

HOUSE OF LORDS

Select Committee on the Constitution

26th Report of Session 2017–19

Northern Ireland (Executive Formation) Bill

Ordered to be printed 10 July 2019 and published 10 July 2019

Published by the Authority of the House of Lords

HL Paper 404

Select Committee on the Constitution

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Committee staff

The current staff of the committee are Matt Korris (Clerk), Matt Byatt (Policy Analyst) and Alasdair Johnston (Committee Assistant). Professor Stephen Tierney and Professor Mark Elliott are the legal advisers to the Committee.

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Northern Ireland (Executive Formation) Bill

1. The Northern Ireland (Executive Formation) Bill was introduced to the House of Commons on 4 July 2019. The Bill is being fast-tracked through both Houses. It had second reading in the House of Commons on 8 July and all remaining stages took place on 9 July. It was brought to the House of Lords on 9 July, with second reading scheduled for 10 July. Committee stage is expected to take place on 15 July, and report and third reading on 17 July.
2. The Bill amends the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018, which amended the Northern Ireland Act 1998, to extend the period for the appointment of Northern Ireland Ministers and the resumption of the power-sharing Executive. 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, the Secretary of State is required to propose a date for another election.
3. This is not the first extension of this period. Following the election to the Northern Ireland Assembly on 2 March 2017, the period initially expired on 27 March 2017. It was extended to 29 June 2017 by the Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017, then to 26 March 2019 by the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018, and then to 25 August 2019 by a statutory instrument under the 2018 Act.¹
4. The Bill proposes to extend the period again to 21 October 2019 and grants the Secretary of State power, by regulations, to change that date to 13 January 2020. As with the power in the 2018 Act, this power may be used only once. The Bill also places a duty on the Secretary of State to lay a report before Parliament on or before 4 September 2019 explaining the progress towards the formation of an Executive in Northern Ireland if one has not already been formed. A further report is required on or before 9 October and at least every two weeks thereafter until either an Executive is formed or until 18 December. The Bill sets various requirements for the contents of the first report by the Secretary of State and provides that a motion to approve the report must be moved in the House of Commons by the Government within seven Commons sitting days. A motion that the House of Lords takes note of the report is also required within seven Lords sitting days.
5. The Bill effectively perpetuates the stasis in Northern Ireland governance. In the absence of movement in the cross-party talks, the lack of an Executive has resulted in both a democratic deficit and increasingly inefficient governance, as Northern Ireland Departments seek to operate public services on the basis of the policy priorities and spending commitments of the previous administration. David Sterling, the head of the Northern Ireland Civil Service, acknowledged that the lack of an Executive had led to “a slow decay

¹ The 2018 Act allowed for the period to be extended once, by a period of up to five months. The Northern Ireland (Extension of Period for Executive Formation) Regulations 2019 ([SI 2019/616](#)) utilised this provision.

and stagnation in our public services”.² We stress that we do not criticise the Northern Ireland Civil Service for operating in line with constitutional propriety in challenging circumstances in the absence of an Executive.

6. In our report on the Northern Ireland (Executive Formation and Exercise of Functions) Bill (now the 2018 Act) we acknowledged the political context of Northern Ireland meant that the UK Government had been “compelled in the absence of any attractive alternatives to legislate” to address the practical issues that had arisen.³ We did however question the fast-tracking of the Bill. We observed:

“Power-sharing has been suspended in Northern Ireland for well over 18 months and there have been few recent signs that a resolution to the impasse is likely ... We understand the Government’s desire to allow the negotiations to continue for as long as possible to avoid this legislation, however more time (even with a fast-track timetable) could have been made available for parliamentary scrutiny of this Bill.”⁴

7. We concluded:

“We accept, reluctantly, that an exceptional response is justified to protect the people of Northern Ireland from a potentially significant damaging impact on the provision of services. We emphasise that in any other circumstances provisions such as these which challenge established constitutional principles would not be acceptable and that no part of this Bill—nor the fast-track procedure by which it is being taken through both Houses—should be taken as a precedent for future legislation.”⁵

8. In our recent report, *The Legislative Process: The Passage of Bills Through Parliament*, we said:

“We regret that legislation relating to Northern Ireland has regularly been fast-tracked. This has become common not just for bills which might be required to address urgent or unforeseen problems, but for routine and predictable matters such as budgetary measures. The political stalemate in Northern Ireland has led to an absence of a functioning Executive and a democratic deficit. Fast-tracking bills relating to Northern Ireland reduces further the scrutiny these measures should receive. Routinely fast-tracking in this way is unacceptable, unsustainable and should only be used for urgent matters.”⁶

9. **We reiterate our concern about the routine nature of fast-tracking legislation relating to Northern Ireland. It is constitutionally unacceptable save for exceptional and urgent circumstances. Given this will be the fourth (and potentially fifth) extension of the period for forming an Executive, and the lack of progress in the cross-party**

2 Richard Johnstone, ‘Northern Ireland Civil Service chief says no ministers could become ‘new normal’’, *Civil Service World*, 14 February 2019: <https://civilserviceworld.com/articles/news/northern-ireland-civil-service-chief-says-no-ministers-could-become-new-normal> [accessed 10 July 2019]

3 Constitution Committee, *Northern Ireland (Executive Formation and Exercise of Functions) Bill* (15th Report, Session 2017–19, HL Paper 211), para 22

4 *Ibid.*, para 23

5 *Ibid.*, para 24

6 Constitution Committee, *The Legislative Process: The Passage of Bills Through Parliament* (24th Report, Session 2017–19, HL Paper 393), para 39

talks, it can hardly be argued that the need for this legislation was not foreseeable and that it could not have been introduced earlier and proceeded with less haste.

10. In our 2009 report, *Fast-track legislation: constitutional implications and safeguards*, we recommended that, for legislation subject to fast-tracking, the Government should set out its justification for fast-tracking in the explanatory notes to the bill.⁷ In our recent report on the Legislative Process, we noted that the Government had observed this recommendation in respect of most recent bills that have been fast-tracked.⁸ **We regret that no such justification has been provided in the explanatory notes to this Bill.**

⁷ Constitution Committee, *Fast-track Legislation: Constitutional Implications and Safeguards* (15th Report, Session 2008–09, HL Paper 116), para 185

⁸ Constitution Committee, *The Legislative Process: The Passage of Bills Through Parliament* (24th Report, Session 2017–19, HL Paper 393), para 39