

Draft Guidance on decision-making for Northern Ireland Departments until an Executive is formed or for the six month period beginning with the day on which the NI (Executive Formation etc) Act 2022 is passed

Introduction

1. This guidance is published by the Secretary of State for Northern Ireland in exercise of the duty imposed by section 3(4) of the Northern Ireland (Executive Formation etc) Act 2022 (the **Act**).
2. This guidance was published in draft alongside the passing of the then Bill in the House of Commons on the [XX December.] The Act received Royal Assent on the [XX December.]

Context

3. The UK Government is committed to the principles, obligations and institutions established under the Belfast (Good Friday) Agreement and subsequent agreements. In accordance with these, the UK Government will continue to work to restore the Northern Ireland Executive. In the meantime, the UK Government will take the steps necessary to maintain the delivery of public services, protect the interests of the people of Northern Ireland and protect public finances.
4. The UK Government recognises that, in the absence of an Executive, there will be some decisions that it should take, such as introducing legislation in Parliament setting out departmental budget limits. In the absence of a functioning Northern Ireland Assembly, the UK Government will keep under review the need for any additional necessary Northern Ireland legislation that may need to be brought before Parliament.
5. In this context, the UK Government recognises that, while efforts to restore the Executive continue, Northern Ireland departments will need to take decisions and exercise functions in order to uphold governance and protect the public interest. This guidance is intended to support NI departments when considering taking those decisions and exercising those functions.

Framework for decision-making

6. Section 3 of the Act provides clarity that the absence of Northern Ireland Ministers does not prevent a senior officer of a NI department from exercising a function of the department if the officer is satisfied that it is in the public interest to exercise the function during the period until an Executive is formed or for six months after Royal Assent, whichever happens first.
7. Alongside the Act, and other relevant legislation and procedures governing NI departments, including the values and behaviours set out in the NICS Code of Ethics, this guidance sets out the principles to which senior officers of NI Departments must, in accordance with section 3(5) of the Act, have regard when taking decisions on matters which, ordinarily, would have been referred to Ministers to decide or agree.

8. In carrying out their functions, Northern Ireland departments must also take into consideration wider pressures on the Northern Ireland Budget and the departmental spending limits and Budget position as set out by the Secretary of State for Northern Ireland in Parliament on 24 November 2022. These will be reflected in the Budget Bill introduced in Parliament in due course.

Guiding principles for decision-making

9. Some decisions should not be taken by civil servants without the direction of elected Ministers. NI departments should therefore first consider the public interest of having elected Ministers taking and guiding decisions. Any major policy decisions, such as the initiation of a new policy, programme or scheme, including new major public expenditure commitments, or a major change of an existing policy, programme or scheme, should normally be left for Ministers to decide or agree.

10. When considering whether there is a public interest in taking a decision in the absence of NI Ministers, principles to be taken into account by senior officers in NI Departments include:

a. The primary principle that departments must control and manage expenditure within the limits of the appropriations set out in Budget Acts, and as set out in the Secretary of State's statement to Parliament of 24 November.

b. The principle that Departments should exercise a function where failure to do so might result in:

- failure to comply with a statutory obligation;
- even greater budgetary pressures for the next financial year or significant financial costs to the public purse;
- significant detriment to the provision of a public service or public safety;
- failure to address a civil contingency, or manage a significant risk; or
- a significant loss of an opportunity to realise a significant public advantage for:
 - public finances; or
 - the NI economy; or
 - inward investment; or
 - job creation; or
 - tackling disadvantage; or
 - carbon reduction.

c. the principle that the policy direction of former Ministers should normally continue to be followed unless it conflicts with principles (a) or (b), or there is a significant change in circumstance or new compelling objective evidence which undermines or which changes the basis on which the original policy direction was based, which lead the senior officer to conclude that it is not in the public interest to do so.

- d. the principle that it is a priority to maintain the delivery of public services as sustainably, effectively, and efficiently as possible.

11. In taking decisions, senior officers should also take into account the following principles:

(a) the principle that where decisions to be taken materially cut across or impact upon the responsibilities of another NI department, discussions with the relevant department(s) should take place and due regard should be given to the views of the relevant department(s).

(b) the principle that where decisions are deferred, the public interest consequences of a deferral should be kept under review. This recognises that, with the passage of time, there may be the need to take decisions on matters previously deferred.

(c) the principle that where decisions are not taken, NI departments should continue to advance preparatory work as far as possible until such time as decisions can be taken by Ministers.

Reporting and accountability measures

12. Decisions must continue to comply with relevant statutory guidance and all existing legislative requirements and obligations, including but not limited to, ensuring that functions are exercised in a way that is consistent with sections 24 and 75 of the NI Act 1998, the Human Rights Act 1998, the Climate Change Act (Northern Ireland) 2022, and the Public Records Act (NI) 1923. Departments must also continue to have regard to all other relevant guidance and policy requirements that may be relevant to departmental decision making, including but not limited to Regulatory Impact Assessments, Privacy Impact Assessments (GDPR), rural proofing, economic appraisals (NIGEAE) and Managing Public Money (NI).

13. Where practicable, an appropriate level of engagement should take place with those individuals and organisations that are likely to be most affected by the decision.

14. Permanent Secretaries remain ultimately responsible for decisions that are taken by senior officers. In line with normal practice and line management processes, Permanent Secretaries should ensure there is appropriate guidance and a process in place to govern how, and at what level, functions are exercised by senior officers in their Department.

15. In maintaining records, NI Departments should consider how best to maintain records on decisions that have been taken in the absence of Ministers using this Guidance. Such records should be made available to incoming Ministers when an Executive is appointed. A monthly summary report of decisions taken using the Guidance should be prepared by NI Departments and shared with the Secretary of State. The Secretary of State will promptly make these reports available to Parliament.

16. This guidance also recognises the importance of the continuing role of the Comptroller and Auditor General for Northern Ireland and the Northern Ireland Audit Office. As part of enhanced accountability measures the C&AG will share all NIAO reports and recommendations with the Secretary of State. NI Departments should lay their departmental responses to the NIAO recommendations in the Assembly and share these responses with the Secretary of State who will lay copies in Parliament.

Review

17. This guidance remains extant until such time as it is reviewed and superseded by further guidance from the Secretary of State. The provisions in the Act (and therefore this guidance) no longer apply if an Executive is formed or after the expiry of six months after Royal Assent (whichever is earlier).

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