

Research Briefing

22 February 2023

By David Torrance

Northern Ireland (Executive Formation) Bill 2022-23



Summary

- 1 Background
- 2 Northern Ireland (Executive Formation) Bill 2022-23
- 3 The Bill – clause by clause analysis

Image Credits

Attributed to: DSC01772-6, Belfast Parliament, Belfast, Northern Ireland. The Parliament Buildings, in the neo-classical style, were opened in 1932 and are home to the Northern Ireland assembly. See set comments for “Belfast Overview” by Lyn Gateley on Flickr website. Licensed under CC BY 2.0/ image cropped.

Disclaimer

The Commons Library does not intend the information in our research publications and briefings to address the specific circumstances of any particular individual. We have published it to support the work of MPs. You should not rely upon it as legal or professional advice, or as a substitute for it. We do not accept any liability whatsoever for any errors, omissions or misstatements contained herein. You should consult a suitably qualified professional if you require specific advice or information. Read our briefing [‘Legal help: where to go and how to pay’](#) for further information about sources of legal advice and help. This information is provided subject to the conditions of the Open Parliament Licence.

Sources and subscriptions for MPs and staff

We try to use sources in our research that everyone can access, but sometimes only information that exists behind a paywall or via a subscription is available. We provide access to many online subscriptions to MPs and parliamentary staff, please contact hoclibraryonline@parliament.uk or visit commonslibrary.parliament.uk/resources for more information.

Feedback

Every effort is made to ensure that the information contained in these publicly available briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Please note that authors are not always able to engage in discussions with members of the public who express opinions about the content of our research, although we will carefully consider and correct any factual errors.

You can read our feedback and complaints policy and our editorial policy at commonslibrary.parliament.uk. If you have general questions about the work of the House of Commons email hcenquiries@parliament.uk.

Contents

| | | |
|------------|---|-----------|
| 1 | Background | 5 |
| 1.1 | May 2022 Assembly election | 5 |
| 1.2 | Secretary of State’s legal obligation | 6 |
| 1.3 | Northern Ireland Protocol | 7 |
| 1.4 | Organ and Tissue Donation | 9 |
| 1.5 | Commentary on devolution settlement | 10 |
| 2 | Northern Ireland (Executive Formation) Bill 2022-23 | 13 |
| 2.1 | Executive formation | 13 |
| 2.2 | Fast-tracking | 14 |
| 2.3 | Local government elections | 14 |
| 2.4 | Secretary of State’s remarks | 14 |
| 2.5 | Amendment | 15 |
| 3 | The Bill – clause by clause analysis | 17 |
| 3.1 | Extension of period for making Ministerial appointments | 17 |
| 3.2 | Compatibility with the European Convention on Human Rights | 18 |

Summary

The [Northern Ireland \(Executive Formation\) Bill 2022-23](#) was introduced in the House of Commons on Thursday 9 February 2023. All its remaining Commons stages are due to take place on Wednesday 22 February.

Currently, the Secretary of State for Northern Ireland is under a legal obligation to call a further Northern Ireland Assembly election. This is because the deadline (19 January 2023) for the formation of a Northern Ireland Executive provided for by the [Northern Ireland \(Executive Formation etc\) Act 2022](#) has now passed without ministerial offices being filled.

The Bill seeks to retrospectively extend the period for the formation of an Executive by 52 weeks from 19 January 2023 to 18 January 2024. This means that the Secretary of State will no longer be obliged to call an election until after January 18 2024.

The Bill includes a power for the Secretary of State to set a date for an Assembly election before the end of the new Executive formation period, if they chose to do so.

The Government has also proposed an amendment to the Bill regarding the [Organ and Tissue Donation \(Deemed Consent\) Act \(Northern Ireland\) 2022](#) passed by the Assembly in February 2022.

The text of the Northern Ireland (Executive Formation) 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 2022,¹ 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](#).² This meant Michelle O’Neill, the Sinn Féin deputy First Minister also ceased to hold office.

1.1 May 2022 Assembly election

Voters in Northern Ireland elect 90 Members of the Legislative Assembly (MLAs), five each 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 (and so on). Votes are counted manually, a process which can take one or two days.

