



BRIEFING PAPER

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Northern Ireland Budget Bill 2017-19 [Bill 123]

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Summary

The House of Commons is scheduled to take all stages of the *Northern Ireland Budget Bill 2017-19* [Bill 123] on 13 November 2017, the first day after the short recess, subject to approval of a Business of the House Motion on the same day.

Northern Ireland has not had an Executive, nor a functioning Assembly, since January 2017. No budget for 2017-18 had been set before the Assembly ceased to function. Under provisions in the *Northern Ireland Act 1998* civil servants have been able to spend up to 95% of the budget for 2016-17 during the period since 1 April 2017. They have advised the Secretary of State that November 2017 is the latest point at which a new budget can be set before funds will start to run out.

The *Northern Ireland Budget Bill* authorises the use of resources and issues cash to Northern Ireland departments and other public bodies, as if it were a budget passed by the Northern Ireland Assembly. It therefore updates and supersedes the money available to civil servants under the 1998 Act. The Bill authorises the issue of £16bn from the consolidated fund of Northern Ireland, and the use of £18bn of non-accruing resources. Its Schedules show the departmental allocations.

The Secretary of State for Northern Ireland, James Brokenshire, has hosted talks for several months between the two main parties, the Democratic Unionist Party (DUP) and Sinn Féin, with support from the Irish Government. The parties have reportedly made some progress, but have not been able to resolve their differences, in particular over Sinn Féin's desire for an Irish language act to give the Irish language official status.

Mr Brokenshire set a deadline of the end of October 2017 as the last point at which an Executive could be formed with a chance of passing a budget in the Northern Ireland Assembly. As this deadline was missed, he announced that he would introduce a budget Bill at Westminster. This Bill would not go beyond the supply already agreed for Northern Ireland in previous estimates. It would not include money announced in connection with the confidence and supply agreement between the Conservative Party and the Democratic Unionist Party.

Mr Brokenshire has spoken of a glide path to increasing intervention by the UK Government. This could take a variety of forms. It is possible that a subsequent move might be made towards direct rule if the political situation does not resolve. Mr Brokenshire argues that the Budget Bill does not represent direct rule itself, as it does not impose any UK Government spending priorities.

1. Background

The Northern Ireland Executive collapsed in January 2017, when Martin McGuinness resigned as deputy First Minister, mainly in protest at the role of the First Minister, Arlene Foster, in a controversial energy subsidy scheme.

An extraordinary election was held in March 2017. There is information on the results in [Northern Ireland Assembly Elections: 2017](#), CBP 7920, 9 March 2017. The Democratic Unionist Party (DUP) won 28 seats, and Sinn Féin won 27, out of a total of 90 seats in the Assembly.

Following the election, the parties failed to agree on a new Executive within the statutory time limit. However, rather than call another election immediately, the Secretary of State for Northern Ireland, James Brokenshire, left a pause for further negotiations aimed at bringing the two largest parties, the DUP and Sinn Féin, to an agreement.

Under the legislation as it stood at the time an Executive had to be formed within 14 days of the first meeting of the Northern Ireland Assembly after the March 2017 election. If an Executive was not formed, a new election would be required, or a change would have to be made to the *Northern Ireland Act 1998* (see Box 1).

In April 2017 Parliament passed the *Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017*, which extended the period of time to form an Executive to 108 days. This extended the deadline to 29 June 2017.¹ This Act also set a regional rate for the current financial year, 2017-18, allowing rate bills to be issued, and thus providing ongoing finance to local government and to the Executive.²

For further background see:

[Northern Ireland \(Ministerial Appointments and Regional Rates\) Bill 2016-17](#), CBP 7916, 21 April 2017

[Northern Ireland: resignation of deputy First Minister](#), CBP 7860, 11 January 2017

Box 1: What happens when an Executive is not formed?

After a general election to the Northern Ireland Assembly there is a statutory time period for an Executive to be formed (as there was also after the resignation of the deputy First Minister).

The process and timescale for appointing the First and deputy First Ministers after an election is set out in s16A of the 1998 Act.

The first meeting of the Assembly must be within 8 days of the election. Within 14 days of that first meeting, a process takes place to fill the posts of First Minister and deputy First Minister:

- The nominating officer of the largest political party of the largest political designation shall nominate a member of the Assembly to be the First Minister.
- The nominating officer of the largest political party of the second largest political designation shall nominate a member of the Assembly to be the deputy First Minister.³

Another process takes place to fill the other ministerial posts.⁴

If the posts of First Minister and deputy First Minister are not filled by the end of the 14 day period, then the Secretary of State proposes a date for a new election, under s32(3), and an Order in Council

¹ [Northern Ireland \(Ministerial Appointments and Regional Rates\) Act 2017](#), s1

² Background to the *Northern Ireland (Ministerial Appointments and Regional Rates) Bill 2016-17* can be found in the Library Briefing Paper [Northern Ireland \(Ministerial Appointments and Regional Rates\) Bill 2016-17](#), CBP 7916, 21 April 2017.

