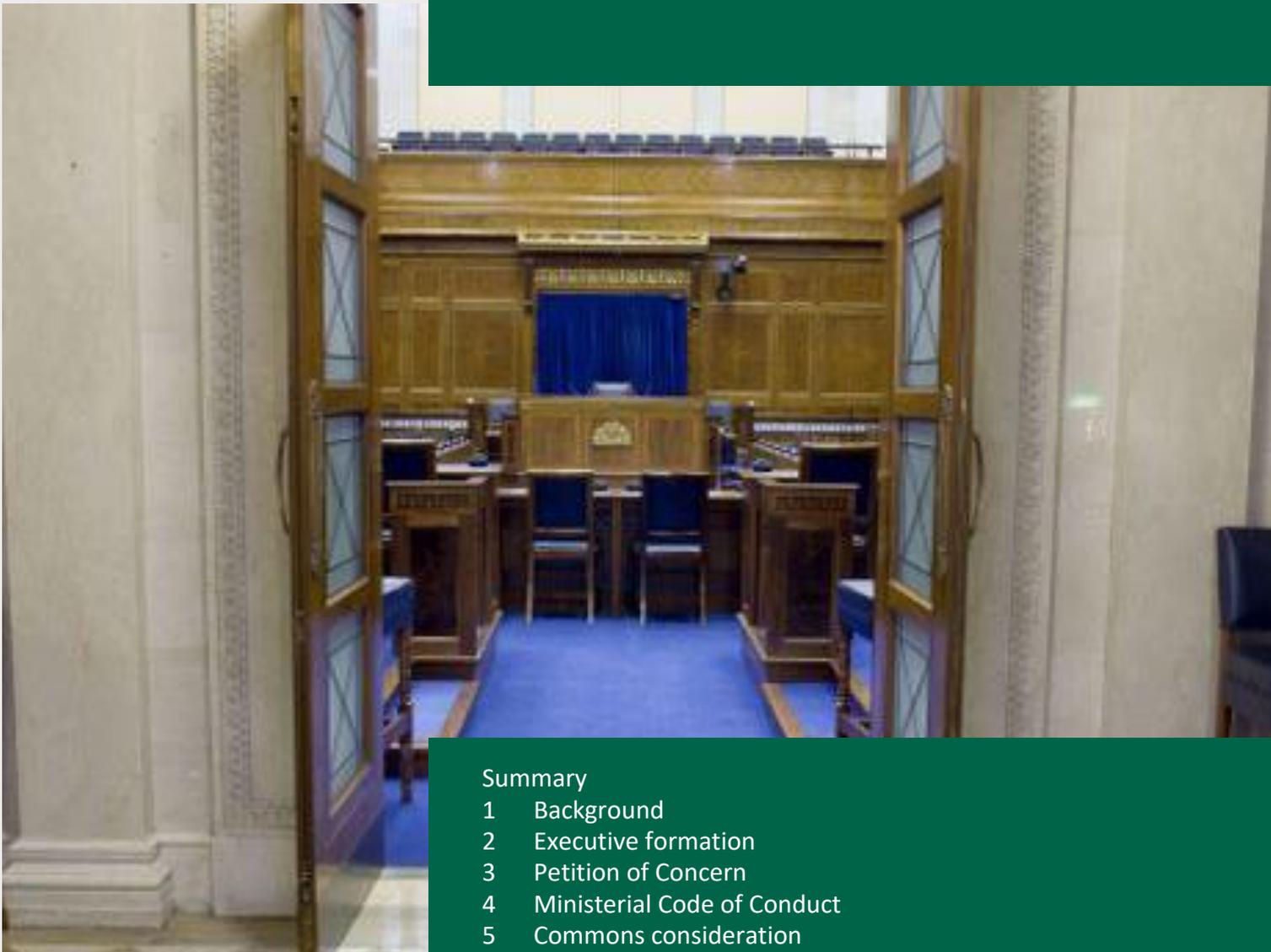


By David Torrance

4 February 2022

Northern Ireland (Ministers, Elections and Petitions of Concern) Bill 2021-22



Summary

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- 2 Executive formation
- 3 Petition of Concern
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Summary

The [Northern Ireland \(Ministers, Elections and Petitions of Concern\) Bill 2021-22](#) was introduced to the House of Commons on 12 May 2021. The Commons is due to consider House of Lords amendments on the afternoon of Monday 7 February 2022.

The Bill will implement aspects of the January 2020 [New Decade, New Approach](#) agreement, which relate to the devolved institutions in Northern Ireland. This includes reforming the process for Executive formation and elections to the Assembly, updating the Ministerial Code of Conduct and altering the Petition of Concern mechanism.

Appointing Ministers

Between January 2017 and January 2020, Northern Ireland's devolved institutions were not fully functioning. This followed the resignation of deputy First Minister Martin McGuinness. One intention of the Bill is to prevent a situation in which Northern Ireland is left without devolved government for another prolonged period.

By law, the Secretary of State for Northern Ireland is required to propose a date for an election if Northern Ireland Ministers have not been appointed within 14 days of an Assembly election, or if the posts of First and/or deputy First Minister have become vacant and remain unfilled after seven days.

The Bill would replace these time limits with up to four six-week periods for appointing Northern Ireland Ministers. It would also allow Ministers to remain in office following an election for up to 24 weeks, and for up to 48 weeks if the First or deputy First Minister stop holding office (for example, through resignation).

Petition of Concern

A mechanism known as the Petition of Concern will also be altered by the Bill. Currently, this enables 30 Members of the Legislative Assembly (MLAs) to force a matter before the Assembly to require cross-community support (that is, a majority not only of all MLAs voting, but also a majority of those "designated" Nationalist and Unionist).