An Assembly election took place on 5 May 2022. Sinn Féin emerged as the largest party and the DUP as the second largest.³ This meant Sinn Féin was entitled to nominate a First Minister and the DUP a deputy First Minister.⁴ 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 five times in an attempt to break the impasse by electing a Speaker.⁵ Assembly recall petitions require the signatures of at least 30 Members of the Legislative Assembly (MLAs) to succeed. But without the nomination and election of a new Speaker, something the DUP refused to do, these recalled Assemblies could not proceed to nominate a First and deputy First Minister and other Executive Ministers.⁶

Prior to the [Northern Ireland \(Ministers, Elections and Petitions of Concern\) Act 2022](#) (which received Royal Assent on 8 February 2022), the Secretary of

¹ The Northern Ireland Executive is also known as the “Executive Committee”.

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

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

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

⁵ 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.

⁶ See, for example, [DUP blocks NI government as election call looms](#), BBC News online, 27 October 2022.

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 were intended to reduce instability in Northern Ireland's political institutions.⁷ This Act was one of the products of the [New Decade, New Approach](#) agreement signed in January 2020.⁸ 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).⁹ 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.¹⁰

1.2 Secretary of State's legal obligation

In a written statement on 20 October 2022, Chris Heaton-Harris, the Secretary of State for Northern Ireland, said legally an election had to take place within 12 weeks and that time was "running out for the parties to come together, form an Executive and avoid this outcome".¹¹

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 Assembly election.¹² In an oral statement on 9 November 2022, Mr Heaton-Harris

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

⁸ See Commons Library Insight, [Northern Ireland Assembly: "New Decade, New Approach"](#).

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

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

¹¹ [Update on delivery of the Government's commitments in New Decade, New Approach](#), 20 October 2022.

¹² [NI Secretary says Assembly election will take place but does not set date](#), Evening Standard, 28 October 2022.

described the failure to form an Executive by the statutory deadline as “hugely disappointing”.¹³

The Secretary of State said he intended to introduce legislation to provide “a short, straightforward extension” to the Executive 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.¹⁴

The [Northern Ireland \(Executive Formation etc\) Act 2022](#) received Royal Assent on 6 December 2022.¹⁵ The Secretary of State immediately further extended the period until 19 January 2023 via Statutory Instrument.¹⁶

Mr Heaton-Harris also introduced the Northern Ireland Budget Bill on 12 January 2023.¹⁷ A Budget would normally be the responsibility of the devolved Assembly and Executive. The [Northern Ireland Budget Act 2023](#) received Royal Assent on 8 February 2023.

The [Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#) is currently being considered by the House of Lords. This is intended to address the legacy of the Northern Ireland Troubles by establishing a new independent commission for reconciliation and information recovery, limiting criminal investigations and legal proceedings, and providing for a new oral history initiative and memorialisation strategy.¹⁸

1.3

Northern Ireland Protocol

The Northern Ireland Protocol is part of the [UK’s Withdrawal Agreement with the EU](#). It provided special arrangements for Northern Ireland, so that the island of Ireland could remain border-free.¹⁹

The [Northern Ireland Protocol Bill](#), which is currently being considered by the House of Lords, would make some changes to the way the Protocol operates

This Bill would make some provisions of the Protocol “excluded”, which means they would no longer apply in domestic UK law. This would include provisions dealing with customs and the movement of goods between Great Britain and

¹³ [HC Deb 9 Nov 2022 Vol 722 c278 \[Northern Ireland elections\]](#)

¹⁴ [HC Deb 9 Nov 2022 Vol 722 c279 \[Northern Ireland elections\]](#)

¹⁵ This happened to be the centenary of the formation of the Irish Free State.

¹⁶ [The Northern Ireland \(Extension of Period for Making Ministerial Appointments\) Regulations 2022](#).

¹⁷ See Commons Library Briefing Paper CBP9686, [The Northern Ireland Budget Bill 2022-23](#).

¹⁸ See Lords Library Research Briefing, [Northern Ireland Troubles \(Legacy and Reconciliation\) Bill: HL Bill 37 of 2022-23](#).

¹⁹ For further detailed information on the protocol, please see Commons Library Briefing Paper CBP9548, [The Northern Ireland Protocol](#).

