed. If they are not, then the Secretary of State is required to propose a date for another election under section 32(3). That period initially expired on 27 March 2017 but was extended by the MARRA so as to expire on 29 June 2017.
- 8 The 2018 Act extended the time under section 16A of the 1998 Act for Ministers to be appointed until 26 March 2019, conferring a power on the Secretary of State to extend that period by regulations on one occasion only for up to 5 months. On 20 March 2019 the Secretary of State exercised that power and the period for Executive formation was extended so as to expire on 25 August 2019.<sup>3</sup>
- 9 This Bill extends the period again so as to expire on 21 October 2019 and enables the Secretary of State to further extend that period until 13 January 2020 (by regulations subject to the made affirmative procedure). The made affirmative procedure will enable the Secretary of State to make the regulations and extend time without the prior approval of Parliament but requires the subsequent approval of Parliament, ensuring Parliamentary scrutiny of how and why she has exercised the power. Extending the period for forming an Executive means that if agreement is reached to form an Executive after 25 August 2019, Ministers can be appointed right away without the need for further legislation. This also has the effect that section 3 of the 2018 Act continues to apply and Northern Ireland departments may continue to exercise their functions in accordance with that section.<sup>4</sup>

## Legal background

- 10 The relevant legal background is set out in the policy background to these notes.

## Territorial extent and application

- 11 Clause 10 sets out the territorial extent of the Bill, that is the jurisdictions in which the Bill forms part of the law. The extent of an Act can be different from its application. Application is

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<sup>2</sup> The 2019 talks aimed at restoring the Northern Ireland Executive have consisted of five working groups each discussing key issues central to making progress. They cover: a programme for government; transparency, accountability and the operation of the Executive; reform of the Petition of Concern; rights, language and identity issues; and improving the sustainability, stability and operation of the Belfast/Good Friday Agreement institutions as a whole.

<sup>3</sup> Northern Ireland (Extension of Period for Executive Formation) Regulations 2019 (SI 2019/616).

<sup>4</sup> Which provides for the exercise of NI departmental functions in the absence of Ministers.

about where the Act produces a practical effect. The Bill would extend to England and Wales, Scotland and Northern Ireland, but it applies to Northern Ireland only.

- 12 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.

## Commentary on provisions of Bill

### Clause 1: Extension of period for forming an Executive

- 13 Clause 1 amends section 1(1) of the 2018 Act so as to extend the period for Executive formation. It enables Northern Ireland Ministers to be appointed without the need for further legislation at any point until 21 October 2019.

### Clause 2: Limited power to further extend period for Executive formation

- 14 Clause 2 substitutes a new section 2 in the 2018 Act. As substituted that section will confer a power on the Secretary of State to extend the period for forming an Executive by regulations until 13 January 2020. This means that if Ministers have not been appointed, but the Secretary of State is of the view that further time is needed to enable this, they may extend the period without further primary legislation.
- 15 The Secretary of State may only exercise the power on or before 21 October 2019 and if they do, may only extend the period so as to expire on 13 January 2020 (subsections (1) and (2) of new section 2).
- 16 The regulations will be subject to the made affirmative procedure in Parliament. That is to say, they may be made without the prior approval of Parliament. They must however be approved by Parliament within 28 days of having been made and if they are not will cease to have effect. The 28 days is calculated so as to exclude any days when Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days (subsections (5) and (8) of new section 2).
- 17 If the regulations are not approved within 28 days and cease to have effect on or before 21 October 2019 then the period for forming an Executive will be treated as ending on that date (subsection (6) of new section 2). If the regulations are not approved within 28 days and cease to have effect after 21 October, then the period for forming an Executive is treated as ending when they cease to have effect (subsection (7) of new section 2).

### Clause 3: Progress reports

- 18 Subsection (1) will require the Secretary of State to report on or before 4 September 2019 on the progress that has been made towards forming an Executive in Northern Ireland. They must publish that report and lay it before Parliament.
- 19 Subsection (3) will require the Secretary of State to make a second report on the progress made towards forming an Executive in Northern Ireland on or before 9 October, and at least every fourteen calendar days thereafter until 18 December (or until an Executive is formed).
- 20 Subsections (4)-(8) require the report on progress towards forming an Executive in Northern Ireland to also include:
  - A report on progress made towards protecting Armed Forces veterans and security personnel who served during the Troubles from repeated investigations in the absence of compelling new evidence.

- A report on progress made towards developing new prosecution guidance for legacy cases in relation to the Troubles by the Attorney General for Northern Ireland.
  - A review and analysis of how Northern Ireland’s current legal framework on abortion could be amended by Parliament in the absence of a functioning Executive.
  - A report on progress made in Northern Ireland on the law on gaming machines and online gambling; in relation to problem gambling, the report must also include the number of people seeking treatment, the services available and the level of support available from the gambling industry.
  - A report on progress on the use of discretionary powers to provide assistance and support under section 18(9) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. The report must include statistics on the number of times the Department of Justice (DoJ) has provided assistance and support for victims of human trafficking; the reasons the DoJ has deemed it necessary to provide that support and assistance; and the immigration status of those victims who are receiving assistance and support beyond the relevant period.
- 21 Before publishing the report on progress towards forming an Executive in Northern Ireland, subsections (9) to (12) require the Secretary of State to publish a report on or before 4 September 2019, on each of the following:
- Progress made towards implementing a pension for those seriously injured as a result of Troubles-related incidents.
  - Progress made towards implementing recommendations made by the Report of the Inquiry into Historical Institutional Abuse in Northern Ireland between 1922 and 1995, including progress on establishing a compensation scheme under an HIA Redress Board.
  - A report on progress towards preparing legislation to apply the Armed Forces Covenant in Northern Ireland.
  - Whether the definition of a victim (as set out in article 3 of the Victims and Survivors (Northern Ireland) Order 2006) should be revised.
- 22 Subsection (13) is self-explanatory.

