

NORTHERN IRELAND (EXECUTIVE FORMATION) BILL

EXPLANATORY NOTES [PRE INTRODUCTION]

What these notes do

These Explanatory Notes relate to the Northern Ireland (Executive Formation) Bill as introduced in the House of Commons on 24 January 2024.

- 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.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	3
Policy background	3
Legal Background	3
Territorial extent and application	4
Fast-track legislation	4
Why is fast-tracking necessary?	4
What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?	4
To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?	4
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?	4
Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?	5
Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?	5
Commentary on provisions of Bill	6
Clause 1: Extension of period for making Ministerial appointments	6
Commencement	6
Financial implications of the Bill	6
Parliamentary approval for financial costs or for charges imposed	6
Compatibility with the European Convention on Human Rights	6
Environmental law for the purposes of the Environment Act 2021	7
Related documents	7
Annex A - Territorial extent and application in the United Kingdom	8

Overview of the Bill

- 1 In summary, this Bill will:
 - a. extend the Executive formation period from 18 January 2024 to 8 February 2024 with the effect of postponing the Secretary of State's duty, under section 32(3) of the Northern Ireland Act 1998, to call an election in Northern Ireland;

Policy background

- 2 Northern Ireland Assembly elections were held on 5 May 2022, as five years had passed since the previous Assembly was elected. Prior to the election, there was no functioning Executive due to the resignation of the then First Minister on 4 February 2022. The First Minister's resignation meant that the deputy First Minister also ceased to hold office and that there was no longer any functioning Executive Committee.
- 3 As a result of the election on 5 May, 90 Members of the Legislative Assembly were elected, forming a new Assembly. The Northern Ireland Act 1998 requires that the Assembly first meets within 8 days of a poll, and that meeting commences the period for filling Ministerial offices.
- 4 The Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022 implemented changes agreed within New Decade, New Approach (NDNA), the agreement that restored the devolved institutions in 2020. These changes include provision for a longer period of time in which to form an Executive, and allowed for an initial period of 6 weeks from the date that the Assembly first meets, followed by 3 successive periods of 6 weeks (i.e. 24 weeks in total), unless the Assembly resolves (with cross-community support) that the period should not be further extended. During this time, NI Ministers who were in post before the election were allowed to remain so in a caretaker capacity.
- 5 The period for filling Ministerial offices after the Assembly election in May 2022 initially came to an end on 27 October 2022, with NI Ministers ceasing to hold office on 28 October 2022. As those offices were not filled, the Secretary of State for Northern Ireland fell under a duty to propose a date for a further Assembly election as soon as practicable to take place within 12 weeks.
- 6 Parliament subsequently passed the Northern Ireland (Executive Formation etc) Act 2022 (NIEFA 2022), retrospectively extending the period for Executive formation from when it ended on 27 October until 8 December 2022, and for the powers to be extended by regulations. The Secretary of State exercised that power on 7 December, thereby extending the period for Executive formation until 19 January 2023. The period was further extended until 18 January 2024 by the Northern Ireland (Executive Formation and Organ and Tissue Donation) Act 2023.

Legal Background

- 7 The relevant legal background is explained in the Policy Background and Decision-making Powers sections of these Notes.

Territorial extent and application

- 8 The Bill extends to England and Wales, Scotland and Northern Ireland, but only applies in Northern Ireland.
- 9 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Fast-track legislation

- 10 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards¹, 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-tracked².

Why is fast-tracking necessary?

- 11 Following consultation with the Northern Ireland political parties and the wider public after the end of the Executive formation period under the Northern Ireland (Executive Formation etc) Act 2022, the Government has assessed that an immediate election would not support the restoration of the devolved institutions. This assessment remains unchanged. Instead, providing a short extension to the Executive Formation period will provide the opportunity to try and imminently restore devolved Governance in Northern Ireland.

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

- 12 The Government has sought to introduce the Bill as soon as the parliamentary timetable allows. It has always been the Government's intention that locally elected politicians in Northern Ireland should be taking decisions and we have sought to allow as much time as possible for that to happen before introducing this Bill.

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

- 13 The Secretary of State for Northern Ireland has been in frequent contact with the Northern Ireland parties, encouraging the parties to form an Executive at the earliest opportunity following the conclusion of the Windsor Agreement. The Secretary of State has also engaged with the Opposition on the approach.

Does the bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their

¹ House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I

² House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I, para.

inclusion is not appropriate?

- 14 The extended period for Executive formation provided for by this Bill is not renewable other than by Act of Parliament.

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

- 15 The Government does not believe that mechanisms for post-legislative scrutiny and review are necessary, given these are interim arrangements and/or only occur in periods when there is no Northern Ireland Executive. The Secretary of State for Northern Ireland is held accountable for the Government's approach to governance in Northern Ireland through the usual mechanisms, for instance parliamentary questions, committee appearances and correspondence.

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

- 16 Under the Northern Ireland Act 1998, as amended by the Northern Ireland (Executive Formation etc) Act 2022, the period for forming an Executive ended on 18 January 2024. As such, new legislation is necessary to extend the Executive formation period.

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

- 17 It has not been possible to engage with the Northern Ireland Affairs Committee in the time available before introduction. The Committee chair will be briefed before the Bill's Commons stages.

Commentary on provisions of Bill

Clause 1: Extension of period for making Ministerial appointments

- 18 By making amendments to section 1 of the Northern Ireland (Executive Formation etc) Act 2022, this clause amends the effect of section 16A of the Northern Ireland Act 1998 during the period following the 5 May 2022 elections. The legislation will extend the period for filling Ministerial offices which follows from the elections that took place on 5 May 2022 for a further period to apply partly retrospectively (so that it applies from 19 January 2024 until 8 February 2024).

Commencement

- 19 This Bill will come into force on the day on which it is passed.

Financial implications of the Bill

- 20 The provisions of this Bill will not generate additional expenditure or raise additional revenue.

Parliamentary approval for financial costs or for charges imposed

- 21 The Bill does not entail any financial costs or charges, so neither a Money Resolution nor a Ways and Means Resolution will be needed in the House of Commons.

Compatibility with the European Convention on Human Rights

- 22 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).
- 23 The Secretary of State, the Rt Hon Chris Heaton-Harris MP, has made the following statement:
- “In my view, the provisions of the Northern Ireland (Executive Formation) Bill are compatible with Convention rights.”
- 24 The Northern Ireland Office does not consider that the provisions of the Bill engage Convention rights.

Environmental law for the purposes of the Environment Act 2021

- 25 The Secretary of State, the Rt Hon Chris Heaton-Harris MP is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Related documents

- 26 The following documents are relevant to the Northern Ireland (Executive Formation) Bill:

- [The Northern Ireland Act 1998](#)
- [The Northern Ireland \(Executive Formation etc Act\) 2022](#)
- [Northern Ireland \(Executive Formation and Organ and Tissue Donation\) Act 2023](#)
- [Northern Ireland \(Interim Arrangements\) Act 2023](#)

Annex A - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	Yes	No	Yes	No