Northern Ireland, state aid and the jurisdiction of the Court of Justice of the European Union over the Protocol.

The Bill would also give Ministers delegated powers to make new law in connection with the Protocol, such as on the movement and regulation of goods.²⁰

Talks are ongoing between the UK and Irish governments and the European Union regarding possible changes to the Northern Ireland Protocol.²¹ The Democratic Unionist Party has set “seven tests” it says would need to be met before it agreed to any changes.²² The Prime Minister visited Belfast on 16-17 February for talks with the leaders of Northern Ireland’s political parties.²³

On 28 December 2022, Lord Benyon, the UK Minister for Biosecurity, Marine and Rural Affairs, [told Lord Jay in a letter on 28 December 2022](#) (PDF) that while the Government’s preference remains a negotiated solution, it was proceeding with the Northern Ireland Protocol Bill “as the situation in Northern Ireland needs to be resolved in any event”. Lord Benyon referred specifically to “red lane” arrangements, under which “goods going to the EU [from Northern Ireland] would be subject to full EU checks and controls and full customs procedures”. He said:

The Government’s position has always been that the arrangements in place for the red lane will require the enhancement of existing [Sanitary and Phytosanitary] facilities at points of entry in Northern Ireland. The necessary construction has not taken place to date owing to wider concerns about the Protocol’s implementation. However, acting to deliver these facilities is pivotal to securing a viable and sustainable way forward on the Protocol in relation to EU-destined goods.

Delivery of these facilities is a devolved responsibility. However, in the absence of a Northern Ireland Executive and Assembly, it will now fall to the UK Government to take that work forward. In line with that responsibility, Defra will introduce the necessary statutory instrument and relevant guidance to underpin this early in 2023. This will be done with full recognition of the ongoing responsibility of the Northern Ireland Department for Agriculture, Environment and Rural Affairs (DAERA) in this area, including maintaining the appropriate staffing levels for those SPS facilities and other administrative matters.

Lord Benyon added that in the event that the Northern Ireland Executive was restored, the Government’s “intention would be to engage on the scope for returning responsibilities back to the Executive where there was agreement to this”.²⁴

²⁰ See Lords Library Research Briefing, [Northern Ireland Protocol Bill: HL Bill 52 of 2022–23](#).

²¹ [NI Protocol talks: “Progress but difficulties remain” according to Maroš Šefčovič](#), UTV website, 6 February 2023.

²² [Brexit: DUP sets out seven tests for NI deal](#), BBC News online, 15 July 2021.

²³ [Brexit: Work to do on protocol deal, says prime minister](#), BBC News online, 18 February 2023.

²⁴ Lord Benyon to Lord Jay, [Northern Ireland Protocol Bill: Sanitary/Phytosanitary Facilities in Northern Ireland \(PDF\)](#), 28 December 2022.

Lord Empey, an Ulster Unionist, said he had read Lord Benyon’s letter “with great concern”:

These facilities, when constructed, will be the physical manifestation of the ‘Border in the Irish Sea’ and downstream consequences of a badly negotiated and ill thought through Brexit.²⁵

On 8 February 2023 the Supreme Court of the United Kingdom ruled that the Northern Ireland Protocol was lawful. It had been challenged by Unionist politicians who said it breached the 1800 Acts of Union,²⁶ as well as the [Northern Ireland Act 1998](#). The Court unanimously rejected their appeal on all grounds. It had previously been rejected by the High Court and Court of Appeal in Belfast.²⁷

1.4

Organ and Tissue Donation

In the House of Commons on 8 February 2023, Stephen Farry, an Alliance MP, asked the Secretary of State about the family of Dáithí Mac Gabhann, who have been campaigning for the implementation of an organ donation law in Northern Ireland. The [Organ and Tissue Donation \(Deemed Consent\) Act \(Northern Ireland\) 2022](#) was passed by the Assembly in February 2022, but secondary legislation is needed to specify which organs and tissues will be covered under the opt-out system.

Mr Farry said:

There is a groundswell of opinion across Northern Ireland MPs and other stakeholders that the Secretary of State should act, through Westminster, to make the Act effective in Northern Ireland. Will he listen to those voices?

Mr Heaton-Harris said:

I obviously understand the position in which the family find themselves. There is a piece of secondary legislation that should have been passed by the Northern Ireland Assembly. The easiest route for this to happen—the quickest route by which Dáithí can get the result he requires, through the passage of that secondary legislation—is via the Assembly coming back and passing it, but we are looking at all options. I have asked officials in my Department to see what we can do.²⁸

In a statement released on 10 February, Sir Jeffrey Donaldson, the leader of the DUP, said it was “disgraceful that this issue has been used as blackmail for the return of devolution”:

The Government has had more than two years to deal with the Protocol. The fact that the imposition of the protocol has caused the collapse of devolved

²⁵ [Empey comments on Lord Benyon letter](#), Ulster Unionist Party website, 30 December 2022.

²⁶ These created the then United Kingdom of Great Britain and Ireland.

²⁷ [Application by Allister et al \[2023\] UKSC 5](#)

²⁸ [HC Deb 8 February 2023 Vol 727 c900 \[Governance\]](#)

government was entirely predictable. There will be no return to devolved government until the Protocol is dealt with decisively and we have arrangements that unionists, as well as nationalists, can support.

Parliament is sovereign and has responsibility for Northern Ireland in the absence of devolution. I have written to the Secretary of State and indicated I will table an amendment in Westminster on 22 February to enable the completion of Dáithí's Law by the springtime as originally planned.²⁹

Alex Maskey MLA, the Speaker of the Northern Ireland Assembly, wrote to all Members on 10 February 2023 in response to those seeking procedural guidance as to whether secondary legislation in relation to the 2022 Act could be passed at a recalled sitting of the Assembly. He said:

The issue here is one of timing and choreography. If the relevant secondary legislation was laid, it is theoretically possible for any recall notice to include firstly the election of a Speaker and Deputy Speakers, and then a motion citing the relevant regulations and seeking their approval.

At this stage, the regulations have not yet been laid and therefore do not formally exist for the Assembly to approve at a recalled sitting, whether or not a Speaker and Deputy Speakers were elected. I also understand that the order has not yet been laid to commence the Organ and Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022 Act. The Act would have to be commenced before the regulations could be laid.

The Speaker also confirmed that no recall petition had yet been submitted.³⁰

However, on Tuesday 14 February a Sinn Féin motion to recall the Assembly for a sixth time received support from the Alliance Party and People Before Profit.³¹ The Assembly met that day, but no Speaker was elected.³²

The Northern Ireland Department of Health moved [The Organ and Tissue Donation \(Deemed Consent\) \(2022 Act\) \(Commencement\) Order \(Northern Ireland\) 2023](#) on 13 February 2023.

1.5

Commentary on devolution settlement

The media has speculated that the Government is keen to agree changes to the Northern Ireland Protocol before the 25th anniversary of the [Belfast/Good Friday Agreement](#) on 10 April 2023. This Agreement included devolved institutions in Belfast.

²⁹ [Organ donation should not be used as blackmail for return of devolution](#), DUP website, 10 February 2023.

³⁰ [Letter to all Members on Procedural Guidance and Potential Recall of the Assembly](#), 10 February 2023.

³¹ [Dáithí's law: Assembly to meet for recall over organ donation](#), BBC News online, 14 February 2023.

³² ['Westminster our last hope,' says Dáithí's dad after Stormont fails to elect speaker](#), ITV News website, 14 February 2023.

In an interview with the BBC's Good Morning Ulster programme, Simon Hoare MP, chair of the Northern Ireland Affairs Committee, said those hoping for a return to Direct Rule from Westminster were mistaken:

[S]o anybody who harbours some perverse hope that if this continuation rolls on, by some back door the devolution route created by the Belfast/Good Friday Agreement suddenly gets stopped, and it is ministers in the NIO [Northern Ireland Office] taking every single decision and Stormont gets brushed away, that is for the birds. That is not going to happen.

What I think is far more likely to happen, and the Secretary of State has made this very clear, is that he wants to be listening to the grassroots in Northern Ireland, who may very well start to advocate in greater numbers and with a louder voice for a change in the rubric and the rules by which an executive is formed.

Absolutely key is that both traditional communities would need to be represented within that executive, but with a growing other identification. I would say to anyone who thinks that the rules are so cast into tablets of stone that they cannot be changed, think again.

There is a growing appetite not to allow any party, either the DUP or Sinn Fein [...] in 2023, with pressing and sophisticated demands from the electorate to address all sorts of problems, to have this rubric which allows one party or another to pick up the ball, run off the pitch and say they are not playing anymore, is indefensible, is wrong and it has to stop.³³

Writing in the Belfast Telegraph, columnist Sam McBride said that Unionist attitudes towards devolution were “hardening”:

[M]any unionists have moved beyond apathy about Stormont's return to actively oppose that happening. Within nationalism there is a similar distaste for an institution which made much of what it touched worse — with the deadliest consequences evident in the health service. If Stormont doesn't come back, or doesn't come back for a long time, the way in which Northern Ireland will be governed is being decided now, in an apparently haphazard fashion.

We've been here before. When direct rule was first instigated in 1972 the legislation which did so had in its title the words “temporary provisions”. It lasted for almost three decades.³⁴

Brandon Lewis, the Chairman of the Conservative Party and a former Secretary of State for Northern Ireland, observed that the “three key strands” of the Belfast/Good Friday Agreement were “fraying, if not outright broken”: “North-South ministerial councils are not meeting, East-West trade is not flowing as it should and Stormont is not sitting.” But Mr Lewis added that the Agreement was “written in such a way that it could evolve”:

³³ [Appetite 'growing' for rule change to prevent one party collapsing Stormont, says Conservative MP](#), Belfast Telegraph, 10 February 2023. For an explanation of Direct Rule, see Commons Library Briefing Paper CBP8638, [Northern Ireland: Direct Rule](#).

³⁴ [Nationalism is losing the battle against direct rule...but that doesn't mean unionism is winning](#), Belfast Telegraph (£), 31 December 2022.

We must be honest about the fact that it was a brilliant framework for peace but is proving a poor foundation for effective government. The question we must dare to ask ourselves is: what next? How can the Agreement be evolved to better support effective and resilient government for all the people of Northern Ireland? How must the structure of Stormont be reinforced so that it is not so fragile? People deserve accountable politicians and a resilient devolved government that is able to deliver on the issues that matter to them, rather than the sporadic governance of recent years.

It is time for us to confront difficult questions about whether the electoral system in Northern Ireland properly reflects the people and communities it is designed to serve. The growth in the vote for the Alliance Party underlines the feeling that many more people now want to vote on issues, not on sectarian lines. That should be embraced as the greatest success of the Belfast/Good Friday Agreement. But if the Agreement does not evolve further, under current rules, if Alliance and its vote share continues to grow, it will never have the right to nominate the First or Deputy First Minister. Democracy cannot succeed when it is set in tram lines that can never cross.³⁵

³⁵ Brandon Lewis, [The Good Friday Agreement must evolve to bring effective government](#), Daily Telegraph (£), 20 February 2023.

2 Northern Ireland (Executive Formation) Bill 2022-23

As the deadline provided for by the Northern Ireland (Executive Formation etc) Act 2022 has now passed without ministerial offices being filled, fresh legislation is necessary to avoid the legal requirement for a further Assembly election in Northern Ireland.

2.1 Executive formation

The Northern Ireland (Executive Formation) Bill 2022-23 seeks retrospectively to extend the period in which an Executive has to be formed following a Northern Ireland Assembly election. The period will be extended by 52 weeks from 19 January 2023 to 18 January 2024. The Bill also includes a power for the Secretary of State to set a date for an Assembly election before the end of this new Executive formation period.

Under the Bill's provisions, if an Executive is not restored by 18 January 2024, then the earliest date on which an election could take place would be 29 February 2024. The latest date would be 11 April 2024.

Unlike previous extensions to the Executive formation deadline, this one is considerably longer. Writing in the Irish Times, Northern Editor Freya McClements said “the theory is that it will allow ‘time and space’ for the protocol negotiations to conclude, a deal to be struck and the DUP to go back into the Executive and Assembly”.³⁶

The period for Executive formation provided for in this Bill is not renewable, which has not been the case with previous extensions.

