



Guidance on decision-making for Northern Ireland Departments during the period for Northern Ireland Executive formation

Presented to Parliament
by the Secretary of State for Northern Ireland
by Command of Her Majesty

November 2018



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Issued by the Northern Ireland Secretary of State on 05 November 2018

Introduction

1. This guidance is published by the Secretary of State for Northern Ireland in exercise of the duty imposed by section 3(2) of the Act. Before publishing this guidance the Secretary of State has, in accordance with section 3(9) of the Act, had regard to representations made to her by the members of the Northern Ireland Assembly.
2. This guidance was published in draft alongside introduction of the Act on the 18th of October. The Act received Royal Assent on the 1st November.
3. In addition to the duty imposed on the Secretary of State in section 3(2) of the Act, section 4 requires that the Secretary of State issues guidance specifying how departmental functions are exercised in relation to “the incompatibility of the continued enforcement of sections 58 and 59 of the Offences against the Person Act 1861 and Article 13(e) of the Matrimonial Causes (Northern Ireland) Order 1978 with human rights”. The Secretary of State is carefully considering how best to discharge her functions under section 4 and will issue guidance in accordance with that section in due course.

Context

4. The UK Government is committed to the principles, obligations and institutions established under the Belfast 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 necessary steps to maintain the delivery of public services and protect the interests of the people of Northern Ireland.
5. The UK Government recognises that, in the absence of an Executive, there will be some decisions that it should take, such as setting out departmental budget allocations in legislation. 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.
6. 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 good governance and protect the public interest. This guidance is intended to support NI Departments when considering taking and exercising those decisions and functions.

Framework for decision-making

7. The Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 extends the time-limited period during which an Executive can be formed (section 1). 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 that period.

8. Alongside the Act, and other relevant legislation and procedures governing NI Departments, including the values and behaviours set out in the NICS Code of Ethics¹, this guidance sets out the principles to which NI Departments must, in accordance with section 3(3) of the Act, have regard when taking decisions on matters which, ordinarily, would have been presented to Ministers to decide or agree.

Guiding principles for decision-making

9. Some decisions should not be taken in the absence of Ministers. NI Departments should therefore first consider the public interest of having locally elected, accountable Ministers taking 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. NI departments should then consider whether there is a public interest in taking a decision rather than deferring a decision during the period for Executive formation².
11. When considering whether there is a public interest in taking a decision in the absence of Ministers, principles to be taken into account by senior officers in NI Departments include:
 - (a) the principle that it is a priority to maintain the delivery of public services as sustainably and efficiently as possible, working towards the previous Executive's stated objective of improving wellbeing for all - by tackling disadvantage and driving economic growth.
 - (b) the principle that the priorities and commitments of the former Executive and Minister(s) should be followed unless there is an exceptional circumstance such as a significant emerging challenge, new strong objective evidence, or significant changing circumstances which lead senior officials to conclude that it is no longer in the public interest to do so.
 - (c) the principle that opportunities should be taken to work towards the 12 outcomes published in the 2018-19 Outcomes Delivery Plan, which is based on the draft Programme for Government developed in conjunction with the political parties of the previous Executive:

Outcome 1: We prosper through a strong, competitive, regionally balanced economy

Outcome 2: We live and work sustainably – protecting the environment

Outcome 3: We have a more equal society

Outcome 4: We enjoy long, healthy, active lives

Outcome 5: We are an innovative, creative, society, where people can fulfil their potential

Outcome 6: We have more people working in better jobs

Outcome 7: We have a safe community where we respect the law, and each other

Outcome 8: We care for others and we help those in need

¹ Excluding those aspects of the Code that expressly refer to serving Ministers.

² The period for forming an Executive is prescribed in the [Act] and ends on 26 March 2019. It may be extended for a further period of up to 5 months.

- Outcome 9:** We are a shared, welcoming and confident society that respects diversity
Outcome 10: We have created a place where people want to live and work, to visit and invest
Outcome 11: We connect people and opportunities through our infrastructure
Outcome 12: We give our children and young people the best start in life.

Opportunities should also be taken to continue to deliver previously agreed investment programmes such as those in the Investment Strategy for Northern Ireland 2011-2021.

- (d) the principle that the consequences of deferring decisions, particularly in terms of the financial, economic, environmental, legal or social impact should be considered and significant detriment avoided.

Particular weight may be given in cases where a delay or deferral could result in:

- significant financial costs to the public purse; or
- serious detriment to the public interest, public health and wellbeing, public safety or the NI economy; or
- the 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.

12. 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 may, however, continue to advance preparatory work as far as possible until such time as decisions can be taken by Ministers.

Reporting and accountability measures

13. Decisions must continue to comply with relevant statutory guidance and requirements and all existing legislative obligations, including but not limited to, ensuring that functions are exercised in a way that is consistent with sections 75 and 76 of the NI Act 1998, the Human Rights Act 1998 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).

14. 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.
15. In order to ensure transparency, NI Departments should publish a full report on progress on the Outcomes Delivery Plan (referred to in principle 11c). This guidance recognises the agreement of NI Departments to present it to the NI Assembly and share it with the Secretary of State who will in turn lay it in Parliament. The Secretary of State will also promptly share this with the NI political parties.
16. 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.
17. 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 and to the NI political parties.
18. 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 and promptly share them with the NI political parties.

Review

19. This guidance remains extant until such time as it is reviewed and superseded by further guidance from the Secretary of State, or the period for forming an Executive set out in the Act has ended (whichever is earlier).

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