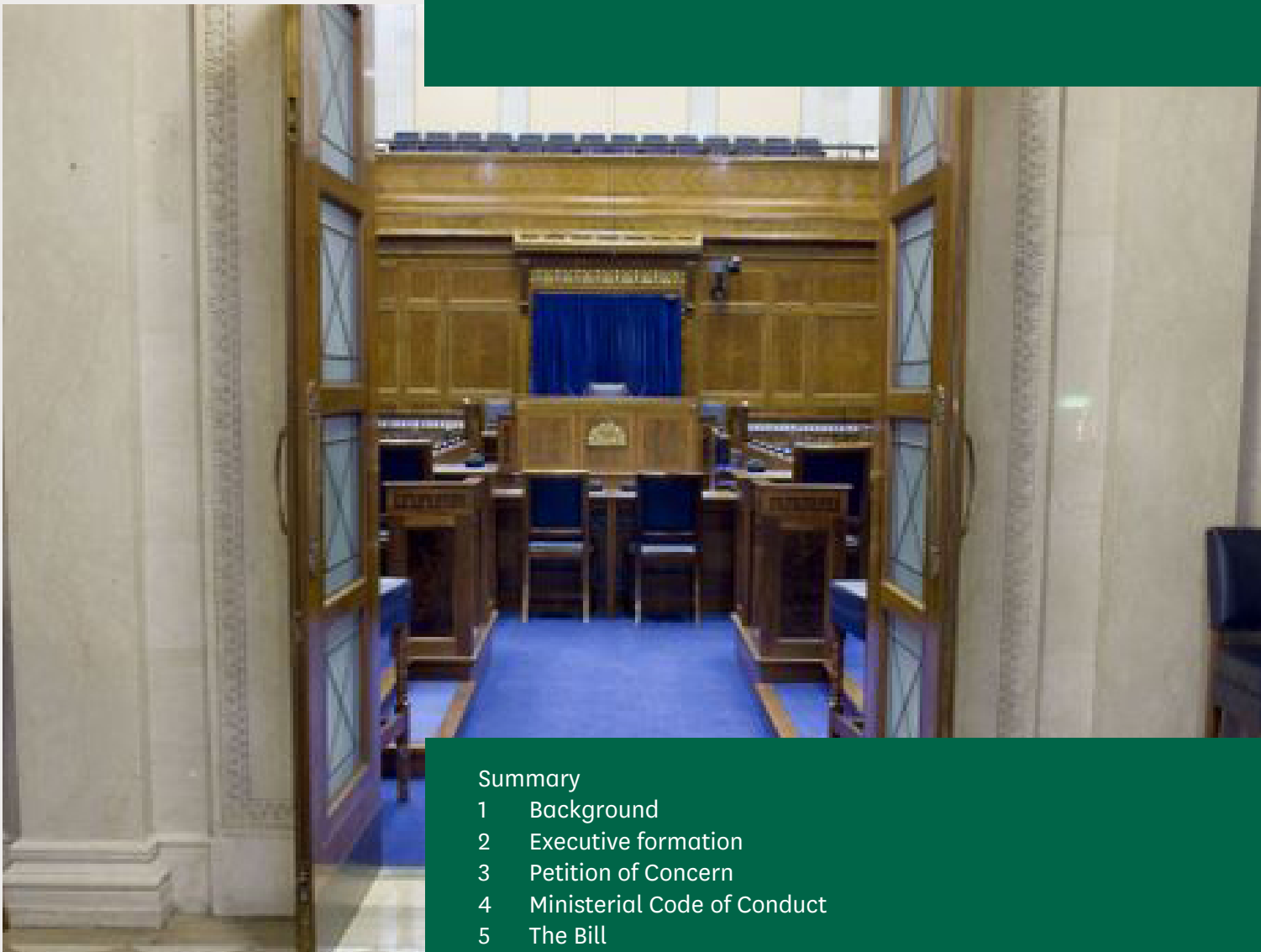


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# Northern Ireland (Ministers, Elections and Petitions of Concern) Bill 2021-22



## Summary

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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 Bill's second reading is due to take place on 22 June 2021.

It 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.<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup> 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](#).<sup>4</sup>

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

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<sup>1</sup> 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.

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

<sup>3</sup> These have yet to be created.

<sup>4</sup> See [HC Debs 20 January 2021 Vol 687 c946](#)

<sup>5</sup> [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. Its second reading is due to take place on 22 June 2021.

The Bill 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.<sup>6</sup>

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<sup>6</sup> 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.



## 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.<sup>7</sup>

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;<sup>8</sup>
- 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.<sup>9</sup>

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.<sup>10</sup>

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<sup>7</sup> See para 18 of Part 2.

<sup>8</sup> 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.

<sup>9</sup> 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](#).

<sup>10</sup> [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.<sup>11</sup>

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.

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<sup>11</sup> 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,<sup>12</sup> for example same-sex marriage,<sup>13</sup> even when a majority of MLAs are in support.<sup>14</sup>

## 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.<sup>15</sup>

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;<sup>16</sup>
- prevents the Speaker or their deputies signing a Petition;<sup>17</sup>
- prevent the mechanism being used for matters which concern the conduct of a member and for second stage votes on a Bill.<sup>18</sup>

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<sup>12</sup> 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.

<sup>13</sup> See Conor McCormick and Thomas Stewart, "[The legalisation of same-sex marriage in Northern Ireland](#)", *Northern Ireland Law Quarterly* 71:4, 2020, pp557-70.

<sup>14</sup> During the Assembly's 1<sup>st</sup> Mandate (1998-2003) and 2<sup>nd</sup> Mandate (2006-07), the Petition of Concern mechanism was not used. During its 3<sup>rd</sup> 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.

<sup>15</sup> [Explanatory Notes](#), Northern Ireland (Ministers, Elections and Petitions of Concern) Bill, p3

<sup>16</sup> [New Decade, New Approach](#), para 2.2.3 of Annex B.

<sup>17</sup> para 2.2.2 of Annex B

<sup>18</sup> para 2.2.4 of Annex B

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# 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;<sup>19</sup>

(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;

(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;

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<sup>19</sup> 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.

(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".<sup>20</sup>

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<sup>20</sup> Ibid., p4.

## 5 The Bill

### 5.1 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**.

## 5.2

### 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”;<sup>21</sup>
- 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.

## 5.3

### 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;

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<sup>21</sup> [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.<sup>22</sup>

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

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<sup>22</sup> [New Decade, New Approach](#), para 3.15.

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

## 5.4 Amendments to the Ministerial Code of Conduct

**Clause 4** 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.

## 5.5 Amendments to petition of concern

**Clause 5** 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.

## 5.6 Remaining clauses

**Clause 6** 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](#).<sup>23</sup>

**Clause 7** states that the Act will extend to England and Wales, Scotland and Northern Ireland (but apply only in Northern Ireland). **Clause 8** states that the provisions of the Act will commence two months after Royal Assent.

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<sup>23</sup> 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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