There are concerns that the Petition of Concern has departed from its intended use. The Bill will add a new 14-day consideration period before a valid petition can be confirmed. It will also require petitioners to come from more than one Northern Ireland political party; prohibit the Assembly's Speaker or their deputies from signing a petition; and prevent its use on anything relating to the conduct of an MLA or on the second stage of a bill.

Code of Conduct

Finally, the Bill would make changes to the Northern Ireland Ministerial Code of Conduct. These include provisions around the treatment of the Northern Ireland Civil Service, public appointments and the use of official resources and information management.

As "excepted" matters, none of these aspects of the New Decade, New Approach agreement can be legislated for in the Northern Ireland Assembly and therefore require legislation at Westminster. Together the reforms will make significant changes to the Northern Ireland Act 1998 (as amended).

The text of the Bill and [Explanatory Notes](#) are available on the [Bill pages](#) on the Parliamentary website.

1 Background

Between January 2017 and January 2020, the [Northern Ireland Assembly](#) and [Executive](#) were not fully functioning.¹

Martin McGuinness, the then deputy First Minister of Northern Ireland, resigned on 9 January 2017. This meant the then First Minister, Arlene Foster, also ceased to hold office. All other Ministers in the Northern Ireland Executive ceased to hold office when an extraordinary Assembly election was held on 2 March 2017. Northern Ireland's political parties did not nominate new Ministers after that election.

Political talks took place during 2018 and 2019 with the aim of restoring the Assembly and Executive. The talks involved the UK and Irish governments and the main political parties in Northern Ireland. Talks concluded in January 2020 with the publication of the New Decade, New Approach agreement on 9 January 2020.²

On 12 January 2020, the five main political parties (the Democratic Unionist Party, Sinn Féin, the Ulster Unionist Party, the Social Democratic and Labour Party, and the Alliance Party) formed a new power-sharing Northern Ireland Executive.

Aspects of the New Decade New Approach agreement are devolved matters that are for the Assembly and Executive to pursue, for example the creation of commissioners for the Irish language and the Ulster Scots/Ulster British tradition.³ Others have already been given effect by the UK Government, including on funding, the appointment of a veterans commissioner, the formation of a [United Kingdom Government-Northern Ireland Executive Joint Board](#) and a programme of events to mark the [centenary of Northern Ireland](#).⁴

Certain aspects of the agreement affect “excepted matters” under the [Northern Ireland Act 1998](#).⁵ These therefore require primary legislation in the UK Parliament, which is the purpose of the current Bill.

¹ For an account of this period, see Brian Rowan, *Political Purgatory: The Battle to Save Stormont and the Play for a New Ireland*, Dublin: Merrion Press, 2021

² See Commons Library Insight blog, [“Northern Ireland Assembly: ‘New Decade, New Approach’”](#), 10 January 2020, for a summary of the agreement

³ The UK Government has [committed to legislating](#) for the creation of commissioners in the absence of action from the Assembly and Executive

⁴ See [HC Debs 20 January 2021 Vol 687 c946](#)

⁵ [Schedule 2 para 22](#) of the 1998 Act protects most of the Act itself from modification

The Northern Ireland (Ministers, Elections and Petitions of Concern) Bill 2021-22 [received its first reading](#) in the House of Commons on 12 May 2021. It was considered by the Commons and Lords between June 2021 and January 2022. The Commons is due to consider House of Lords amendments on the afternoon of Monday 7 February 2022.

The Bill (as amended) has three main elements:

- Reforms to the sustainability of devolved institutions
- Reform of the Petition of Concern mechanism
- Updating the Ministerial Code of Conduct

The matters to which the provisions of the Bill relate are not within the legislative competence of the Northern Ireland Assembly. Therefore, the UK Government is not seeking a legislative consent motion in relation to any provision of the Bill.

Legislation to implement the 2014 [Stormont House Agreement](#) to address Northern Ireland legacy issues (another aspect of the New Decade, New Approach agreement) has yet to appear.⁶

1.1 Resignation of DUP leaders and First Ministers

Shortly after the Bill was introduced to the Commons, Arlene Foster MLA was succeeded as leader of the Democratic Unionist Party (DUP) by Edwin Poots MLA on 28 May 2021. Poots then resigned as DUP leader on 30 May 2021, when Sir Jeffrey Donaldson MP succeeded him.

Foster had announced her resignation as DUP leader and First Minister of Northern Ireland on 28 April 2021. She left office as First Minister on 14 June 2021 and was succeeded by Paul Givan MLA on 17 June 2021. Sir Jeffrey was not an MLA and therefore could not assume office as First Minister as well as DUP leader.

On 3 February 2022 [Paul Givan also resigned](#) as First Minister of Northern Ireland, effective from midnight. This meant deputy First Minister Michelle O'Neill also relinquished her post. The Northern Ireland Executive will not be able to meet as it is chaired jointly by the First and deputy First Ministers. Other ministers can remain in post, although they cannot take any new decisions.

⁶ In January 2020 the UK government said this would be published and introduced “within 100 days” of the New Decade, New Approach agreement. See Commons Library Briefing Paper CBP8352, [Investigation of Former Armed Forces Personnel Who Served in Northern Ireland](#), 22 February 2021, pp40-42

Mr Givan cited ongoing disagreements regarding the [Ireland/Northern Ireland Protocol](#) for his decision to stand down.⁷ He said the “delicate balance” created by the [Belfast/Good Friday](#) and [St Andrews Agreements](#) had “been impacted by the agreement”.⁸

On 2 February, the Northern Ireland Minister of Agriculture, Edwin Poots, ordered officials to halt checks on goods arriving from Great Britain (required under the Protocol) at Northern Ireland’s ports. On 4 February, the Northern Ireland High Court ordered inspections on goods to continue pending the outcome of legal challenges.⁹

According to BBC Northern Ireland, Alex Maskey, Speaker of the Northern Ireland Assembly, wrote to Members of the Legislative Assembly (MLAs) stating that the offices of the First and deputy First Minister were now “vacant”: “Therefore, the offices will have to be filled before 12.01am on Friday 11 February [2022].” Referring to the Northern Ireland (Ministers, Elections and Petitions of Concern) Bill due to be considered by the House of Commons on 7 February, Mr Maskey said he could only deal with the “legal position which exists now”.¹⁰

Under the current law, the Secretary of State for Northern Ireland is required to propose a date for an Assembly election if, after the post of the First and/or deputy First Minister becomes vacant, the posts remain unfilled after seven days. The [next Assembly election is due on 5 May 2022](#).