#### Clause 4: Law on gambling and support for those experiencing problem gambling in Northern Ireland – debate

- 23 Clause 4 requires the Secretary of State to table a House of Commons motion, to the effect that the report on progress on problem gambling under Clause 3(7) is approved, within two sitting days of the relevant report being published. That motion must be debated within seven sitting days of the report being published. A parallel ‘take note’ motion must be tabled and debated in the House of Lords to the same timescale.
- 24 Subsection (2) is self-explanatory.

#### Clause 5: Assistance and support for victims of human trafficking in Northern Ireland – debate

- 25 Clause 5 requires the Secretary of State to table a House of Commons motion, to the effect that the report on progress on assistance and support to victims of human trafficking under Clause 3(8) is approved, within two sitting days of the relevant report being published. That motion

must be debated within seven sitting days of the report being published. A parallel ‘take note’ motion must be tabled and debated in the House of Lords to the same timescale.

26 Subsection (2) is self-explanatory.

### Clause 6: Pension for victims and survivors of Troubles-related incidents – debate

27 Clause 6 requires the Secretary of State to table a House of Commons motion, to the effect that the report on progress on implementing a pension for those seriously injured as a result of Troubles-related incidents under Clause 3(9) is approved, within two sitting days of the relevant report being published. That motion must be debated within seven sitting days of the report being published. A parallel ‘take note’ motion must be tabled and debated in the House of Lords to the same timescale.

28 Subsection (2) is self-explanatory.

### Clause 7: Historical institutional abuse in Northern Ireland

29 Clause 7 requires the Secretary of State to table a House of Commons motion, to the effect that the report on progress towards implementing recommendations made by the Report of the Inquiry into Historical Institutional Abuse under Clause 3(10) is approved, within two sitting days of the relevant report being published. That motion must be debated within seven sitting days of the report being published. A parallel ‘take note’ motion must be tabled and debated in the House of Lords to the same timescale.

30 Subsection (2) is self-explanatory.

### Clause 8: Marriage of same-sex couples in Northern Ireland

31 Clause 8 requires the Secretary of State to make regulations to change the law relating to marriage in Northern Ireland to provide that marriage between same-sex couples is lawful. These regulations, which will be subject to the negative resolution procedure in Parliament, must be in force no later than 21 October 2019. The Secretary of State will no longer be required to make these regulations, nor if they have been made will they come into force, if a Northern Ireland Executive is formed before 21 October 2019.

### Clause 9: International obligations in respect of CEDAW

32 Clause 9 requires the Secretary of State to make regulations to give effect to the recommendations of the Report of the Inquiry concerning the UK under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. These regulations, which will be subject to the negative resolution procedure in Parliament, must be in force no later than 21 October 2019. The Secretary of State will no longer be required to make these regulations if a Northern Ireland Executive is formed before 21 October 2019.

### Clause 10: Extent, commencement and short title

33 These clauses are self-explanatory.

## Commencement

34 The Act will come into force on the day on which it is passed.

## Financial implications of the Bill

35 Further consideration is being given to the financial implications of the Bill as amended in the House of Commons.

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## Compatibility with the European Convention on Human Rights

- 36 The Bill engages rights under article 14, taken together with article 8 of the European Convention on Human Rights. In particular whilst provision is made in respect of same-sex marriage and the Secretary of State is required to make regulations to make this lawful, no equivalent provision is made in respect of civil partnerships. In current circumstances if same-sex marriage were introduced and civil partnership continued to be available only to same-sex couples, then there is risk of a breach of ECHR.
- 37 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).

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

“I am unable (but only because of clause 8) to make a statement that, in my view, the provisions of the Northern Ireland (Executive Formation) Bill are compatible with the Convention rights but the Government nevertheless wishes the House to proceed with the Bill.”

## Related documents

- 38 The following documents are relevant to the Northern Ireland (Executive Formation) Bill:
- Guidance on decision-making for Northern Ireland Departments during the temporary period for Northern Ireland Executive formation:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/754029/Cm9725\\_Guidance\\_on\\_decision-making\\_for\\_NI\\_Dpts.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/754029/Cm9725_Guidance_on_decision-making_for_NI_Dpts.pdf)
  - Historical Institutional Abuse Inquiry:  
<https://www.hiainquiry.org/historical-institutional-abuse-inquiry-report-chapters>
  - Report of the Inquiry concerning the UK under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.  
[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT\\_CEDAW\\_ITB\\_GBR\\_8637\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT_CEDAW_ITB_GBR_8637_E.pdf)

## Annex A – Territorial extent and application in the United Kingdom

39 The Bill will extend and apply to the whole of the United Kingdom, including 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	N/A	No
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	No
Clause 10	No	No	No	Yes	N/A	N/A	N/A	No

### Minor or consequential effects

40 There are no minor or consequential effects.<sup>5</sup>

<sup>5</sup> References in this statement to an effect of a provision being minor or consequential are to its being minor or consequential 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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