

NORTHERN IRELAND BUDGET BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland Budget Bill as introduced in the House of Commons on 29 October 2019 (Bill 9).

- These Explanatory Notes have been prepared by the Northern Ireland Office in order to assist the reader of the Bill and 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.

Subject	Page of these Notes
Overview of the Bill	3
Policy background	3
Legal background	4
Fast-track legislation	5
Commentary on provisions of Bill	8
Commencement	9
Financial implications of the Bill	9
Parliamentary approval for financial costs or for charges imposed	9
Compatibility with the European Convention on Human Rights	9
Related documents	10
Annex A - Territorial extent and application in the United Kingdom	10

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.
- 2 It authorises Northern Ireland departments and certain other bodies to incur expenditure and use resources for the financial year ending on 31 March 2020, as detailed in the corresponding Main Estimates volume and summarised in the Schedules to the Bill.

Policy background

The Northern Ireland Budget

- 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 is not currently sitting in the absence of an agreement to form an Executive. 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 most up to date spending plans at that time.

The Northern Ireland (Anticipation and Adjustments) Act 2019

- 5 Following this, the Northern Ireland Civil Service continued to manage the delivery of services in Northern Ireland. This 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 authorised by Parliament in the UK Estimates process. Parliament's authorisation for these revisions was provided in the Northern Ireland Budget (Anticipation and Adjustments) Act 2019 in March 2019.
- 6 In addition to providing the authorisations and appropriations for the revised amounts required for the full 2018-19 financial year, the Northern Ireland Budget (Anticipation and Adjustments) Act 2019 also provided authorisations and appropriations for a vote on

account. This was 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.

- 7 This vote on account is a normal process for any Supply and Appropriation Act and did not imply the setting of a 2019-20 Budget for the Northern Ireland departments and other public bodies. Its purpose was to provide access to cash and resources, approximately 70 per cent of the amount authorised for the previous financial year, to ensure that services could continue to be delivered pending the consideration of a Budget Bill for the full 2019-20 financial year.
- 8 The amounts authorised and appropriated in the vote on account are expected to begin to be exhausted from 31 October 2019, and the purpose of the Bill is to provide the authorisations and appropriations for the balance to complete each department's full 2019-20 cash and resource requirements. The figures in this Bill are based on the draft 2019-20 Budget announced in Parliament for the Northern Ireland departments by the Secretary of State for Northern Ireland on 28 February 2019, adjusted to reflect the latest in-year position agreed by the Northern Ireland Civil Service.

The Northern Ireland Budget Bill

- 9 This Bill is a minimal step to ensure that public services can continue to be provided in Northern Ireland for the full financial year. 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 allocations set out in the Bill continue to be based on the advice of the Northern Ireland departments.
- 10 No new money would be voted as a result of the Bill. Instead it will appropriate sums already provided to the Consolidated Fund of Northern Ireland through the UK Estimates process, together with revenue generated 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. It would be deemed for those purposes to be an Act of the Assembly. To that end, instead of the usual Assembly process, a Main 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 Main 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

Why is fast-tracking necessary?

- 16 It is necessary to fast-track this Bill to safeguard the continued delivery of public services and to provide clarity for departments to safeguard public finances. It therefore 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 2020 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 vote on account contained within the Northern Ireland Budget (Anticipation and Adjustments) Act 2019.
- 18 As a result of reaching these limits the only alternative would be for the Permanent Secretary of the Department of Finance in Northern Ireland to exercise the powers under section 59 of the Northern Ireland Act 1998 and section 7 of the Government Resources and Accounts Act (Northern Ireland) 2001. This would be in order to allow services to continue to be delivered in Northern Ireland once the amounts authorised by the vote on account become exhausted. These powers are emergency powers intended to be used only in the absence of more orthodox legal authority. They can authorise only up to a maximum of 95% of the previous year's provision and cannot authorise the use of accruing resources; therefore legislation would still be required regardless, albeit at a later point in the year. Relying on these powers would risk creating unnecessary 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 full financial year ending 31 March 2020.
- 20 This Bill does not authorise any new money. Instead it will appropriate sums already

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

provided to the Consolidated Fund of Northern Ireland through the UK Estimates process, together with revenue generated locally within Northern Ireland. That being the case it would not have been appropriate to introduce this Bill ahead of the Supply and Appropriation (Main Estimates) Bill but as set out already it is required before the end of October 2019.

- 21 Legislating now will provide certainty to the Northern Ireland departments on public finances and enable them to plan and manage the delivery of public services for the full financial year no matter what circumstances arise in the coming months. This avoids the risk that the Northern Ireland Civil Service (NICS) would rely on the use of emergency powers under section 59 of the Northern Ireland Act 1998 in November if a Budget Bill is not passed before then by either the Assembly or Parliament.

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

- 22 The need for this Bill arises from the continued absence of a Northern Ireland Executive, such that there would now be insufficient time for a Budget Bill to be passed by a restored Northern Ireland Assembly. It is being taken forward at the latest possible point before the risk to public services could manifest but also after the point at which UK Main Estimates have been passed. The figures in this Bill are based on the Written Ministerial Statement regarding the Budget set out to Parliament in February 2019 adjusted to reflect the latest in-year position agreed by the Northern Ireland Civil Service but in the circumstances, it has not been possible to give Parliament more time to scrutinise this Bill.