Speaking at a press conference on 3 February, Sinn Féin president Mary Lou McDonald called for an early Assembly election:

We cannot stagger on in the months ahead without a functioning executive and Sinn Féin will not facilitate this. In the absence of a functioning executive, an early election must be called and the people must have their say.¹¹

In a statement, the Secretary of State for Northern Ireland, Brandon Lewis, said the DUP’s decision was “extremely disappointing” and urged them to “reinstate the First Minister immediately to ensure the necessary delivery of public services for the citizens of Northern Ireland”. He added:

I recognise the impact the Northern Ireland Protocol is having on the ground. The UK Government has been clear for some time that the Protocol has been causing serious problems, unbalancing the delicate and hard-won political stability in Northern Ireland.

We remain fully committed to fixing the problems with the Protocol and to protect the Belfast (Good Friday) Agreement in all its

⁷ See Commons Library Briefing Paper CBP9330, [Northern Ireland Protocol: Article 16](#)

⁸ BBC News online, [“DUP: NI First Minister Paul Givan announces resignation”](#), 3 February 2022

⁹ BBC News online, [“Brexit: Sea border checks order suspended by High Court”](#), 4 February 2022

¹⁰ BBC News online, [“DUP: NI First Minister Paul Givan announces resignation”](#)

¹¹ Ibid

dimensions. We will continue our intensive talks with the EU in order to resolve these.¹²

Reacting to Sinn Féin's calls for an early Assembly election, the DUP leader Sir Jeffrey Donaldson told the BBC his party would work with other political parties to ensure Northern Ireland Protocol legislation went through the Assembly before the election due in May 2022.

"I would like to see that happen before the election so that the people of Northern Ireland can give their verdict," said Sir Jeffrey, adding that it would be "difficult" for the DUP to form a new Executive after the election if issues concerning the Protocol had not been addressed.¹³

¹² Northern Ireland Office, "[Statement by the Secretary of State for Northern Ireland on the resignation of the First Minister](#)", 3 February 2022

¹³ BBC Northern Ireland, "[Jeffrey Donaldson: 'I would like NI protocol issues resolved before election'](#)", 4 February 2022

2

Executive formation

The New Decade, New Approach agreement included a section on the sustainability of Northern Ireland's devolved institutions after they were restored in January 2020.¹⁴

The political parties agreed to a package of measures aimed at allowing the institutions to continue to function during periods of political difficulty. The aim was to prevent a recurrence of the problems created by the three-year period in which there was no fully functioning Assembly or Executive.

Legal duty to call an election

By law, the Secretary of State for Northern Ireland is required to propose a date for an Assembly election under two scenarios:

- If Northern Ireland Ministers – including the First Minister and deputy First Minister – are not appointed within a 14-day period after the first meeting of the Assembly following an election.¹⁵
- If, after the post of the First and/or deputy First Minister becomes vacant, the posts remain unfilled after seven days.

Following the March 2017 Assembly election, the UK Parliament legislated to extend the 14-day period for Executive formation so as to avoid the need for another election while talks were ongoing. Later, the Secretary of State was enabled to further extend this period by regulation.¹⁶

As the Explanatory Notes to the current Bill observe:

These timescales are short and provide little time for the political parties to reach any agreement or for the Secretary of State to attempt to resolve any issues before the election duty arises. The Northern Ireland departments are extremely limited in the business that they can undertake in the absence of a Minister.¹⁷

¹⁴ See para 18 of Part 2

¹⁵ The period was originally six weeks under the 1998 Act. It was reduced to 7 days in 2006 and then extended to 14 days in 2016

¹⁶ See Section 1 of the [Northern Ireland \(Ministerial Appointments and Regional Rates\) Act 2017](#), and Section 1 of the [Northern Ireland \(Executive Formation and Exercise of Functions\) Act 2018](#)

¹⁷ [Explanatory Notes](#), Northern Ireland (Ministers, Elections and Petitions of Concern) Bill, p3

New provisions

New provisions will therefore extend the period for the appointment of ministers (under both scenarios described above) before the Secretary of State is obliged by law to propose a date for an election. As the Explanatory Notes observe:

They will provide for Ministers to remain in post longer to allow for greater continuity of decision making and may reduce the incentive for a party to leave the Executive. These provisions also ensure that there are certain safeguards in place should the Assembly resolve on a cross-community basis not to extend the period for appointing Ministers and if the Secretary of State believes that there is not sufficient representation within the Executive to command cross-community confidence in the Assembly.¹⁸

Instead of 14 and 7 days respectively, Clause 1 of the Bill provides for up to four 6-week periods for appointing Northern Ireland Ministers, including the First Minister and deputy First Minister, following an Assembly election or after the First and deputy First Minister cease to hold office (having, for example, resigned). These are renewed automatically.

The Bill also provides for Northern Ireland Ministers to remain in office after an election for up to a maximum of 24 weeks. And where the First and deputy First Minister cease to hold office they (other Executive Ministers) can remain in office for a maximum period of 48 weeks.

Under the Northern Ireland Act 1998, the First and deputy First Ministers have to be MLAs.