According to the Bill's Explanatory Notes, following further consultation with the Northern Ireland political parties and the wider public, the UK Government “assessed that an immediate election would not support the restoration of the devolved institutions”.³⁷

³⁶ [Weary voters in Northern Ireland wondering if any deadline can restore devolution](#), Irish Times, 9 February 2023.

³⁷ [Explanatory Notes](#), para 8.

2.2 Fast-tracking

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.³⁸ The Bill’s Explanatory Notes include this information.³⁹

Due to the need to implement the Bill urgently, the Northern Ireland Affairs Committee has not scrutinised the Bill in draft. However, the Secretary of State has written to the chair of the committee to offer a briefing after its introduction.

The Bill does not entail any financial costs or charges, so neither a Money Resolution nor a Ways and Means Resolution are necessary.⁴⁰

2.3 Local government elections

Separately, the UK Government has brought forward [The Postponement of Local Elections \(Northern Ireland\) Order 2023](#).⁴¹

This will delay local elections in Northern Ireland from 4 May 2023 to 18 May 2023. This is to avoid a clash with the coronation of King Charles III on Saturday 6 May 2023.⁴²

2.4 Secretary of State’s remarks

In a written statement which accompanied the Bill’s introduction, the Secretary of State for Northern Ireland said it was “disappointing” that more than a year since the First Minister’s resignation “people in Northern Ireland still do not have the strong devolved institutions that they deserve”:

The restoration of the Executive, in line with the Belfast (Good Friday) Agreement, remains my top priority. I will continue to do all I can to help the Northern Ireland Parties work together to make that happen. It was on that basis that we legislated in the autumn to extend the Executive formation period through the Northern Ireland (Executive Formation etc) Act 2022. Since

³⁸ House of Lords Constitution Committee, [Fast-track Legislation: Constitutional Implications and Safeguards](#), HL paper 116-I, para 186.

³⁹ [Explanatory Notes](#), paras 13-14.

⁴⁰ 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.

⁴¹ This Order will be made at the next meeting of the Privy Council.

⁴² Voting can take several days, while Monday 8 May 2023 has been proclaimed a bank holiday in Northern Ireland, as in the rest of the UK.

that period ended on 20 January 2023, I have once again been under a statutory duty to hold an Assembly election within 12 weeks (that is on or before 13 April 2023).⁴³

The Secretary of State added that in a meeting with Vice-President of the European Commission Maros Šefčovič in Brussels, he had reiterated that:

the UK Government is working hard to resolve the problems caused by the Northern Ireland Protocol, and the desire to see an agreed solution with the EU. I was clear that this extension does not influence Protocol discussions.⁴⁴

That same day, Mr Heaton-Harris hosted Northern Ireland party leaders at a “roundtable” meeting in Belfast.⁴⁵ “I very much hope that the Parties will recognise the importance of getting back to work,” he said, “so that a functioning Executive can take the actions needed, to address the challenges facing public services in Northern Ireland.”⁴⁶

2.5

Amendment

A New Clause 1 was tabled in the name of Sir Jeffrey Donaldson MP on 17 February 2023. It was supported on a cross-party basis by all sitting Members for constituencies in Northern Ireland. The Member’s explanatory statement stated that:

This new clause is intended to bring into operation during the current post-election period the Organ and Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022, which received Royal Assent on 30 March 2022, by temporarily allowing Parliament (instead of the Assembly) to approve relevant regulations made by the Department of Health in Northern Ireland.⁴⁷

This amendment would temporarily bypass the requirement for Northern Ireland Assembly consent for regulations made by the Department for Health in Northern Ireland on permitted material for transplantation.

However, on Monday 20 February, the Secretary of State for Northern Ireland, Chris Heaton-Harris, announced that the Government would table its own amendment when the Bill was considered by the House of Commons on Wednesday 22 February. Mr Heaton-Harris said he had:

been incredibly moved by Dáithí’s story and his family’s dedication. I know that the party leaders in Northern Ireland feel the same. In recognition of just how important this issue is, I have decided to bring forward an amendment to the Executive Formation Bill which will allow for the overdue legislation to be made

⁴³ Statement UIN HLWS547, [Northern Ireland Executive Formation](#), 9 February 2023.