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

- 23 The Bill is being introduced in the absence of a Northern Ireland Executive. The amounts being authorised and appropriated in this Bill are based on a budget position announced in Parliament by the Secretary of State for Northern Ireland on 28 February 2019 adjusted to reflect the latest in-year position agreed by the Northern Ireland Civil Service.
- 24 In advance of setting budget allocations, the Secretary of State engaged extensively with the NICS to understand their budgetary needs and priorities. All the main political parties have also been consulted on the financial situation.

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?

- 25 The Bill does not contain a sunset clause. However, the Bill only applies to the financial year ending 31 March 2020.

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

- 26 As noted above, the Bill only makes provision for the issue of sums and the authorisation of the use of resources for the financial year ending 31 March 2020.

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

- 27 Yes. As the Northern Ireland Budget (Anticipation and Adjustments) Act 2019 was passed by Parliament in March 2019, the only existing legislation which allows for the issue of additional sums from the Consolidated Fund of Northern Ireland and for the authorisation of the use of additional 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. As noted above, these are emergency powers only intended to be used in the absence of more orthodox legal authority. Relying on these powers would risk creating unnecessary uncertainty around public finances.
- 28 Moreover, the powers provided under section 59 of the Northern Ireland Act 1998 and section 7 of the Government Resources and Accounts Act (Northern Ireland) 2001 are limited to 95% of the previous year's provision, and exclude the use of accruing resources. As a result they would be insufficient to provide the additional sums and use of additional resources required to safeguard the delivery of public services in Northern Ireland for the full 2019-20 financial year.
- 29 New legislation is therefore required in order to allow public services to continue to be delivered in Northern Ireland for the full financial year up to and including 31 March 2020.

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

- 30 Due to the need to implement the Bill urgently, the Northern Ireland Affairs Committee has not scrutinised the Bill in draft. However, the committee did have an opportunity to see and scrutinise the budget allocations which were set out in the Secretary of State's NI Budget Statement and on which they received an informal technical briefing from NIO officials.

Commentary on provisions of Bill

Clause 1: Issue of sums out of the Consolidated Fund for the year ending 31 March 2020 and appropriation of that sum

- 31 The purpose of Clause 1 is to authorise the NI Department of Finance to issue out of the Consolidated Fund of Northern Ireland the sum of £5,306,684,000 for the purposes set out in Schedule 1. This sum is a balance to complete, and is in addition to the amount previously authorised by section 4 of the Northern Ireland Budget (Anticipation and Adjustments) Act 2019.

Clause 2: Power of the Department of Finance to borrow

- 32 Clause 2 authorises the temporary borrowing by the NI Department of Finance of approximately half the sum covered by Clause 1. This is a normal 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 3: Use of resources (other than accruing resources) in the year ending 31 March 2020

- 33 Clause 3 authorises the use of resources by NI departments and other specified public bodies amounting to £6,041,303,000 in the year ending 31 March 2020 for the purposes specified in column 1 of Schedule 2. As with Clause 1, this amount is a balance to complete, and is in addition to the amount previously authorised by section 6 of the Northern Ireland Budget (Anticipation and Adjustments) Act 2019.

Clause 4: Limits on use of certain accruing resources in the year ending 31 March 2020

- 34 Clause 4 sets limits on the accruing resources, including both operating and non-operating accruing resources, which may be used by the NI departments and specified public bodies for the purposes specified in column 1 of Schedule 2 in the year ending 31 March 2020.

Clause 5: Act to take effect as if it were a Budget Act of the Assembly etc.

- 35 Clause 5 provides for this Bill to have the same effect as if it were an Act of the Northern Ireland Assembly. It also modifies references in other pieces of legislation which relate to the requirement for the laying and approval of estimates in the Assembly so that they include references to estimates laid before Parliament in the current financial year.

Clause 6: Interpretation and Clause 7: Short title

- 36 These provisions are self-explanatory.

Schedule 1 – Sums granted for the year ended 31 March 2020

- 37 Schedule 1 sets out the purposes and sums of money granted to Northern Ireland departments and other bodies under this Bill (Clause 1).

Schedule 2 – Amounts of resources authorised for use and amounts of accruing resources which may be used in year ending 31 March 2020

- 38 Schedule 2 sets out the amount of resources authorised for use by Departments and other bodies (see Clause 3) and the limits to use of accruing resources (see Clause 4).

Commencement

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

Financial implications of the Bill

- 40 This Bill will authorise the issue of the sum of £5,306,684,000 from the Consolidated Fund of Northern Ireland and the use of resources to the amount of £6,041,303,000 for the year ending 31 March 2020 by Northern Ireland departments and other public bodies.

Parliamentary approval for financial costs or for charges imposed

- 41 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

- 42 We do not consider that the provisions of this Bill engage any rights under the European Convention on Human Rights.
- 43 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).
- 44 The Right Hon. Julian Smith, Secretary of State for Northern Ireland, has made the following statement:

"In my view, the provisions of the Northern Ireland Budget Bill are compatible with Convention rights."

Annex A - Territorial extent and application in the United Kingdom

45 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
Schedule 1	No	No	No	Yes	No
Schedule 2	No	No	No	Yes	No

Subject matter and legislative competence of devolved legislatures

46 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 legislature. 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 Bill will be introduced would come within the exception allowed by the Convention.

NORTHERN IRELAND BUDGET BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Northern Ireland Budget Bill introduced in the House of Commons on 29 October (Bill 9).

Ordered by the House of Commons to be printed, 29 October 2019.

© Parliamentary copyright 2019

This publication may be reproduced under the terms of the Open Parliament Licence which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS