

Research Briefing

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By David Torrance

# Northern Ireland (Executive Formation etc) Bill 2022-23



## Summary

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## Summary

The [Northern Ireland \(Executive Formation etc\) Bill 2022-23](#) was introduced in the House of Commons on Monday 21 November 2022. All its remaining Commons stages are due to take place on Tuesday 29 November.

The statutory period for filling Ministerial offices in Northern Ireland, including those of the First and deputy First Minister, expired on 28 October 2022. As those offices were not filled, the Secretary of State for Northern Ireland fell under a legal obligation to propose a date for a further Assembly election. The Bill – which is being fast-tracked – seeks to:

- Extend retrospectively the period for Executive formation by 6 weeks – from 28 October to 8 December 2022 – with the potential for a further 6-week extension to 19 January 2023, via Statutory Instrument;
- Clarify the decision-making powers of “senior officers” (civil servants) of Northern Ireland Departments to manage the delivery of public services either until an Executive is reformed, or for 6 months from enactment of the Bill, whichever is sooner;
- Provide for key public appointments to be made in the absence of Northern Ireland Ministers;
- Provide for action to be taken to reduce the salary of Members of the Legislative Assembly (MLAs) in the absence of a fully functioning Assembly; and
- Enable the Secretary of State to set Northern Ireland’s domestic and non-domestic regional rates (equivalent to council tax and business rates in Great Britain) for the 2023/24 financial year via Statutory Instrument.

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

# 1 Background

The devolved [Northern Ireland Executive](#) has not been fully functioning since February 2022,<sup>1</sup> when the Democratic Unionist Party (DUP) withdrew its First Minister (Paul Givan MLA) from office in protest over post-Brexit trade rules known as the [Northern Ireland Protocol](#).<sup>2</sup> This meant Michelle O’Neill, the Sinn Féin deputy First Minister also ceased to hold office.

## 1.1 May 2022 Assembly election

A Northern Ireland Assembly election took place on 5 May 2022. Sinn Féin emerged as the largest party and the DUP as the second largest.<sup>3</sup> This meant Sinn Féin was entitled to nominate a First Minister and the DUP a deputy First Minister.<sup>4</sup> However, the leader of the DUP, Sir Jeffrey Donaldson MP, refused to nominate a deputy First Minister until the Northern Ireland Protocol had been resolved. This meant a new Executive could not be formed.

Since that election, the Assembly has been recalled four times in an attempt to break the impasse by electing a Speaker.<sup>5</sup> Assembly recall petitions require the signatures of at least 30 Members of the Legislative Assembly (MLAs) to succeed.<sup>6</sup> But without the nomination and election of a new Speaker, something the DUP refused to do, the recalled Assembly could not proceed to nominate a First and deputy First Minister and other Executive Ministers.

Prior to the [Northern Ireland \(Ministers, Elections and Petitions of Concern\) Act 2022](#) (which received Royal Assent on 8 February 2022), the Secretary of State for Northern Ireland was required to propose a date for an Assembly election if Northern Ireland Ministers (including the First and deputy First Ministers) were not appointed within a 14-day period following the first meeting of the Assembly after an election.

New provisions in the 2022

Act <https://www.legislation.gov.uk/ukpga/2022/2/enacted> were intended to

<sup>1</sup> The Northern Ireland Executive is also known as the “Executive Committee”.

<sup>2</sup> [Givan resignation triggers fresh political crisis in NI](#), BBC News online, 3 February 2022. See also Commons Library Briefing Paper CBP9548, [Northern Ireland Protocol](#).

<sup>3</sup> See Commons Library Briefing Paper CBP9549, [Northern Ireland Assembly Elections: 2022](#).

<sup>4</sup> See Commons Library Insight, [Northern Ireland elections: How will an Executive be formed?](#)

<sup>5</sup> The [Northern Ireland Act 1998](#) requires that the Assembly first meets within eight days of a poll, and that meeting commences the period for filling Ministerial offices.

<sup>6</sup> [DUP blocks NI government as election call looms](#), BBC News online, 27 October 2022.

reduce instability in Northern Ireland’s political institutions.<sup>7</sup> This Act was one of the products of the [New Decade, New Approach](#) agreement signed in January 2020.<sup>8</sup> This restored Northern Ireland’s devolved institutions following a three-year hiatus.

The 2022 Act included provision for a longer period of time in which to form an Executive. Instead of 14 days, it allowed for an initial period of 6 weeks from the date the Assembly first met, followed by 3 successive periods of 6 weeks (ie 24 weeks in total).<sup>9</sup> During this period, Northern Ireland Ministers who were in post prior to the May 2022 election were allowed to remain so in a “caretaker” capacity.<sup>10</sup>

## 1.2 Secretary of State’s position

In oral evidence to the Northern Ireland Affairs Committee on 18 October 2022, the Secretary of State for Northern Ireland, Chris Heaton-Harris MP, ruled out legislative changes to avoid the legal requirement for him to call another election:

In this place [Parliament], I cannot see the space for any emergency legislation, let alone a general will for it. I discussed it with my Cabinet colleagues this morning. I cannot be clearer: that is what will happen on 28 October.<sup>11</sup>

Northern Ireland’s Chief Electoral Officer, Virginia McVea, told BBC Radio Foyle that another Assembly election would cost more than £6.5 million. She also said contingency planning was underway, including contacting “about 600 odd polling places and nearly 9,000 potential staff” to see if they would be available. According to the BBC, the Chief Electoral Officer also wrote to Northern Ireland’s political parties to say an election, if the deadline for Executive formation was not met, would take place on 15 December 2022.<sup>12</sup>

Voters in Northern Ireland elect 90 Members of the Legislative Assembly (MLAs), five in 18 multi-member constituencies. Elections are conducted under the [Single Transferable Vote \(STV\) system of proportional representation](#), which involves transfers of second and third-preference votes

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<sup>7</sup> See Commons Library Briefing Paper CBP9213, [Northern Ireland \(Ministers, Elections and Petitions of Concern\) Bill 2021-22](#).

<sup>8</sup> See Commons Library Insight, [Northern Ireland Assembly: “New Decade, New Approach”](#).

<sup>9</sup> Unless the Assembly resolved (with cross-community support) that the period should not be further extended.

<sup>10</sup> Caretaker Northern Ireland Ministers could not take significant, cross-cutting and controversial decisions in the absence of a Northern Ireland Executive.

<sup>11</sup> Northern Ireland Affairs Committee, [Oral evidence: Work of the Secretary of State for Northern Ireland, HC 86](#), 18 October 2022.

<sup>12</sup> [Stormont: Alliance bid to recall assembly to debate poll deadline](#), BBC News online, 19 October 2022.

(and so on). Votes are counted manually, a process which can take one or two days.

In a written statement on 20 October 2022, Chris Heaton-Harris said legally an election must take place within 12 weeks and that “time is running out for the parties to come together, form an Executive and avoid this outcome”.<sup>13</sup>

The period for filling Ministerial offices (including those of First and deputy First Minister) after the Assembly election in May came to an end on 28 October 2022. As those offices were not filled, the Secretary of State for Northern Ireland fell under a legal obligation to propose a date for a further Assembly election as soon as practicable and to take place by 19 January 2023. At this stage, Ministers in post before the May election relinquished office.

The Secretary of State, however, did not set a date for another Northern Ireland Assembly election on 28 October 2022. Speaking in Belfast, Mr Heaton-Harris said:

This is a really serious situation. As of a minute past midnight last night, there are no longer ministers in office in the Northern Ireland Executive. I will take limited but necessary steps to ensure public services do continue and to protect the public finances. But there is a limit to what the Secretary of State can do in these circumstances.<sup>14</sup>

At Northern Ireland Questions on 9 November 2022, the Labour MP for Slough, Tanmanjeet Singh Dhesi, questioned Mr Heaton-Harris about his apparent change of mind:

The Secretary of State told the Northern Ireland Affairs Committee that he would be calling an election “at one minute past midnight” on 28 October, but that did not happen, which has left Northern Ireland in limbo. Reports have since emerged that the Secretary of State was directly overruled by the Prime Minister. Is that true, or did he mean to intentionally mislead a parliamentary Committee?

In response, the Secretary of State said: “I do not believe that I was overruled by the Prime Minister.”<sup>15</sup>

## 1.3

## 9 November statement

In an oral statement on 9 November 2022, Chris Heaton-Harris described the failure to form an Executive by the statutory deadline as “hugely

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<sup>13</sup> [Update on delivery of the Government’s commitments in New Decade, New Approach](#), 20 October 2022.

<sup>14</sup> [NI Secretary says Assembly election will take place but does not set date](#), Evening Standard, 28 October 2022.

<sup>15</sup> [HC Deb 9 Nov 2022 Vol 722 c246 \[Power sharing\]](#). Rishi Sunak succeeded Liz Truss as Prime Minister on 25 October 2022.

disappointing”. The Secretary of State added that he had engaged with political parties, businesses, community representatives and members of the public in Northern Ireland, as well as “other international interlocutors” and thought it “fair to say that the vast majority of those to whom I have spoken think that an election at this time would be most unwelcome”.<sup>16</sup>

Mr Heaton-Harris announced that he intended to introduce legislation to provide “a short, straightforward extension” to the formation period:

The current period will be extended by six weeks to 8 December, with the potential for a further six-week extension to 19 January if necessary. The aim is to create the time and space necessary for talks between the UK Government and the European Commission to develop, and for the Northern Ireland parties to work together to restore the devolved institutions as soon as possible.<sup>17</sup>

The Secretary of State also said he would also take “limited but necessary steps” to protect Northern Ireland’s public finances and the delivery of public services. Finally, Mr Heaton-Harris said he would seek to reduce the salaries of MLAs “while not performing all the duties that they were elected to do”.<sup>18</sup>

The Secretary of State ended his statement by repeating that:

the overriding priority of this Government is to implement, maintain and protect the Belfast/Good Friday agreement, which has been the bedrock of so much of the progress in Northern Ireland over the past quarter-century. In recent days, some people have called for joint authority in Northern Ireland. Let me say that that will not be considered. The UK Government are absolutely clear that the consent principle governs the constitutional position of Northern Ireland, under which Northern Ireland is an integral part of the United Kingdom.<sup>19</sup>

This was a reference to Social Democratic and Labour Party (SDLP) leader Colum Eastwood MP, who had written to party leaders in Northern Ireland asking them to support “joint authority” (between the UK and Republic of Ireland) if an Assembly and Executive was not formed in the coming months:

We cannot allow the situation to drift aimlessly and the SDLP has been firm, there can be no return to direct rule from Westminster. I’m asking every party leader to acknowledge the situation facing us and to back Joint Authority from both the British and Irish governments to provide stability in the months ahead.<sup>20</sup>

Talks are also ongoing between the UK and Irish governments and the European Union regarding possible changes to the Northern Ireland Protocol.<sup>21</sup>

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<sup>16</sup> [HC Deb 9 Nov 2022 Vol 722 c278 \[Northern Ireland elections\]](#)

<sup>17</sup> [HC Deb 9 Nov 2022 Vol 722 c279 \[Northern Ireland elections\]](#)

<sup>18</sup> [HC Deb 9 Nov 2022 Vol 722 c279 \[Northern Ireland elections\]](#)

<sup>19</sup> [HC Deb 9 Nov 2022 Vol 722 c279 \[Northern Ireland elections\]](#)

<sup>20</sup> [Joint authority Northern Ireland: Irish Taoiseach Michael Martin claims return to direct rule not possible for Northern Ireland](#), News Letter, 26 October 2022.

<sup>21</sup> [NI Protocol: UK plays down imminent breakthrough](#), BBC News online, 16 November 2022.

## 2

## The Northern Ireland (Executive Formation etc) Bill

The Northern Ireland (Executive Formation etc) Bill 2022-23 seeks to:

1. Retrospectively extend the period for Executive formation in Northern Ireland by 6 weeks – from 28 October to 8 December 2022 – with the potential for a further 6-week extension to 19 January 2023 via Statutory Instrument;
2. Clarify the decision-making powers of senior officers (civil servants) of Northern Ireland Departments to manage the delivery of public services either until an Executive is reformed, or for 6 months from enactment of the Bill, whichever is sooner;
3. Provide for key public appointments to be made in the absence of Northern Ireland Ministers;
4. Provide for action to be taken to reduce the salary of MLAs in the absence of a fully functioning Assembly; and
5. Enable the Secretary of State to set the Northern Ireland domestic and non-domestic regional rates (equivalent to council tax and business rates in Great Britain) for the 2023/24 financial year via Statutory Instrument.

The Bill affects matters within the devolved (or “transferred”) competence of the Northern Ireland Assembly. Under the Sewel Convention, the UK Parliament will “not normally” legislate in such an area without the agreement of the Northern Ireland Executive.<sup>22</sup> In the absence of the Executive and a functioning Assembly, however, it will not be possible for the Assembly to provide a [Legislative Consent Motion](#). The Bill’s Explanatory Notes state that the Government is “satisfied that the circumstances of this Act come within the exception allowed by the convention”.<sup>23</sup>

The Government also intends to ask Parliament to expedite the Bill’s progress. In its report on “fast-track” legislation, the House of Lords Constitution Committee recommended that the Government provide more information to justify such a move.<sup>24</sup> The Bill’s Explanatory Notes include this information.<sup>25</sup>

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<sup>22</sup> See Commons Library Briefing Paper CBP8883, [Devolution: The Sewel Convention](#).

<sup>23</sup> [Explanatory Notes](#), p6.

<sup>24</sup> House of Lords Constitution Committee, [Fast-track Legislation: Constitutional Implications and Safeguards](#), HL paper 116-I, para 186.

<sup>25</sup> [Explanatory Notes](#), p7.

None of the Bill's provisions generate additional expenditure.<sup>26</sup> The Secretary of State for Northern Ireland has stated that in his view the Bill's provisions are compatible with the European Convention on Human Rights.<sup>27</sup>

## 2.1 Executive formation

The Bill includes provisions to provide a short extension to the period for filling Ministerial offices in Northern Ireland. These would retrospectively extend the current period by 6 weeks until 8 December 2022 while also providing for a further 6-week extension until 19 January 2023.

This means that on 8 December 2022 the Secretary of State will have the option either to call an election (to take place between 19 January and 2 March 2023) or extend the deadline by six weeks to 19 January 2023. If no Executive has been formed by that date, then an election would have to take place by 13 April 2023.

The period for Executive formation has been extended before. Following the March 2017 Northern Ireland Assembly election, the UK Parliament legislated to extend the then 14-day period so as to avoid the need for another election while inter-party talks were ongoing. Later, the Secretary of State for Northern Ireland was enabled to further extend this period via regulation.<sup>28</sup>

As the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022 repealed the [Northern Ireland \(Executive Formation and Exercise of Functions\) Act 2018](#), fresh legislative provision is necessary.

**Table 1** shows the earliest and latest possible Assembly election dates under current deadline provisions and those provided for in the Bill.

Table 1 Executive formation			
Deadline	12-week window	Earliest election	Latest election
28 October 2022	28 October 2022 – 19 January 2023	8 December 2022	19 January 2023
8 December 2022 (6-week extension)	8 December 2022 – 2 March 2023	19 January 2023	2 March 2023
19 January 2023 (further 6-week extension via SI)	19 January 2023 – 13 April 2023	2 March 2023	13 April 2023

<sup>26</sup> House of Commons [Standing Order No 49](#) provides that any charge on the public revenue must be authorised by resolution of the House of Commons (a "money resolution"), but this rule does not apply to payments made out of the Consolidated Fund of Northern Ireland.

<sup>27</sup> This statement is required by virtue of [section 19](#) of the Human Rights Act 1998.

<sup>28</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](#).

## 2.2

# Civil servants' decision-making powers

In a previous period during which Northern Ireland's devolved institutions were not fully functioning (January 2017 – January 2020), the issue of what decisions civil servants in Northern Ireland could take in the absence of ministerial oversight arose.<sup>29</sup>

In a 2018 court case, *Buick's application for judicial review*, the Northern Ireland Court of Appeal (NICA) upheld<sup>30</sup> the Northern Ireland High Court's judgment that powers exercisable by departments in the absence of Ministers are subject to limitations.<sup>31</sup> In particular – and for the purposes of that appeal – the NICA held that departments may not exercise functions in respect of matters that would normally be referred to the Northern Ireland Executive because they are “cross-cutting, significant or controversial”. The Court also observed that Northern Ireland Departments cannot take decisions that would normally, as a matter of convention or otherwise, go before an Executive Minister for approval.

The conclusions in *Buick* were again considered in *JR80's application for judicial review*. This considered whether the Secretary of State for Northern Ireland was legally obliged to establish a scheme of redress for victims of historical institutional abuse as recommended by an independent inquiry. The Court of Appeal confirmed the limitations on decisions that can be made by Northern Ireland Departments in the absence of Executive Ministers, subject to the effect of the primary legislation passed in response to that case.<sup>32</sup>

[Section 3](#) of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 equipped “senior officers” in the Northern Ireland Civil Service with the ability to exercise certain functions during a period for forming an Executive if that officer was satisfied it was in the public interest to do so. As those powers were subject to a sunset clause and, in any case, the parent Act has been repealed, fresh provision is required to:

clarify that departments can continue to exercise functions in the absence of Ministers where it is in the public interest to do so. This is considered necessary so as to ensure the continued delivery of public services in Northern Ireland and to provide clarity and certainty about decision making while efforts are made to restore the Executive.<sup>33</sup>

The Bill therefore clarifies that a senior officer of a Northern Ireland Department is not prevented from exercising functions of that department where it is in the public interest to do so, during the period until an Executive

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<sup>29</sup> The Northern Ireland Civil Service was established in 1921 and is distinct from the Home Civil Service which operates in Great Britain.

<sup>30</sup> [\[2019\] NICA 58](#)

<sup>31</sup> [\[2018\] NIQB 43](#)

<sup>32</sup> [\[2019\] NICA 58](#)

<sup>33</sup> [Explanatory Notes](#), pp4-5.

is formed or for 6 months from the day on which the Bill receives Royal Assent, whichever occurs first.<sup>34</sup>

The Bill also requires the Secretary of State to publish guidance about the exercise of departmental functions, and departments are to have regard to that guidance.<sup>35</sup> Finally, the Bill makes retrospective provision to clarify that the absence of Executive Ministers did not prevent a senior officer of a Northern Ireland Department from exercising functions of that department during the period beginning with 28 October 2022 and ending with the date on which the Bill receives Royal Assent.

## 2.3 Public Appointments

Provision for key public appointments to be made in the absence of Northern Ireland Ministers also forms part of the Bill.

Where appointment functions are conferred upon Northern Ireland Ministers they cannot be exercised while there are no Executive Ministers in post. The Bill therefore addresses what are considered to be the “most urgent” cases, where the making of an appointment is necessary to “maintain governance and public confidence in the institutions in Northern Ireland”.<sup>36</sup> These are:

- the Northern Ireland Commissioner for Children and Young People; and
- Commissioners for the Northern Ireland Judicial Appointments Commission.

The absence of Northern Ireland Ministers also affects some appointments made by UK Ministers. Where current legislation states that, in making an appointment, UK Ministers must consult or obtain the agreement of Northern Ireland Ministers, this cannot be achieved in the absence of an Executive. Where appointments are made by UK Ministers jointly with Northern Ireland Ministers (and, in some cases, also with Scottish and Welsh Ministers), these appointments also cannot be presently be made. The Bill, therefore, provides for such appointments to be made.

[Section 5](#) of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 made similar provision.<sup>37</sup>

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<sup>34</sup> “Senior officer” is given the same meaning as in the [Departments \(Northern Ireland\) Order 1999](#), namely: a person who is employed in that department and is (a) a member of the Northern Ireland senior civil service; or (b) a member of the Northern Ireland Civil Service designated by the department as a senior officer for the purposes of that Order.

<sup>35</sup> This also echoes section 3 of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018.

<sup>36</sup> [Explanatory Notes](#), p5.

<sup>37</sup> Also now repealed.

## 2.4

## Paying MLAs

Members of the Legislative Assembly (MLAs) have continued to be paid in full while the Northern Ireland Assembly has not been fully functioning. In the absence of an operational Independent Financial Review Panel, no action can currently be taken to address this. The Bill therefore confers upon the Secretary of State for Northern Ireland the power to amend the salaries and expenses payable to MLAs when the Assembly is not fully functioning (ie when it is not sitting in plenary session).

MLA pay arose as an issue during the 2017-20 Assembly hiatus. In November 2017 the then Secretary of State, James Brokenshire, asked Trevor Reaney, a former Clerk of the Northern Ireland Assembly, to provide “advice on the most appropriate approach to the level of salaries, expenses and allowances for MLAs in the continued absence of devolved government”.<sup>38</sup> In particular, Mr Brokenshire asked for advice as to what extent, if any, the “determination” (a decision on pay) issued by the Independent Financial Review Panel ought to be adjusted. This Panel sets the level of salaries, expenses and allowances for MLAs.<sup>39</sup>

Mr Reaney reported in December 2017 and made 18 recommendations, including an immediate reduction in MLA pay by £7,425 (a drop from £49,500 to £42,075) and then a further reduction of £6,187 three months later, meaning a total reduction of £13,612.<sup>40</sup>

As the Independent Financial Review Panel then had no members,<sup>41</sup> it could not make a determination to implement Mr Reaney’s recommendations. Therefore, Parliament passed the [Northern Ireland Assembly Members \(Pay\) Act 2018](#) which enabled the Secretary of State (by then Karen Bradley) to reduce MLA pay.<sup>42</sup> She did so in a determination made on 6 September 2018.<sup>43</sup>

Under [section 1\(3\)](#) of the 2018 Act, the Secretary of State’s power to make a determination ceased once Executive ministerial offices were filled in January 2020. Fresh legislative provision is therefore required.

The Bill does not specify the timescale or size of the proposed pay reduction for MLAs. They currently draw a salary of £51,500 plus up to £15,500 for annual office costs.<sup>44</sup>

<sup>38</sup> [Letter from Secretary of State James Brokenshire to Mr Trevor Reaney](#), 12 November 2017.

<sup>39</sup> See part 1 of the [Assembly Members \(Independent Financial Review and Standards\) Act 2011](#).

<sup>40</sup> Northern Ireland Office, [MLA pay advice recommendations](#), 20 December 2017.

<sup>41</sup> The previous members’ terms of office had come to an end in July 2016 and no new members had subsequently been appointed.

<sup>42</sup> See Commons Library Briefing Paper CBP8267, [Northern Ireland Assembly Members \(Pay\) Bill 2017-19](#).

<sup>43</sup> [MLA pay cut: reaction to Karen Bradley’s announcement](#), BBC News online, 6 September 2018.

<sup>44</sup> See Northern Ireland Assembly website, [Salaries and Expenditure Rates 2016-2022](#).

## 2.5

### Regional rates

Finally, the Bill provides the Secretary of State with a power to set the regional domestic and non-domestic rates (the equivalent of council tax and business rates) in Northern Ireland under regulations made by Statutory Instrument.

Northern Ireland continues to operate a domestic rating system. Council Tax has never operated in Northern Ireland. Rate multipliers or “poundages” are set by local authorities for both domestic and non-domestic properties, and these are multiplied by the property’s value. This is akin to the system that operated in Great Britain until 1990. The Northern Ireland Executive levies a “regional rate” alongside local rates.<sup>45</sup> Both regional and district rates are collected by the Rate Collection Agency. Property valuations for rating purposes are carried out by the [Valuation and Lands Agency](#) (VLA).

Domestic properties are valued on the basis of the capital (ie sale) value of a property. The maximum capital rateable value of a domestic property in Northern Ireland is £400,000.<sup>46</sup> This is based on the capital value of a domestic property on 1 April 2005. Non-domestic properties are valued on the basis of the annual rental value of a commercial property (as is the case with business rates in Great Britain). The [next revaluation of non-domestic properties](#) will come into effect on 1 April 2023, based on rental values on 1 April 2021.

The Secretary of State’s power in the current Bill will be exercisable from when it receives Royal Assent and for the 2023/24 financial year only. The power will cease should a Northern Ireland Executive be formed before the end of the new statutory periods for Executive formation.

## 2.6

### Secretary of State’s remarks

In remarks accompanying publication of the Bill, Mr Heaton-Harris said it would address the “realities of the governance gap in Northern Ireland during the present impasse”:

The government’s priority is to see politicians elected to return to fulfil their roles in a strong, devolved, locally-accountable government as laid out in the Belfast Good Friday Agreement. I urge the Northern Ireland parties to use this extended time to come together and deliver for the interests of all the people in Northern Ireland, particularly in this time of rising costs.<sup>47</sup>

<sup>45</sup> For the 2021-22 financial year, Northern Ireland’s regional domestic rate was 45.74p, and the regional non-domestic rate was 27.9p. Local rates are set by Northern Ireland’s 11 district councils.

<sup>46</sup> See [Rates \(Maximum Capital Value\) \(Amendment\) Regulations \(Northern Ireland\) 2009](#).

<sup>47</sup> [Stormont: Bill on assembly members’ pay cut to be introduced](#), BBC News online, 21 November 2022.

## 3 The Bill – clause by clause analysis

### 3.1 Executive formation

Clauses 1 and 2 of the Bill would amend [section 16A](#) of the Northern Ireland Act 1998 in respect of the Executive formation period.

**Clause 1** retrospectively extends the period for making ministerial appointments by six weeks. It does so by providing that in that section (16A) “the period for filling Ministerial offices” means the period beginning with 13 May 2022 and ending with 8 December 2022” and that “the current post-election period” means the period beginning with 5 May 2022 and ending with the day on which a poll for the election of an Assembly is next held.

**Clause 2** provides the power to extend the period for making ministerial appointments by a further six weeks. It does so by stating that the Secretary of State may by regulations amend Clause 1 (or section 1 of what will be the Act) so as to replace “8 December 2022” with “19 January 2023”. This power is operable once and must be exercised within a week of the Bill being granted Royal Assent. For the second 6-week extension to apply, the Secretary of State must make the regulations and lay a Statutory Instrument.

### 3.2 Exercise of departmental functions

Clauses 3 to 5 make provision for the exercise of Northern Ireland departmental powers either until an Executive is next formed, or until the expiry of 6 months beginning from the day on which this Act is passed, whichever occurs first.

**Clause 3(1)** provides that the absence of Executive Ministers does not prevent a senior officer (civil servant) of a Northern Ireland Department from exercising a function of that department if s/he is satisfied that it is in the public interest to do so. Subsection 2 provides for the period(s) in which such functions can be exercised. Subsection 3 provides that if a matter connected with the exercise of a function by a department has **not** been “discussed and agreed” by the Northern Ireland Executive then it is “not to be treated as preventing the exercise of that function”. Subsection 4 requires the Secretary of State to publish guidance about the exercise of departmental functions and subsection 5 requires “senior officers” of departments to have regard to that guidance. Subsection 6 also requires the Secretary of State to have regard to any representations made to him by MLAs.

**Clause 4** clarifies that the absence of Executive Ministers is not to be treated as having prevented departments from exercising their functions in the period from 28 October 2022 until the Bill receives Royal Assent. Subsection 2 preserves the rights of existing litigants to proceed with their pending claims.

**Clause 5** makes supplementary provision.

### 3.3

## Exercise of Ministerial appointment functions

Clauses 6 to 9 provide a limited power for the relevant UK Minister to exercise appointment functions in relation to the offices specified in the section during the current period without an Executive.