¹⁸ Ibid

3 Petition of Concern

The New Decade, New Approach agreement also included reforms to a mechanism known as the [Petition of Concern](#). Under the agreement, the UK Government committed to reporting every six months on the operation of the Petition and whether further reform was necessary.

Its [First Report](#) was published in July 2020. A [Second Report](#) followed in January 2021. A Third Report is due to be published in July 2021. The first two reports noted that the mechanism had not been used since the restoration of the devolved institutions in January 2020.

Background

Most decisions of the Northern Ireland Assembly are taken by a simple majority vote. However, certain “key decisions”, such as approval of a budget, must have cross-community support.

If, in accordance with [s42\(1\)](#) of the Northern Ireland Act 1998, 30 MLAs:

petition the Assembly expressing their concern about a matter which is to be voted on by the Assembly, the vote on that matter shall require cross-community support.

Under [s4\(5\)](#) of the Northern Ireland Act 1998, “cross-community support” in relation to a vote on any matter means:

- (a) the support of a majority of the members voting, a majority of the designated Nationalists voting and a majority of the designated Unionists voting; or
- (b) the support of 60 per cent of the members voting, 40 per cent of the designated Nationalists voting and 40 per cent of the designated Unionists voting.

Under the [Belfast/Good Friday Agreement](#), the Petition of Concern was intended as a safeguard “to ensure key decisions [in the Assembly] are taken on cross-community basis”. The requirement was given effect in Section 42 of the Northern Ireland Act 1998 and in the Assembly’s [Standing Orders](#).

Since 1999 concerns have grown that the Petition of Concern has become a means by which one party in the Assembly can “veto” or block certain

measures or business,¹⁹ for example same-sex marriage,²⁰ even when a majority of MLAs are in support.²¹

Proposed changes to mechanism

While the Assembly has some scope within the existing legal framework to vary the procedure that applies to the Petition of Concern, it does not have the ability to restrict its availability. Primary legislation is therefore required at Westminster.

The Bill's Explanatory Notes say that the purpose of the changes are to return use of the Petition of Concern to "its intended purpose" and "preventing one party from blocking measures or business". The aim is to:

reduce the use of the mechanism to only in the most exceptional circumstances and as a last resort, having exhausted every other available mechanism.²²

Clause 5 of the Bill will:

- add a new 14-day consideration period before a valid Petition can be confirmed;
- require petitioners to come from more than one Northern Ireland political party;²³
- prevents the Speaker or their deputies signing a Petition;²⁴
- prevent the mechanism being used for matters which concern the conduct of a member and for second stage votes on a Bill.²⁵

¹⁹ See Christopher McCrudden, John McGarry, Brendan O'Leary and Alex Schwartz, "Why Northern Ireland's Institutions Need Stability", *Government and Opposition* 51:1, 2016, pp30-58

²⁰ See Conor McCormick and Thomas Stewart, "[The legalisation of same-sex marriage in Northern Ireland](#)", *Northern Ireland Law Quarterly* 71:4, 2020, pp557-70

²¹ During the Assembly's 1st Mandate (1998-2003) and 2nd Mandate (2006-07), the Petition of Concern mechanism was not used. During its 3rd Mandate (2007-11) it was used 33 times in plenary sessions. Between 2011 and 2016 it was used on 118 occasions in plenary, but only once between 2016 and 2017.

²² [Explanatory Notes](#), Northern Ireland (Ministers, Elections and Petitions of Concern) Bill, p3

²³ [New Decade, New Approach](#), para 2.2.3 of Annex B

²⁴ para 2.2.2 of Annex B

²⁵ para 2.2.4 of Annex B

4

Ministerial Code of Conduct

Finally, the New Decade, New Approach agreement committed to updating the [Ministerial Code of Conduct](#) for Northern Ireland Ministers

This sets out the rules and procedures for the exercise of the duties and responsibilities of Ministers and junior Ministers of the Northern Ireland Executive as specified in the Belfast/Good Friday Agreement, [s28A](#) of the Northern Ireland Act 1998, the [St Andrews Agreement](#) and s5 of the [Northern Ireland \(St Andrews Agreement\) Act 2006](#).

The updates contained in the Bill were requested by the Northern Ireland Executive and are in line with the New Decade, New Approach agreement. These would substitute paragraph 1 of Part 2 of [Schedule 4](#) to the Northern Ireland Act 1998 and read as follows:

Ministers must at all times— (a) maintain the highest standards of conduct and behave in a way that upholds the highest standards of propriety;

(b) be accountable to the Assembly and the public for the decisions and actions of their departments and agencies, including stewardship of public funds and the extent to which key performance targets and objects have been met;

(c) uphold the Nolan principles;²⁶

(d) comply with this code and with rules relating to the use of public funds;

(e) operate in a way that is conducive to promoting good community relations and equality of opportunity, treating all those with whom they come into contact with consideration and respect;

(f) ensure that no conflict arises, or could be reasonably perceived to arise, between Ministers' public duties and their private interests, financial or otherwise, and comply with rules concerning conflicts of interest;

²⁶ The "Nolan principles" means [The Seven Principles of Public Life](#) set out in the First Report of the Committee on Standards in Public Life (Cm 2850), as revised or replaced from time to time

- (g) refrain from using information gained in the course of their service for personal gain and from using the opportunity of public service to promote their private interests;
- (h) ensure that official resources are not used for party political purposes;
- (i) comply with rules regarding the management of official information;
- (j) comply with rules on the acceptance of gifts and hospitality;
- (k) uphold the political impartiality of the civil service, not asking civil servants to act in any way which would conflict with the Northern Ireland Civil Service Code of Ethics;
- (l) make civil service and public appointments in accordance with relevant legislation and relevant recruitment codes; and ensure that the rules on management and conduct of special advisers, including discipline, are complied with.

The Bill's Explanatory Notes say these changes "will increase the transparency, accountability and functioning of the Executive".²⁷

²⁷ Ibid, p4

5 Commons consideration

5.1 Second reading: 22 June 2021

Introducing the Bill's second reading on 22 June 2021, the Secretary of State for Northern Ireland said:

The UK Government and this Parliament have a duty to ensure good and functional governance in Northern Ireland. Today, through this bill, we discharge that duty by bringing forward measures that will help continue to enhance the public's confidence in the Northern Ireland institutions through increased transparency and improved governance arrangements. Those measures will ensure that the institutions will be more sustainable, more resilient and for the benefit of the people of Northern Ireland.²⁸

Mr Lewis stressed that the bill only implemented aspects of the deal, and that the Government was working with the Northern Ireland Executive and the Irish Government on other commitments set out in the agreement.

The Bill received qualified support from the participating Northern Ireland parties, although there were some concerns about the Government's approach to devolution in Northern Ireland and to some of the other aspects of the New Decade, New Approach deal. For example, the DUP chief whip, Sammy Wilson, said his party would be supporting the bill, as it helped ensure Northern Ireland would not have to go long periods without a government again. However, he highlighted his party's concerns about the Northern Ireland Protocol and about the Government's commitment to introduce legislation dealing with the New Decade, New Approach agreement's cultural and language aspects in Westminster, due to a lack of progress on the matter in the Northern Ireland Assembly.²⁹

The SDLP leader, Colum Eastwood, said he was "not a massive fan of much of [the] bill", but that his party would support it as they did not "win the argument" during the New Decade, New Approach negotiations. He expressed frustration that legislation in Westminster was necessary but wanted progress on the language and cultural aspects of the deal. He said:

I do not want this place legislating at all in the devolved space, but if parties like the DUP and Sinn Féin cannot deliver in government,

²⁸ [HC Deb 22 June 2021 Vol 697 c776](#)

²⁹ [HC Deb 22 June 2021 Vol 697 cc789-92](#)

this is what is going to keep happening time and again. If you want to stop Westminster going over the heads of the devolved government, do the things that you agreed to do in the first place, and then we will not be in this situation.³⁰

The deputy Alliance leader, Stephen Farry, indicated his support for the Bill, although he also expressed concern about agreements regularly being breached in Northern Ireland. He believed there were some ambiguities in the New Decade, New Approach agreement, and therefore hoped the bill and the agreement could be improved.³¹

Labour also supported the Bill. However, the Shadow Secretary of State for Northern Ireland, Louise Haigh,³² said her party would be looking to “tighten up” its provisions:

We welcome attempts to safeguard power sharing and improve the sustainability of the executive and the assembly. Although we will suggest amendments to tighten up provisions in the bill, the lessons from the past should offer a clear warning to all of us. Institutions are much easier to collapse than they are to get back up and running. Recent events could scarcely have provided a clearer example of why the provisions contained in the bill are necessary.³³

The Bill passed its second reading in the Commons without a division.

5.2 Committee stage day 1: 29 June 2021

The Bill was considered by public bill committee across two days. The first day, held on 29 June 2021, involved two oral evidence sessions, and included witnesses from the civil service, academia and officials in the Northern Ireland Assembly.³⁴

5.3 Committee stage day 2: 6 July 2021

Several government amendments were made to the Bill during committee. Robin Walker, the then Minister of State in the Northern Ireland Office, described these as technical amendments to rectify an inadvertent alteration

³⁰ [HC Deb 22 June 2021 Vol 697 cc796-98](#)

³¹ [HC Deb 22 June 2021 Vol 697 cc800-04](#)

³² Louise Haigh was succeeded as Shadow Secretary of State for Northern Ireland on 29 November 2021 by Peter Kyle MP

³³ [HC Deb 22 June 2021 Vol 697 cc780-82](#)

³⁴ [HC Deb 29 June 2021 cc1-65](#)

to the Petition of Concern procedure that the Bill would have brought about. These amendments were agreed without division.

A number of opposition amendments were also tabled, with one of these moved to a division, where it was defeated by 10 votes to 2. The amendment concerned the appointment of First Ministers and was tabled by the SDLP. It would have required the First and deputy First Minister to be appointed jointly (therefore dropping the term “deputy”).

Speaking to the proposed amendment, Claire Hanna, the SDLP MP for Belfast South, expressed concern that the current system, introduced by the St Andrews Agreement, had “privatised” elections in Northern Ireland to the two larger parties.³⁵ This system requires the First Minister to be nominated from the largest party in the largest designation in the Assembly, and for the deputy First Minister to be nominated from the largest party in the second largest designation. Currently, this is the DUP and Sinn Féin respectively.

Robin Walker responded to these points by stating that the purpose of the Bill was simply to implement what was agreed in the New Decade, New Approach deal. He also believed that it was important to have different designations to ensure cross-community support within the Assembly. However, he did accept that further discussions on power-sharing arrangements might be useful in the future.

Labour asked about the powers of caretaker ministers (those allowed to continue in post for a period of time after an election or the functioning of the Executive, as provided for by clause 1), and what safeguards would be in place to ensure they did not act beyond what was reasonable. Responding, Robin Walker explained that the Government believed there were already adequate safeguards to protect against this:

The fundamental protection in the case of caretaker ministers is the absence of an executive. If there is no first minister and deputy first minister, significant, controversial or cross-cutting decisions cannot be taken by the executive. In a resignation scenario, assembly committees will also continue to function for the Assembly’s duration and can continue to discharge their important duties of scrutinising ministers and departments and holding them accountable. Under the Northern Ireland Act 1998, ministers cannot take any decisions that ought to have been taken by the executive. We therefore believe there is no need to provide further statutory clarifications given that legal safeguards are already in place. We also know, and as we saw during the period of absence of an executive, that the courts are prepared to step in if they feel that decisions are being taken beyond the remit of whoever is taking them. We have seen examples of that.³⁶

³⁵ [HC Deb 6 July 2021 c96](#)

³⁶ [HC Deb 6 July 2021 c74](#)

5.4

Report stage: 26 October 2021

No amendments were made to the Bill at report stage. Opposition amendments were discussed but were moved to a division. Amendments were tabled by Labour, the SDLP and the Alliance party.

Speaking to the Alliance party's amendments, Stephen Farry explained that they covered four broad areas: the election or nomination of First Minister and deputy First Minister; reforms to Petitions of Concern; the operation of the Executive; and shortening the Bill's commencement date. He accepted the point that the Bill reflected the New Decade, New Approach agreement, but noted the deal was published in January 2020. He said a lot had happened in Northern Ireland since then. Farry said he would not push his amendments to a division but hoped ministers would reflect on some of the points raised during the debate.³⁷

Colum Eastwood spoke about the SDLP's amendments concerning the First Minister and deputy First Minister roles. In particular, he urged the Government to at least consider the idea of calling them Joint First Ministers. He believed this would remove a lot of division and debate.³⁸

Representing Labour, the shadow minister for Northern Ireland, Alex Davies-Jones, spoke to her party's amendments to "push forward progress" on a Northern Ireland Bill of Rights and the establishment of civic forums to give communities a greater say in decision-making. Both these matters were included in the New Decade, New Approach agreement, and Alex Davies-Jones believed the Bill provided an opportunity to push for their implementation.³⁹

The Minister of State for Northern Ireland, Conor Burns, stressed that the Bill was "deliberately limited in scope" and would only implement aspects of the New Decade, New Approach deal. Addressing the amendments tabled about the First Minister and deputy First Minister roles, the minister stated that it would be up to the parties in Northern Ireland to agree a new approach:

Some of the amendments concerning the titles of first minister and deputy first minister and some of the points made about the changing demographics within Northern Ireland may be things that the parties in Northern Ireland will want to come together to address, but we do not believe it is our role to be forcing that change on the parties in Northern Ireland within the devolved space without their consent.⁴⁰

³⁷ [HC Deb 26 October 2021 Vol 702 cc157-60](#)

³⁸ [HC Deb 26 October 2021 Vol 702 cc162-64](#)

³⁹ [HC Deb 26 October 2021 Vol 702 cc168-70](#)

⁴⁰ [HC Deb 26 October 2021 Vol 702 c172](#)

5.5

Third reading: 26 October 2021

Opening the Bill's third reading, the Secretary of State said it would be "remiss of us to begin to tweak and change the details here in Westminster without further agreement from the parties". However, he stated that he looked forward to future debate on the subjects raised, both in Northern Ireland and during the Bill's progress through the House of Lords:

During the passage of the Bill, including this afternoon, there has been sensible, interesting and well-argued debate on the wider institutions and options in Northern Ireland. I look forward to seeing discussions continue among the Northern Ireland parties and to engaging on these matters with them and with colleagues here, as well as to following discussions in the other place.⁴¹

Alex Davies-Jones indicated Labour's support for the Bill but criticised the Government for the delays and its handling of the implementation of the New Decade, New Approach deal:

Although Labour supports the Bill, we believe that there are several missed opportunities for the Government to refocus on delivering on the promise of peace, which they have allowed to stall. A Bill of Rights, integrated education and housing, women's rights and giving communities a real say in decision making were the essence of the Good Friday agreement and the shared future that it imagined, but progress on them has been virtually non-existent over the past decade. We do not believe that the instability we see can be separated from the failure to deliver on such commitments. Above all, the way to guarantee stability is to demonstrate that commitments made will be honoured, and that Westminster is still prepared to step up and honour our side of the bargain.⁴²

The DUP spokesperson for the Cabinet Office and International Development, Gregory Campbell, indicated his party's support for the Bill, despite some reservations.⁴³

The SDLP's Claire Hanna said that her party agreed with the general "thrust of the Bill", but again believed it could have gone further: "[W]e are beset and bedevilled by a culture of veto and stand-off, and this would have been an appropriate opportunity to try to fix some of those things".⁴⁴

⁴¹ [HC Deb 26 October 2021 Vol 702 c175](#)

⁴² [HC Deb 26 October 2021 Vol 702 cc168-69](#)

⁴³ [HC Deb 26 October 2021 Vol 702 cc183-84](#)

⁴⁴ [HC Deb 26 October 2021 Vol 702 c183](#)

6 Lords consideration

6.1 Second reading: Monday 29 November 2021

Members of the House of Lords discussed the main issues in the Bill during the second reading debate.⁴⁵

6.2 Committee stage: Monday 13 December 2021

Committee stage of Bill took place in Grand Committee, away from the main Lords Chamber.⁴⁶ Members speaking [put forward amendments](#) to the Bill, including:

- that the First Minister and deputy First Minister be referred to as Joint First Ministers to reflect their identical status, powers and responsibilities
- requiring the Government to report on which parts of The New Decade, New Approach Deal have been delivered under the Bill, and what plans it had to implement the remainder of the deal
- re-establishing a consultative Civic Forum for Northern Ireland

The Bill was debated without any further amendments.

6.3 Report stage: Wednesday 19 January 2022

Members also [put forward amendments](#) to consider at the Bill's report stage.⁴⁷ The amendments covered a range of subjects, including:

- referring to the First Minister and deputy First Minister as Joint First Ministers
- First Minister and deputy First Minister appointment process
- allowing an MP to become an MLA, or an MLA to become an MP when elections took place at the same time

⁴⁵ [HL Deb 29 Nov 2021 Vol 816 cc1223-62](#)

⁴⁶ [HL Deb 13 Dec 2021 Vol 816 cc2GC-50GC](#)

⁴⁷ [HL Deb 19 Jan 2022 Vol 817 cc1668-1709](#)

- requiring the Government to report on implementation of the New Decade, New Approach agreement

According to the Press Association, Lord Caine, a Northern Ireland Office minister, had written to peers ahead of the Bill's report stage with proposals temporarily to allow MLAs to be MPs and vice-versa, a so-called "dual mandate". He wrote:

There is no appetite or consensus in Northern Ireland to allow dual mandates to continue indefinitely or to return to a situation in which the overwhelming majority of MPs from Northern Ireland were also members of the Assembly.

But, Lord Caine added, the "objective" of the UK Government was to support the functioning of the Northern Ireland Assembly by:

providing stability in instances where the Northern Ireland Parties need to reconfigure their representation across Parliament and Stormont, without the triggering of Parliamentary by-elections.⁴⁸

Every party in Northern Ireland except the DUP criticised the proposed amendment.⁴⁹ At Prime Minister's Questions on 19 January 2022, the Conservative MP Simon Hoare said:

The vast majority of people, and indeed the vast majority of politicians, across Northern Ireland believe that whatever the question, double-jobbing is not the answer. May I urge my right hon. Friend to listen to the majority and ensure that the Government amendment is not moved in the other place later today?

The Prime Minister, Boris Johnson, replied:

I am grateful to my hon. Friend. I am advised that the amendment in question will indeed be withdrawn.⁵⁰

6.4 Third reading: 24 January 2022

No changes to the wording of the Bill were put forward ahead of its third reading in the Lords.⁵¹

⁴⁸ Press Association, "[Plans for temporary return of 'double-jobbing' for NI politicians condemned](#)", 14 January 2022

⁴⁹ It was perceived as enabling the DUP leader Sir Jeffrey Donaldson to avoid a Westminster by-election if he were to become an MLA at the Northern Ireland Assembly elections due in May 2022

⁵⁰ [HC Deb 19 Jan 2022 Vol 707 c330](#)

⁵¹ [HL Deb 24 Jan 2022 Vol 818 cc22-25](#)

7 The Bill (as amended)

7.1 Period for making ministerial appointments

Clause 1 extends the time available for the appointment of a First Minister and a deputy First Minister following the resignation of either or following a Northern Ireland Assembly election.

Subsections (3) and (4) of clause 1 make the necessary amendments to the Northern Ireland Act 1998 (“the 1998 Act”).

Subsection (3) amends [s16A](#) of the 1998 Act to replace the 14-day time limit for appointing ministers, including the First and deputy First Minister, following an Assembly election.

Subsection (4) amends [s16B](#) of the 1998 Act to replace the 7-day limit on filling the office of First and deputy First Minister following a resignation.

Both periods are replaced by a new limit of 6 weeks.

The 6-week period is automatically renewed three times, for a total period of up to 24 weeks. This is either timed from the Assembly’s first meeting following an election, or from the First Minister or deputy First Minister ceasing to hold office, whichever is shortest.

Clause 1 also inserts two new subsections to sections 16A and 16B of the 1998 Act. In both cases, new subsection 3B allows for the Assembly to end the automatic renewal of the 6-week period before the next period is due to begin. This would have the effect of dissolving the Assembly. This subject to new subsection 3C.

New subsection 3C requires that any resolution to end the renewal period must be passed with cross-community support.

If the time limits are not met, the Secretary of State for Northern Ireland “shall propose a date for the poll for the election of the next Assembly” under the provisions in [s32](#) of the 1998 Act. The Bill also amends those provisions, see Clause 3.

7.2 Duration of ministerial appointments

Clause 2 amends sections 16A and 18 of, and Schedule 4A to, the 1998 Act so as to provide that Northern Ireland Ministers will no longer cease to hold office following the election of a new Assembly.

Instead, it provides for up to a maximum of 24 weeks following an election or for a maximum of 48 weeks since there has been a functioning Executive in place, whichever is shorter, in which Ministers may continue to hold office, subject to those offices otherwise being filled.

Ministers will therefore cease to hold office under the following scenarios:

- If the 24-week period after an election ends without new ministers, including the First Minister and deputy First Minister, being appointed;
- If the 48-week period since a functioning Executive has been in place ends without new ministers, including the First Minister and deputy First Minister, being appointed;
- If the Secretary of State has exercised their power to propose a date for an election to ensure “there is sufficient representation to command cross-community confidence in the Assembly”,⁵²
- If a minister is not returned as a Member of the Assembly at an election, in which case the party to which the minister belonged may nominate a replacement;
- If new ministers (including the First Minister and deputy First Minister) are appointed within the 24/48-week time limits referred to above.

7.3 Extraordinary Assembly elections

Clause 3 alters the responsibility of the Secretary of State for Northern Ireland to propose a date for an election as a result of the new time limits proposed in Clause 1.

Clause 3 does this by amending provisions in s32 of the 1998 Act, which deals with unscheduled, or early, “Extraordinary Assembly elections”.

Currently, Section 32 allows for an early Assembly election under three scenarios:

- If the Assembly itself resolves to hold an early election by a two-thirds majority;

⁵² [New Decade, New Approach](#), para 3.15

- If the time limits for appointing ministers under section 16A of the 1998 Act elapse; or
- If the time limits for appointing the First or deputy First Minister under section 16B elapse.

If any of these criteria are met, s32 states that the Secretary of State for Northern Ireland “shall propose a date” for a new election.

Clause 3 would amend s32 of the 1998 Act by stating that the Secretary of State shall propose an election date “as soon as practicable” under all three scenarios, and that it must be within 12 weeks from the day on which an Assembly resolution has been passed or from the date upon which either time limit has elapsed.

Subsection (5) makes additional amendments. It gives the Secretary of State the power to propose a new election date if the time for appointing ministers, resulting from the proposed changes in Clause 1 – new sections 16A(3) or 16B(3) of the 1998 Act – is automatically renewed. An election date can be proposed after the first six-week period but before the end of the 24-week period.

However, the Secretary of State may exercise this power (new subsections 3B and 3C of section 32) only if they consider “that it is necessary to do so in order to give effect to the purpose underlying paragraph 3.15 of Annex C of Part 2 of The New Decade, New Approach Deal so far as it relates to representation”.

The paragraph cited states:

These changes will be given legislative effect consistent with the shared commitment to the principles of power-sharing and cross-community protection contained in the Belfast (Good Friday) Agreement and ensuring there is sufficient representation to command cross-community confidence in the Assembly.⁵³

If the Secretary of State exercises this power, then the provisions in Clause 2 which allow Northern Ireland Ministers to hold office after polling day for up to 24 or 48-weeks would cease.

New subsections 3D-3F (under Subsection 5) ensure that “competing duties” to propose a date for an election do not arise at the same time. The Explanatory Notes give an example whereby the Secretary of State has set an election date because an Executive has not been formed. Should an Executive then be formed, the Secretary of State would be able to withdraw his original proposed date.

Other subsections deal with a scenario under which the Assembly resolves to dissolve itself and the Secretary of State has already proposed a date for a

⁵³ [New Decade, New Approach](#), para 3.15

poll. Finally, subsection 3G allows the Secretary of State to alter or withdraw an already proposed date.

Clause 4 makes certain transitional provisions. 4(1) states that the amendments to the 1998 Act made by clauses 1(2), (3) and (5) and 2(2) “do not apply in a case where section 16A of the Northern Ireland Act 1998 applies as the result of an Assembly being elected before this Act comes into force”.

4(2) states that the new provisions relating to vacancies in the office of First Minister or deputy First Minister:

- (a) apply in relation to vacancies arising within the period of seven days ending when this Act comes into force, but
- (b) do not otherwise apply in relation to vacancies arising before this Act comes into force.

4(3) states that for these purposes “the new provisions relating to vacancies in the office of First Minister or deputy First Minister” means:

- (a) the amendment made by section 1(4)
- (b) the new section 18(A1)
- (c) to be inserted into the Northern Ireland Act 1998 by section 2(3), and (c) the new paragraph 3D(A1)(c) to be inserted into Schedule 4A to that Act by section 2(5).

4(4) states that the amendments made by Clause 3 do not apply where the duty of the Secretary of State under section 32(1) or (3) of the Northern Ireland Act 1998 arises before this Act comes into force.

7.4

Amendments to the Ministerial Code of Conduct

Clause 5 substitutes a revised Ministerial Code of Conduct in Schedule 4 to the 1998 Act.

Northern Ireland Ministers may not take up office until they have affirmed the pledge of office (also in Schedule 4 to the Act) which includes a pledge to comply with the Ministerial Code of Conduct.

Subsection (2) is a transitional provision. The revised code will apply to ministers who are in office at the time this provision comes into force, from the time the provisions come into force. In respect of actions before the new code applies, the old code will continue to apply.

7.5

Amendments to Petition of Concern

Clause 6 implements reforms of the Petition of Concern mechanism as set out in paragraphs 9-13 and Annex B of the New Decade, New Approach agreement. In so doing, it substitutes a new s42 in the 1998 Act.

New subsection (1) provides for a 14-day “consideration period” following the day on which Petition has been presented by 30 Members of the Legislative Assembly (MLAs). On the 15th day, 30 MLAs must “confirm” the Petition for it to have effect (that is, so as to require the vote on the matter petitioned to be decided on a cross-community basis).

By virtue of new subsection (2), once a matter is the subject of a Petition the vote on that matter may not take place until after the day on which it must be confirmed (i.e. a vote may not take place before the 16th day).

New subsections (1), (3) and (5) provide that a Petition must be signed and confirmed by at least 30 MLAs (although it need not be signed and confirmed by the same 30 MLAs) from two or more political parties. The subsection also prohibit the Speaker and their deputies from signing a Petition.

The mechanism’s availability is set out in new subsection (4) which prevents its use for matters which concern a sanction relating to the conduct of an MLA and for votes on the general principles of a Bill (that is, the Bill’s “second stage”). The Assembly must also specify further matters that may not be the subject of a Petition in its Standing Orders (see new subsection (6)(c)).

New subsection (6)(a) requires Standing Orders to make provision for the procedure for presenting and confirming a Petition and effectively restates existing subsection (2). Paragraphs (b) and (d) also require Standing Orders to make provision for matters that are the subject of a Petition to be referred to the ad hoc committee on conformity with equality requirements (see section 13(3)(a) of the 1998 Act) and make provision for such steps as are necessary for the purposes of implementing paragraph 2.2.7 of Annex B of New Decade New Approach.

New subsection (7) provides that, if the day on which a Petition is to be confirmed is not a working day, then it must be confirmed on the next day that is a working day. “Working day” for these purposes is defined in new subsection (8) and refers to a day that is not a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday in Northern Ireland.

7.6

Remaining clauses

Clause 7 repeals the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 and Sections 1-7 of the [Northern Ireland \(Executive Formation etc\) Act 2019](#).⁵⁴

Clause 8 states that the Act will extend to England and Wales, Scotland and Northern Ireland (but apply only in Northern Ireland). Clause 9 states that the provisions of the Act will come into force “on the day on which it is passed”.

⁵⁴ The remaining Sections of this Act relate to duties to make regulations on same-sex marriage, abortion and victims’ payments. These remain in force.

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