³ *Northern Ireland Act 1998*, s16A(3). NB that this was amended by the *Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016*, and some online versions of the 1998 Act still show the unamended text with a period of seven days.

⁴ *Northern Ireland Act 1998*, s18

dissolves the Assembly and calls the election. There is no time limit on when the Secretary of State must set a date, which effectively provides discretion to create time for talks.

This applies to extraordinary elections such as the one in March 2017, as well as to elections on the normal cycle.

Any alternative outcome requires new legislation at the UK level. This occurred in April 2017, when the time period for creating an Executive after the March 2017 election was extended to 108 days.

2. Talks during 2017

2.1 Executive not formed before extended deadline

The 29 June 2017 deadline for forming an Executive was not met, but the Secretary of State for Northern Ireland did not propose a date for another extraordinary election. He continued to work to restore a power-sharing Executive, pursuing an established model of talks involving the main parties in Northern Ireland and the UK and Irish Governments.

On 28 June 2017 Mr Brokenshire told the House of Commons that:

The overriding priority for the UK Government in Northern Ireland remains the restoration of devolved power-sharing government in Stormont. The UK Government are working with the main Northern Ireland parties and, in accordance with the well-established three-stranded approach, the Irish Government to restore a fully functioning inclusive Executive and Assembly. But time is short. I would urge all concerned to use the narrow window that remains to look beyond their differences and to see that an Executive is formed.⁵

In a statement on 3 July 2017, after the deadline had passed, Mr Brokenshire indicated that the parties had continued to talk about forming an Executive and that he considered progress was being made. He reconfirmed that the UK Government wished to see the restoration of devolved government:

In the past few days since the passing of the deadline, some progress has continued to be made, including on the most challenging issues, such as language, culture and identity, but gaps remain between the parties on a defined number of issues. The Government remain committed to working with the parties and the Irish Government to find a way to close these gaps quickly in order to reach an agreement that will pave the way for the restoration of devolved government.⁶

He continued to believe that a deal remained “achievable”, and said that “if agreement is reached, I will bring forward legislation to enable an Executive to be formed, possibly as early as this week”. However, he considered that “time is short”. He outlined the consequences of Northern Ireland being without an Executive, concluding that “this hiatus cannot simply continue for much longer”.⁷

In the same statement Mr Brokenshire said, as he had said before the deadline expired, that

The return of inclusive, devolved government by a power-sharing Executive is what would be profoundly in the best interests of Northern Ireland, and that will remain our overriding focus in the crucial days ahead.⁸

⁵ [HC Deb 28 June 2017 c579](#)

⁶ [HC Deb 3 July 2017 c899](#)

⁷ [HC Deb 3 July 2017 c899](#)

⁸ [HC Deb 3 July 2017 c900](#)

2.2 Continued absence of an Executive

At Northern Ireland Office Questions on 13 September 2017 Mr Brokenshire noted that the Executive still had not been formed and that the UK Government continued to work to re-establish devolved government. Again, he explained that there was little time to reach an agreement, although he considered this was still possible.⁹

At the beginning of October 2017, he reiterated the view that a deal to restore the Executive was still possible. On 5 October, the *Belfast Telegraph* reported his comments at the Association of Chartered Certified Accountants Business Leader Forum in Belfast:

As the clock ticks towards an effective deadline of the end of the month, when the Westminster Government will have to intervene to set a budget for Stormont's rudderless public services, Mr Brokenshire told a business breakfast that, while the atmosphere in talks between the parties had improved, there was still work to do to reach a deal.¹⁰

Likewise, on 9 October 2017, Mr Brokenshire said in a written statement that the DUP and Sinn Féin had "reduced the number of issues between them – including on some aspects of language and culture," but he added that "clear differences still remain."¹¹

He indicated that he was ready to bring forward legislation to allow an Executive to be formed, which would not otherwise be possible given the expiry of the statutory period, but that the time for doing this was limited. If an agreement were not reached, UK legislation for a Northern Ireland budget would be needed:

If devolved government is not restored in the next few weeks, I will consider carefully what steps are needed in the best interests of the people, the voluntary sector, public services and businesses in Northern Ireland. As a minimum, this would involve introducing legislation later this month to set a budget for 2017/18 putting Northern Ireland on a path towards greater UK Government intervention in its day to day affairs.¹²

It appeared that some progress was made, but this stalled in mid-October. The Secretary of State told the Northern Ireland Affairs Committee on 18 October 2017,

There has been intensive engagement between the DUP and Sinn Fein over recent weeks. That has created a greater intensity, a greater tempo of engagement and greater understanding between the two parties. We had been moving in a positive direction, highlighting where the issues of difference were and closing a number of the gaps.¹³

However, he went on,

⁹ [HC Deb 13 September 2017 c827](#)

¹⁰ "[Powersharing deal needs compromise but is still doable, says N Ireland Secretary](#)", *Belfast Telegraph*, 5 October 2017

¹¹ [HCWS 147](#), 9 October 2017

¹² [HCWS 147](#), 9 October 2017

¹³ [Oral Evidence](#), Work of the Secretary of State for Northern Ireland, HC 498, 18 October 2017, Q1

That progress stalled at the end of last week. Unless things change and there is a renewed spirit of compromise, the outlook for imminent resolution is not positive.