⁴⁴ Statement UIN HLWS547, [Northern Ireland Executive Formation](#).

⁴⁵ [Secretary of State Chris Heaton-Harris to meet Stormont parties for round-table talks](#), ITV News website, 9 February 2023.

⁴⁶ Statement UIN HLWS547, [Northern Ireland Executive Formation](#).

⁴⁷ [Northern Ireland \(Executive Formation\) \(Amendment Paper\)](#), 17 February 2023.

by the NI Department of Health and see this change to the law become a reality.

I would like to reiterate that, if the amendment is selected, the UK Government's intervention here is exceptional. Decisions such as these should be being taken by locally-elected decision-makers.

I urge the parties to take the necessary steps to tackle all the other vitally important measures, just like this one, that they could deliver in Northern Ireland by simply agreeing to restore the institutions.⁴⁸

The Government amendment (New Clause 2) was published on 21 February 2023 in the name of Chris Heaton-Harris.⁴⁹ This took a different approach to New Clause 1 in that it amended the regulation-making procedure. The Member's explanatory statement said:

This new clause would amend the procedure for making regulations under subsection (9A) of section 3 of the Human Tissue Act 2004 while no Presiding Officer and deputies are in post so that they are subject only to negative resolution by the Northern Ireland Assembly.

An updated Amendment Paper was published on 22 February 2023.⁵⁰

⁴⁸ [Dáithí's law on organ donation to be approved by Westminster](#), The Irish News, 20 February 2023.

⁴⁹ [Northern Ireland \(Executive Formation\) Bill \(Amendment Paper\)](#), 21 February 2023.

⁵⁰ [Northern Ireland \(Executive Formation\) Bill \(Amendment Paper\)](#), 22 February 2023.

3

The Bill – clause by clause analysis

The Northern Ireland (Executive Formation) Bill 2022-23 consists of two clauses.

3.1

Extension of period for making Ministerial appointments

Clause 1 makes various changes to section 1 of the Northern Ireland (Executive Formation etc) Act 2022, which amended the effect of section 16A of the Northern Ireland Act 1998 during the post-election period which followed the Northern Ireland Assembly held on 5 May 2022.

Subclause (2) omits the words “by six weeks” and substitutes “18 January 2024” for “19 January 2023”.⁵¹

Subclause (3) further amends section 1 of the 2022 Act by providing a discretionary power for the Secretary of State to propose a date for a poll at any time within the newly extended period for Executive formation. The subclause states that:

At any time before the end of the period mentioned in section 16A(3), the Secretary of State may, if the offices mentioned there have not yet been filled, propose a date for the poll for the election of the next Assembly.

Clause 2 of the Bill covers extent, commencement and the Bill’s short title.

The Bill will extend to England and Wales, Scotland and Northern Ireland.

The Bill will come into force on the day on which it is passed.

Once it has received Royal Assent, the Act may be cited as the Northern Ireland (Executive Formation) Act 2023.

⁵¹ As inserted by the Northern Ireland (Extension of Period for Making Ministerial Appointments) Regulations 2022 (S.I. 2022/1296).

3.2

Compatibility with the European Convention on Human Rights

[Section 19](#) of the Human Rights Act 1998 requires a Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of that Bill with Convention rights (as defined by section 1 of that Act).

The Secretary of State for Northern Ireland has made the following statement:

In my view, the provisions of the Northern Ireland (Executive Formation) Bill are compatible with Convention rights.

In addition, the [Northern Ireland Office](#) does not consider that the provisions of the Bill engage Convention rights.⁵²

⁵² [Explanatory Notes](#), paras 25-27.

The House of Commons Library is a research and information service based in the UK Parliament. Our impartial analysis, statistical research and resources help MPs and their staff scrutinise legislation, develop policy, and support constituents.

Our published material is available to everyone on commonslibrary.parliament.uk.

Get our latest research delivered straight to your inbox. Subscribe at commonslibrary.parliament.uk/subscribe or scan the code below:



 commonslibrary.parliament.uk

 [@commonslibrary](https://twitter.com/commonslibrary)