**Clause 6(1)** provides that an appointment function may be exercised by the relevant Minister of the Crown (a UK Minister). Subsection 2 provides that the Lord Chancellor (who is also Secretary of State for Justice) may appoint members of the [Northern Ireland Judicial Appointments Commission](#),<sup>48</sup> and that the Secretary of State for Northern Ireland may appoint the [Northern Ireland Commissioner for Children and Young People](#).<sup>49</sup> Subsection 3 allows the Secretary of State to amend the list of offices in 6(2) via Statutory Instrument.<sup>50</sup>

**Clause 7** addresses appointment functions already conferred on UK Ministers which cannot be exercised in the absence of Northern Ireland Ministers. Where legislation requires that UK Ministers consult or obtain the agreement of Northern Ireland Ministers or the Northern Ireland Executive before exercising an appointment function, this clause replaces that with a requirement that the Northern Ireland Department be consulted.

**Clause 8** addresses appointment functions exercised jointly by UK Ministers and Northern Ireland Ministers, including those made alongside Scottish and Welsh Ministers. In these cases, the clause enables those functions to be exercised in the absence of the Northern Ireland Minister. Instead of acting jointly with the Northern Ireland Minister, the Secretary of State is required to consult the relevant Northern Ireland Department.

**Clause 9** provides “core definitions”.

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<sup>48</sup> The Commission was established in 2005 under the [Justice \(Northern Ireland\) Act 2002](#) to select and appoint, or recommend for appointment, all listed judicial offices up to and including High Court Judges.

<sup>49</sup> This position was created in accordance with the [Commissioner for Children and Young People \(Northern Ireland\) Order 2003](#) to safeguard and promote the rights and best interests of children and young people in Northern Ireland.

<sup>50</sup> According to the Bill's [Explanatory Notes](#), this is to ensure “that vacancies that need to be filled as a matter of urgency can be filled without the need for further primary legislation” (p10).

In combination with the definition in **clause 12(2)**, the power to exercise appointment functions in relation to the specified offices will cease when there is next a Northern Ireland Executive.

## 3.4 Northern Ireland Assembly pay

**Clause 10** allows the Secretary of State to make a determination on MLAs' salaries and allowances as well as the allowances and gratuities of persons who cease to be MLAs during a period in which the Assembly is not fully functioning.

Subsections 2 and 3 require any determination to be made in writing and to be provided to the [Assembly Commission](#), which must publish it. Subsection 4 applies section 12 of the [Assembly Members \(Independent Financial Review and Standards\) Act \(Northern Ireland\) 2011](#) to any determination made by the Secretary of State in the exercise of these powers. Subsection 5 ensures MLAs' pensions are not affected by any change to their salaries under any determination made by the Secretary of State; subsection 6 clarifies the position of determinations made by the Secretary of State; subsection 8 restricts the power to make a determination to the current period. Subsection 10 repeals the Northern Ireland Assembly Members (Pay) Act 2018.

## 3.5 Regional rate

**Clause 11** enables the Secretary of State for Northern Ireland to set Northern Ireland's regional domestic and non-domestic rates by Statutory Instrument for the year ending 31 March 2024, but only during the current period in which there is no Northern Ireland Executive.

Subsection 6 provides that the Northern Ireland Department of Finance may, when the Executive is next formed, vary the rates set under this clause by using the established procedure of an order under the [Rates \(Northern Ireland\) Order 1977](#). Subsection 7 provides that it may set the rates for the whole of the year in which an order is made.

## 3.6 General provisions

### Interpretation

**Clause 12** defines the “key terms” used in clauses 5 to 7 of the Bill. Subsection 2 states that “an Executive is formed once the offices of First Minister and deputy First Minister and those to be held by the other Northern Ireland Ministers are all filled”.

## Extent

**Clause 13** states that (with the exception of clause 11) the Bill extends to England and Wales, Scotland and Northern Ireland, but only applies in Northern Ireland. Clause 11 of the Bill extends and applies only to Northern Ireland.

## Commencement

**Clause 14** states that clauses 6 to 9 of the Bill will come into force on such day as the Secretary of State may by regulations appoint via Statutory Instrument. The other provisions of the Bill will come into force on the day upon which it receives Royal Assent.

## Short title

**Clause 15** states that upon receipt of Royal Assent, the Bill may be cited as the Northern Ireland (Executive Formation etc) Act 2022.

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