Mr Brokenshire gave another update to the House of Commons on 19 October 2017. He referred to the overarching political impasse:

Over the past weeks and months the Prime Minister and I have sought, working with the Irish Government in accordance with the three stranded approach, to bring the parties together to work towards an agreement.

The DUP and Sinn Fein are seeking to find agreement on the issues between them. Those remaining are small in number but highly difficult and sensitive - notably in relation to language and culture.

The outlook for an imminent resolution is not positive. Time is running out. And without an agreement, we are on a glide path to increasing intervention by the UK Government.¹⁴

He stated that it was essential that a new budget were in place by the end of November 2017 (see below).

He then set out further critical dates:

Working from that deadline, the Northern Ireland Civil Service have assessed that it would still be possible, with political agreement among the parties in the Assembly, for an Executive formed in the week commencing 6 November to take forward its own Budget.

Consequently, the last week I could introduce Executive formation legislation in Parliament for an Executive to take forward its own Budget would be the week commencing 30 October.

I have made clear that I will only legislate in this way on the basis of a written agreement between the parties. If this is not forthcoming before 30 October, the only option remaining would be to legislate for a budget at Westminster.¹⁵

Mr Brokenshire slightly extended his deadline in view of apparent progress in the talks, but on 1 November 2017 he announced in a press release his intention to bring forward legislation for a budget,¹⁶ giving details to the House of Commons the next day. This is discussed further below.

¹⁴ [HCWS 185](#), 19 October 2017

¹⁵ [HCWS 185](#), 19 October 2017

¹⁶ [James Brokenshire statement: Northern Ireland talks update](#), 1 November 2017

3. Northern Ireland budget

3.1 Introduction

The Northern Ireland Assembly has to pass legislation at least three working days before the end of one financial year “authorising the issue out of the Consolidated Fund of Northern Ireland of sums for the service of the next financial year”.¹⁷ When the Assembly dissolved in January 2017, no budget had been set for the Northern Ireland Executive for the 2017-18 financial year. Since the end of March 2017 it has fallen to the Permanent Secretary of the Department of Finance, David Sterling, to allocate funding to Northern Ireland Departments under powers provided by section 59 of the *Northern Ireland Act 1998*. The amount he can authorise started at 75% of the 2016-17 total, and rose to 95% in July 2017.

3.2 Interim measures under Northern Ireland Act 1998

On 28 March 2017 the Secretary of State indicated interim measures that would allow everyday administration to continue in Northern Ireland in the absence of an Executive:

From tomorrow, a civil servant, the permanent secretary at the Department of Finance, will exercise powers to allocate cash to Northern Ireland Departments. This is an interim measure designed to ensure that services are maintained until such time as a budget is agreed. We are keeping in close contact with the head of the Northern Ireland civil service on these matters, and I understand that the Department of Finance will be setting out more details later today.¹⁸

David Sterling, Permanent Secretary at the Department of Finance, took on responsibilities under s59 of the *Northern Ireland Act 1998*. Given that a budget was not passed within three days of the end of the financial year, as noted above, he was able to authorise payments from the Northern Ireland consolidated fund up to a maximum of 75% of the payments in the previous year (2016-17). This figure went up, also under s59, when there was still no budget by the end of July 2017. From then on he was able to authorise up to 95% of the total payments from the fund in 2016-17.

Mr Sterling explained his approach:

While the legislation limits the amount that may be approved to 75%, of the previous year, up to the end of July and 95% thereafter, this does not mean that departmental budgets for 2017-18 will be reduced by 25% or even 5%. Rather the powers available are simply an interim measure designed to ensure that services are maintained until such times as a budget is agreed and a Budget Act passed. At which point departments will have access to the full level of funding available.

¹⁷ *Northern Ireland Act 1998*, section 59

¹⁸ HC Deb 28 March 2017, c127

These Section 59 measures enable cash to continue to flow to maintain the provision of public services and will provide a degree of certainty to departments. They are not a substitute for a Budget agreed by an Executive. Indeed we are very clear that the prioritisation and allocation of financial resources is a matter for Ministers. There is also co-ordinated engagement between departments to ensure that key stakeholders are fully informed about these interim financial measures. Departments are currently writing out to community and voluntary bodies to confirm interim funding designed to maintain the ongoing integrity of the key services they provide until an agreed budget is in place.

With regard to capital expenditure, all Executive Flagship and ongoing contractual capital commitments will be honoured into 2017-18.¹⁹

On 24 April 2017 the Secretary of State issued a written statement setting out an indicative budget position and set of departmental allocations. Mr Brokenshire took advice from the Head of the Northern Ireland Civil Service in providing this information. He commented that he intended that these allocations provided clarity to the Northern Ireland departments “as to the basis for departmental allocations in the absence of an Executive, so that Permanent Secretaries can plan and prepare to take more detailed decisions in that light”. He also confirmed that if devolved government were not restored, the UK Government would “ultimately be prepared to provide legislative authority for the expenditure of Northern Ireland departments for 2017-18”.²⁰

In a written statement on 19 July 2017 Mr Brokenshire set out adjusted indicative budget positions and departmental allocations for the 2017-18 financial year. He noted that the adjustments reflected funding provided in the spring Budget, but did not reflect the financial support for Northern Ireland that was announced alongside the confidence and supply agreement between the Conservative Party and the Democratic Unionist Party. He again stated that it would be better for a Northern Ireland Executive to determine the budget. However, if an Executive were not formed, the UK Government would take forward legislation at Westminster to give authority for the expenditure of Northern Ireland departments.²¹

In his written statement on 19 October 2017 Mr Brokenshire effectively announced the impending end of the interim period under s59 of the 1998 Act:

by virtue of the legal spending limits imposed in the absence of formal budget, public services cannot be sustained without further legislation for much longer. Indeed the limits set out by the Northern Ireland Act 1998 are such that it is essential for Budget legislation to be in place by no later than the end of November.

In evidence to the Northern Ireland Affairs Committee, the Secretary of State made further comments about the prospect of the UK Government setting a budget for Northern Ireland:

¹⁹ “[Department provides Budget clarification](#),” Department of Finance, 28 March 2017

²⁰ [HCWS612](#) on Northern Ireland Finances, 24 April 2017

²¹ [HCWS77](#) on Northern Ireland Finances, 19 July 2017

I would reiterate that for the UK Government here at Westminster to be legislating for a budget for Northern Ireland is a significant and serious step. It is not one that I take lightly, but one that I believe I would have to take in the circumstances of not seeing a budget in place.²²

He also indicated that the budget in itself would be a limited intervention, not one making far-reaching policy changes:

Setting a budget allows the Northern Ireland Civil Service to keep things ticking over, if I can put it like that, so that it can maintain public services and funds can go to education, the health service and other public services. However, decisions over strategic policy-making cannot happen. They cannot happen. Even the setting of a budget is on the basis of the Civil Service's best estimates as to what the priorities of the parties were, having taken account of some adjustments and some further changes that have taken place during the year. It does not give power to the Northern Ireland Civil Service, beyond what it is already trying to do, for making political decisions.²³

3.3 Secretary of State's announcement of budget Bill

On 2 November 2017 James Brokenshire made [a statement to the House of Commons](#), in which he announced his intention to legislate for a budget. This was because the talks process had not led to an agreement in time for a new Executive to be formed and to pass its own budget:

It is now highly unlikely that an Executive could be in place within a timetable to be assured of passing a budget by the end of November, which is the point at which we and the Northern Ireland civil service assess that Northern Ireland will begin to run out of resources. No Government could simply stand by and allow that to happen, and we would be shirking our responsibilities to the people of Northern Ireland were we to do so. That is why the Government will take forward the necessary steps that would enable a budget Bill to be introduced in the House to protect the delivery of public services in Northern Ireland.²⁴

Mr Brokenshire said that "important progress" had been made in the talks, but that differences remained between the DUP and Sinn Féin, "particularly around language and culture". While the talks were confidential, and relatively little detailed information is available, it was known that Sinn Féin's desire for an Irish language act, which would give the Irish language official status, was a point of disagreement.

Mr Brokenshire gave the following comment on the contents of the Bill:

This budget Bill would deal only with the current financial year. It would incorporate figures provided by the Northern Ireland civil service, reflecting its assessment of the outgoing priorities of the

²² [Oral Evidence](#), Work of the Secretary of State for Northern Ireland, HC 498, 18 October 2017, Q2

²³ [Oral Evidence](#), Work of the Secretary of State for Northern Ireland, HC 498, 18 October 2017, Q26

²⁴ HC Deb 2 November 2017, c993

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previous Executive. It would not set out any spending decisions by me or the Government.²⁵

The purpose would be to give the Northern Ireland civil service legal authority and resources to continue spending for the remainder of the year.

The Secretary of State repeated his reluctance to take this step, he reiterated that he did not consider this to be a form of direct rule, and that he would continue to support further talks. He was still willing to restore the Executive if that were possible:

Even now, however unlikely it may be, should the parties demonstrate that an Executive can be formed in the immediate future, I would clearly wish to proceed with legislation to allow that to happen, on the condition that a means could be created to provide an expedited procedure on an exceptional basis to enable the budget to be passed by the end of November.²⁶

He also undertook to reflect on the question of MLA salaries. MLAs elected in March 2017, who have not conducted any business, continue to be paid, and this has attracted criticism. Naomi Long, leader of the Alliance Party, had called for pay to be reduced to 70% of the full amount.²⁷ This is a devolved matter, so primary legislation would be needed in order for the UK to reduce the amount.

²⁵ HC Deb 2 November 2017, c993

²⁶ HC Deb 2 November 2017, c994

²⁷ [“Significant gaps in Stormont talks, says Theresa May,”](#) BBC online, 30 October 2017

4. Comments by the parties

The leaders of the two largest parties in the Northern Ireland Assembly appeared together at the Conservative Party Conference. On 4 October 2017 the *Belfast Telegraph* reported that talks to restore power-sharing had intensified but Arlene Foster, the DUP leader, acknowledged that “differences do remain”, while Michelle O’Neill, the Sinn Féin leader in Northern Ireland, “insisted that an agreement was still ‘entirely possible’”:

Both women said that talks to restore power-sharing had intensified, but Mrs O’Neill warned: “The British Government should not think that they can cobble together a deal acceptable to the DUP and then shoe-horn Sinn Féin into acquiescing to it.

“That will not happen. The shape of a deal is very clear. The two governments know this. So do the DUP and the other parties.”

She said the DUP’s ‘confidence and supply’ deal with the Tories presented “real challenges”.

However, she insisted that an agreement was still “entirely possible”.

Asked whether Mrs Foster must stand aside in order for a deal to be reached, Mrs O’Neill said that until all outstanding issues were dealt with they wouldn’t “get to (the) position of Arlene standing aside”.

When asked if she had been too high-handed with republicans while in office, the DUP leader replied: “Anybody who looks back at their life and doesn’t say, ‘Oh, I should have done that in a different way’, would be telling you a lie.

“I don’t think I was high-handed but, of course, it’s for others to decide if I was or not.”

Mrs Foster said that while “solid progress” had been made in the talks “differences do remain”.²⁸

By the end of October 2017 there was pessimism over the prospects for an agreement in the talks. In addition, the smaller parties expressed disappointment that they were excluded, and that devolution was dependent on progress between the two main parties.²⁹ Naomi Long for the Alliance Party commented,

It has been reliant on Sinn Féin and the DUP taking time to engage themselves to try and resolve their differences.

But it hasn’t been a structured process. It hasn’t been a process where others have been able to contribute to try to find ways through those difficulties.³⁰

The Green Party leader in Northern Ireland, Steven Agnew, called for a citizens’ assembly, saying “I think we are beyond the point of parties

²⁸ Suzanne Breen, “[Odds on Stormont deal lengthen after Sinn Féin and DUP leaders clash at Tory conference](#)”, *Belfast Telegraph*, 4 October 2017

²⁹ “[Significant gaps in Stormont talks, says Theresa May](#),” BBC online, 30 October 2017

³⁰ “[Stormont talks paused for the weekend](#),” BBC News, 28 October 2017

representing the people, they are representing their own vested interests.”

Claire Sugden, an independent MLA, also drew attention to the role of existing parties, encouraging voters to

start thinking about other issues, start thinking about health care, start thinking about education and start thinking about who you are actually voting for and if they can deliver, because for 10 months they haven't been able to.³¹

After the passing of the Secretary of State's deadline in early November 2017 the DUP deputy leader Nigel Dodds called for direct rule if an agreement could not be reached within a few weeks:

I have made it very clear we can only go on in this semi-direct rule in certain areas, welfare and now the budget, for a very short period.

We need decisions to be taken by ministers and if those aren't going to be Northern Ireland Executive ministers, then I think within a few short weeks we need to move to an appointment of direct-rule ministers.

You can give civil servants the power to spend money, but there are a lot of decisions stacking up and you have to have ministers to make decisions.³²

Gerry Adams, Sinn Féin President, rejecting direct rule, called for an intergovernmental conference between the UK and Ireland. He pointed to issues which it could address:

"The provision of an Irish Language Act, Marriage Equality, a Bill of Rights and funding for legacy inquests are all British government obligations," he said.

"However, it appears that the Tory government's priority at this time is to sustain its political pact with the DUP."³³

The Prime Minister, Theresa May, called the leadership of the DUP and Sinn Féin to express concern over the lack of agreement, and to urge them to resolve outstanding issues:

The Prime Minister has spoken on the phone to the leadership of the DUP and Sinn Fein parties about the political situation in Northern Ireland.

In separate phone calls, she expressed her concern that despite recent progress agreement had not yet been reached and she urged both parties to bridge the gaps on the outstanding issues that remained.

On Northern Ireland's finances, the Prime Minister explained how the UK Government will reluctantly be taking forward legislation for a Budget Bill on Monday, to ensure that in the absence of an Executive, public services in Northern Ireland have the resources they need to operate.

³¹ Both from "[NI political crisis: Greens call for 'citizens' assembly'](#)," BBC News, 5 November 2017.

³² Speaking on Radio Ulster, quoted in "[DUP wants direct rule ministers 'within weeks'](#)," BBC News, 3 November 2017.

³³ "[Stormont deadlock: Theresa May calls NI political parties](#)," BBC News, 10 November 2017

The Prime Minister made clear this was absolutely not an indication of direct rule but it was necessary to enable the Northern Ireland Civil Service to allocate funds for key public services while talks between the parties continued.

There was agreement on the importance of devolved Government being returned to Northern Ireland for the benefit of all communities and the Prime Minister said that the UK Government would continue to work, alongside the Irish Government, with the parties in reaching a successful outcome.³⁴

³⁴ ["PM calls with leaders of the DUP and Sinn Fein parties,"](#) press release, 10 Downing Street, 10 November 2017

5. Direct Rule

The Secretary of State for Northern Ireland, James Brokenshire, has spoken of a “glide path to increasing intervention” in Northern Ireland affairs by the UK Government.³⁵ He has said that the passing of a budget Bill does not constitute direct rule in itself:

Ultimately, if we cannot get agreement, if this becomes intractable, I would have to consider all options, including direct rule. The passing of a Budget Bill itself does not denote that. That is still a further step. That is, in essence, to give the Civil Service scope to continue operating and to have flexibility within its budget.³⁶

On the same occasion he went on to flag up the possibility of greater involvement:

Ultimately, on the glide path I have indicated, it is about further UK government intervention in the day-to-day affairs of Northern Ireland. I do not take any desire in doing that, but it is a duty I hold. The ultimate destination around all that would be some form of direct rule.

5.1 General options

There is no single model of direct rule, but it usually refers to the UK Government taking full responsibility for policy-making and legislation, as happened during the Troubles. At that time, under an Act of Parliament, the UK took over the legislative powers of the former Northern Ireland Parliament, and legislated through Orders in Council.

Mr Brokenshire’s aeronautical metaphor could be taken to imply a gradual increase of UK Government involvement. This could take the form of specific interventions by the UK Parliament in the form of primary legislation. However, this might not be a sustainable long-term option, not least as it leaves constitutional uncertainty over the leadership of policy for Northern Ireland. In addition, it would require significant parliamentary time at Westminster.

One writer, Derek Birrell, has characterised past periods of direct rule in Northern Ireland by means of certain unusual features:

- a system of government described formally and informally as interim or temporary;
- a system of government where those holding office and exercising power wished to bring the system to an end and worked to bring that about;
- a system of government which was not the first preference of the population governed by it;
- a system where the government ministers taking key decisions were not accountable to the electorate they were governing as they did not represent Northern Ireland constituencies and their parties did not contest elections in

³⁵ [HCWS 185](#), 19 October 2017

³⁶ [Oral Evidence](#), Work of the Secretary of State for Northern Ireland, HC 498, 18 October 2017, Q16

Northern Ireland, apart from a small Conservative party foray.³⁷

The Secretary of State's unhappiness about direct rule could be added to this list: "UK government decision-making would be a very firm step backwards and not what Northern Ireland needs."³⁸

Indeed Mr Brokenshire has made it clear repeatedly that he does not seek direct rule as a first choice, and has cited the historical experience as one reason:

The experience of the past has been that, if you go into some situation like direct rule, where the UK Government are making decisions, it is relatively straightforward to get into it, to pass legislation to do that, to set up the systems and all that sort of stuff. It is very, very hard to then get out of it, which is why I am acting with circumspection and a clear and determined head to seek to avoid that.³⁹

The Irish Government's reaction to any move towards direct rule would be interesting. As noted above, the Secretary of State remains under an undeadlined obligation to call a new election. So far the Irish Government has not pressed publicly for an election, and has in fact engaged in the talks process. Nevertheless, if direct rule were proposed, effectively acknowledging the failure of talks, the Secretary of State's statutory obligation might come under scrutiny.

The Irish Government is a co-guarantor of the Good Friday Agreement.

Paragraph 1 of Strand One of the Agreement provides for the Assembly:

This agreement provides for a democratically elected Assembly in Northern Ireland which is inclusive in its membership, capable of exercising executive and legislative authority, and subject to safeguards to protect the rights and interests of all sides of the community.

Strand Three includes a sub-head for the British-Irish Intergovernmental Conference, and this includes in its paragraph 5 a reference to non-devolved matters:

In recognition of the Irish Government's special interest in Northern Ireland and of the extent to which issues of mutual concern arise in relation to Northern Ireland, there will be regular and frequent meetings of the Conference concerned with non-devolved Northern Ireland matters, on which the Irish Government may put forward views and proposals. These meetings, to be co-chaired by the Minister for Foreign Affairs and the Secretary of State for Northern Ireland, would also deal with all-island and cross-border co-operation on non-devolved issues.

As mentioned above, it is possible that the UK Government would seek to delay a move to direct rule by making limited interventions in separate pieces of primary legislation.

³⁷ *Direct rule and the governance of Northern Ireland*, D Birrell, 2009, p3

³⁸ [Oral Evidence](#), Work of the Secretary of State for Northern Ireland, HC 498, 18 October 2017, Q26

³⁹ [Oral Evidence](#), Work of the Secretary of State for Northern Ireland, HC 498, 18 October 2017, Q64

UK legislation would not necessitate nor imply a permanent removal of devolved responsibilities. The UK Parliament, if it behaved in this way, would be exerting the powers recognised by s5(6) of the 1998 Act to legislate for Northern Ireland.

Indeed, even with devolution intact, the UK Government has legislated for Northern Ireland on a devolved matter. For instance, the *Northern Ireland (Welfare Reform) Act 2015* was passed by consent as a result of the Fresh Start Agreement of November 2015.⁴⁰

5.2 1974-1999

Northern Ireland retained devolved government for about 50 years, from the creation of the Irish Free State to the early days of the Troubles. The Northern Ireland Parliament existed from 1921 to 1973, although it was suspended in March 1972.

The governance of Northern Ireland was transferred to the Crown by the *Northern Ireland Act 1974*. This Act dissolved the short-lived Assembly that had been constituted under the *Northern Ireland Assembly Act 1973*, it introduced new arrangements for the legislative, executive and administrative functions in Northern Ireland, set out in its Schedule 1, and it provided for a Constitutional Convention on the future government of Northern Ireland.

From this point until the advent of devolution in 1999 the legislative powers formerly held by the Northern Ireland Parliament passed to the Queen in Council. The executive powers had passed to the Secretary of State for Northern Ireland when that post was created in 1972.

This meant that most legislation for Northern Ireland was made in the form of Orders in Council under the 1974 Act. These were subject to the affirmative procedure, requiring approval by resolution of each House of Parliament, except in cases of urgency. As a result, Northern Ireland legislation was subject to a shorter parliamentary process than primary legislation, it could not be amended, and it was decided by a legislature in which Northern Ireland Members were a small minority. However, some Orders in Council were issued in draft form for consultation, and it was possible to debate the Orders in Council in the Northern Ireland Grand Committee for up to two and a half hours.⁴¹

Some primary legislation was also passed. Most of this related to matters that were not devolved, but there were examples of primary legislation at Westminster on devolved matters where these were considered particularly important or complex. The *Fair Employment (Northern Ireland) Act 1976*, outlawing religious discrimination in employment, was an example.

⁴⁰ For further detail, see [A Fresh Start: the Stormont Agreement and Implementation Plan and the Northern Ireland \(Welfare Reform\) Bill 2015-16 \[Bill 99\]](#), CBP 7389, 20 November 2017.

⁴¹ [Northern Ireland Legislation](#), House of Commons Information Office, Factsheet L8, revised August 2010; retrieved in archived form, 30 October 2017

Northern Ireland departments continued to function, but they did so under the instruction of the Secretary of State.⁴² The Northern Ireland Office included three junior Ministers in 1972, but between 1979 and 1990 there were five, making six Ministers including the Secretary of State. This came down to four junior Ministers thereafter. These were supported by the Northern Ireland Office and by the Northern Ireland civil service organised into its six Departments. The Northern Ireland consolidated fund continued to exist during this time.⁴³

According to Birrell the number of Orders in Council made under the 1974 Act varied between 15 and 29 each year (discounting partial years), with a total of 545 between 1974 and 1999.⁴⁴

The 1974 Act was rolled over by annual orders made by the Secretary of State. It had been intended as a temporary measure, but it contained provision for its own extension.

This was the mechanism by which the Act remained operative up to the restoration of devolution in 1999.

5.3 2002-2007

The *Northern Ireland Act 2000* provided for the suspension of the Assembly. This happened when its s1 came into force. The Assembly could be restored by order, and it could be suspended again by means of a further order.⁴⁵ The Assembly was suspended four times under this Act, from February to May 2000, on 11-12 August 2001, on 22-23 September 2002, and from October 2002 until May 2007.⁴⁶

The Schedule to the 2000 Act set out the means of legislating for Northern Ireland whenever the Assembly was suspended. Any provision that could be made by the Assembly could be made by Order in Council, subject to the affirmative procedure, requiring approval by each House of Parliament, except in cases of urgency. If an urgent Order in Council were made without prior parliamentary process, then it would have to be approved by each House of Parliament within 40 days of being made, otherwise it would cease to have effect.

The Secretary of State took charge politically, discharging the functions of the First Minister and deputy First Minister, and any other Minister not in charge of a department. The functions of Ministers who were in charge of departments were to be exercised by those departments, but under the direction of the Secretary of State.

Under paragraph 9 of the Schedule, the Secretary of State took on the Assembly's functions in respect of remuneration and pensions. In particular, s/he could determine that no salaries were to be paid to Members of the Assembly.

⁴² *Northern Ireland Act 1974*, Sch 1, para 2

⁴³ *Direct rule and the governance of Northern Ireland*, D Birrell, 2009, pp25-29 and 144-45

⁴⁴ *Direct rule and the governance of Northern Ireland*, D Birrell, 2009, p41

⁴⁵ *Northern Ireland Act 2000*, ss2 and 4

⁴⁶ *Direct rule and the governance of Northern Ireland*, D Birrell, 2009, pp17-18

During this period the Northern Ireland civil service was organised into 10 Departments, and there were four junior Ministers plus the Secretary of State.⁴⁷

The number of Orders in Council varied between between 19 and 23 (discounting partial years), with a total of 104 between 2002 and 2007.⁴⁸

This period of direct rule came to an end following negotiation of the [St Andrews Agreement](#) in 2006. This agreement is discussed in detail in Research Paper 06/56, [The Northern Ireland \(St Andrews Agreement\) Bill 2006-07](#), 17 November 2006.

One part of the St Andrews Agreement was the repeal of the *Northern Ireland Act 2000*. This happened in May 2007 by means of the [Northern Ireland \(St Andrews Agreement\) Act 2006](#), when an order restoring the Assembly was made, under s2(5), thus triggering the entry into force of Sch 4, which repealed the 2000 Act. This brought the period of direct rule to an end. It also entailed that any future return to direct rule would require primary legislation by the UK Parliament.

⁴⁷ *Direct rule and the governance of Northern Ireland*, D Birrell, 2009, pp28-29

⁴⁸ *Direct rule and the governance of Northern Ireland*, D Birrell, 2009, pp41

6. The Bill

The *Northern Ireland Budget Bill 2017-19* has eight clauses and two schedules. Explanatory Notes are also available as [Bill 123-EN](#).

It is due to have all its Commons stages on 13 November 2017, subject to agreement of a Business of the House Motion that day.

There are examples of bills that had all their Commons stages on the same day (including First Reading) in *Expedited legislation: Government Bills receiving their Second and Third Reading on the same day in the House of Commons*, SN04974, 2 May 2017

The most recent was the *Northern Ireland (St Andrews Agreement) (No 2) Bill 2006-07*, which had all its stages in both Houses of Parliament and received Royal assent on the same day, 27 March 2007.

The *Northern Ireland Budget Bill 2017-19* authorises the use of resources and issues cash to Northern Ireland's departments and other public bodies. It gives the legal authority necessary for the departments and bodies to spend to existing plans.

The Bill authorises the issue of £16bn from the consolidated fund of Northern Ireland, which supersedes the £12bn available under s59 of the *Northern Ireland Act 1998* (see section 3 above). It authorises the use of resources other than accruing resources to the value of £18bn by Northern Ireland departments and certain other public bodies. Accruing resources refer to the income received by a department or public body that it is authorised to retain to offset related spending.

The Bill has been described as being based on figures provided by the Northern Ireland civil service. These were based on the civil servants' assessment of the outgoing Executive's priorities, with some adjustments through the year.⁴⁹ It was not intended to embody spending priorities imposed by the UK Government, nor to authorise money associated with the confidence and supply agreement between the Conservative Party and the DUP.

Mr Brokenshire told the Northern Ireland Affairs Committee:

The budget that I have spoken about can only be in respect of the appropriations that were set earlier this year. Further or additional funding has to come through the normal estimates process: a further estimate that would need to be put before the House and then approved for funds to be transferred to the Northern Ireland Executive.⁵⁰

6.1 Clauses

Clause 1 authorises the issue from the consolidated fund of Northern Ireland of £16,116,048,000. The purposes for which this is appropriated

⁴⁹ HC Deb 2 November 2017, c993, and [Oral Evidence, Work of the Secretary of State for Northern Ireland](#), HC 498, 18 October 2017, Q26. Discussed in detail in Section 3 above.

⁵⁰ [Oral Evidence, Work of the Secretary of State for Northern Ireland](#), HC 498, 18 October 2017, Q47.

are set out in **Schedule 1**. These are the departmental allocations, expressed as a single figure for each department, accompanied by a long list of purposes.

Clause 1 provides that the sum authorised and the allocations given supersede those made under s59 of the 1998 Act (the money spent by civil servants so far). These totalled £12,272,909,000.

Clause 2 gives the Department of Finance the power to borrow on the credit of the £16bn up to 50% of that amount, to be repaid with any interest out of the consolidated fund of Northern Ireland by 31 March 2018.

Clause 3 satisfies the requirement of s6(1) of the *Government Resources and Accounts Act (Northern Ireland) 2001* for the use of resources by a Northern Ireland department to be authorised by a Budget Act. It does not apply to accruing resources, which are covered in clause 4.

Clause 3 authorises Northern Ireland departments and other bodies to use up to £18,007,637,000 of resources. This supersedes the £14,935,660,000 available under s7 of the 2001 Act, which was available on the same basis as the sums granted under s59 of the 1998 Act (ie, 75% of the figure for 2016-17, rising to 95% in July 2017).

The bodies covered are listed in c3(2):

- (a) the Northern Ireland departments;
- (b) the Food Standards Agency;
- (c) the Northern Ireland Assembly Commission;
- (d) the Northern Ireland Audit Office;
- (e) the Northern Ireland Authority for Utility Regulation;
- (f) the Northern Ireland Public Services Ombudsman;
- (g) the Public Prosecution Service for Northern Ireland,

The purposes to which these resources may be put are shown in column 1 of **Schedule 2**. The total resources are shown in column 2.

Clause 4 provides that the limits on accruing resources that may be used for specific purposes during 2017-18 are shown in column 3 of Schedule 2.

Clause 5 provides that the present Bill takes effect as if it were a Budget Bill of the Northern Ireland Assembly. This means that it fulfils any statutory purposes and satisfies any requirement for such a Bill. In particular, references in the 2001 Act to estimates that have to be laid before the Assembly become, for 2017-18, references to estimates that have to be laid before Parliament.

Clause 6 repeals certain spent provisions. **Clause 7** gives definitions of terminology, and **clause 8** gives the short title.

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