

Research Briefing

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By David Torrance

Northern Ireland (Interim Arrangements) Bill 2022-23



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Summary

The Northern Ireland (Interim Arrangements) Bill 2022-23 was introduced to the House of Commons on Thursday 27 April 2023. It is due to be taken through all its remaining Commons stages on Wednesday 10 May.

The Bill makes “interim” arrangements in the continuing absence of a fully functioning Northern Ireland Assembly and Executive. It will:

- provide for senior civil servants in nine Northern Ireland Departments to continue to exercise certain functions when in the public interest, notwithstanding the ongoing lack of Northern Ireland Ministers;
- confer on the Secretary of State for Northern Ireland the power to commission advice or request information from Northern Ireland Departments for the purpose of developing options for raising more public revenue in Northern Ireland, or otherwise improving the sustainability of public finances in Northern Ireland;
- confer on the Secretary of State the power to direct Northern Ireland Departments to carry out consultations for the same two purposes; and
- require certain accounts, reports and other financial documents that **must** be laid in the Northern Ireland Assembly also to be laid in the UK Parliament when the Northern Ireland Assembly is not fully functioning.

The text of the [Northern Ireland \(Interim Arrangements\) 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 that 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 last took place on 5 May 2022, the 2017 “Mandate” having expired.³ Sinn Féin emerged as the largest party and the DUP as the second largest.⁴ This meant Sinn Féin was entitled to nominate a First Minister and the DUP a deputy First Minister.⁵ 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 six times in an attempt to break the impasse by electing a Speaker.⁶ 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 refuses to do, these recalled Assemblies could not

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 Politicians and officials in Northern Ireland use “Mandate” to mean what at Westminster would be a parliamentary “term”.

⁴ See Commons Library Briefing Paper CBP9549, [Northern Ireland Assembly Elections: 2022](#).

⁵ See Commons Library Insight, [Northern Ireland elections: How will an Executive be formed?](#)

⁶ 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. For the most recent recall, see [DUP will not return to Stormont over organ donation law](#), ITV News website, 13 February 2023.

proceed to nominate a First and deputy First Minister and other Executive Ministers.⁷

1.2 Westminster legislation

Since February 2022, and also between 2017 and 2020 – when the devolved institutions in Northern Ireland were also not fully functioning⁸ – the UK Parliament legislated on a number of occasions either to delay the necessity for an election, pass a Budget for Northern Ireland or to allow the Secretary of State for Northern Ireland to direct Northern Ireland Departments.

The UK Government chose not to return to what is known as “Direct Rule”, under which all matters normally devolved to Belfast are directed by ministerial members of the UK Government.⁹

These Acts included:

- [Northern Ireland \(Executive Formation and Organ and Tissue Donation\) Act 2023](#): further extended the period for Executive formation and made further provision for existing regulations on organ and tissue donation in Northern Ireland.
- [Northern Ireland Budget Act 2023](#)
- [Northern Ireland \(Ministers, Elections and Petitions of Concern\) Act 2022](#): The Act included provision for a longer period of time in which to form an Executive and for Executive Ministers to remain in post in a caretaker capacity.
- [Northern Ireland \(Executive Formation etc\) Act 2022](#): This enabled senior civil servants in Northern Ireland Departments to exercise the functions of those departments when in the public interest, notwithstanding the ongoing lack of Northern Ireland Ministers. It also enabled the Secretary of State to issue guidance and to make specified public appointments.
- [Northern Ireland Budget Act 2019](#) (repealed)
- [Northern Ireland \(Executive Formation etc\) Act 2019](#)
- [Northern Ireland \(Regional Rates and Energy\) Act 2019](#)
- [Northern Ireland Budget \(Anticipation and Adjustments\) Act 2019](#) (repealed)

⁷ See, for example, [DUP blocks NI government as election call looms](#), BBC News online, 27 October 2022.

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

⁹ See Commons Library Briefing Paper CBP8638, [Northern Ireland: Direct Rule](#).

- [Northern Ireland Assembly Members \(Pay\) Act 2018](#) (repealed)
- [Northern Ireland \(Regional Rates and Energy\) Act 2018](#)
- [Northern Ireland Budget \(Anticipation and Adjustments\) Act 2018](#) (repealed)
- [Northern Ireland \(Executive Formation and Exercise of Functions\) Act 2018](#) (repealed)
- [Northern Ireland Budget Act 2018](#) (repealed)
- [Northern Ireland Budget Act 2017](#) (repealed)
- [Northern Ireland \(Ministerial Appointments and Regional Rates\) Act 2017](#)¹⁰

As the Explanatory Notes for the current Bill state, since February 2022 the UK Government has made:

limited interventions to ensure financial stability and respond to the governance situation in Northern Ireland including [the Northern Ireland Executive Formation Act] 2022, legislating to set the level of regional rates for 2022-23, giving indicative budget allocations and providing a full Northern Ireland Budget for 2022-23, and enabling a reduction in pay for Members of the Northern Ireland Assembly.¹¹

The Explanatory Notes add that these have “largely been direct legislative interventions, rather than transferring to UK Ministers powers normally exercised by Northern Ireland Ministers”.¹²

This briefing does not consider the forthcoming Northern Ireland Budget, which will be the subject of separate legislation at Westminster. In a written statement on 27 April 2023, Chris Heaton-Harris, the Secretary of State for Northern Ireland, said he would “bring forward a Budget Bill in due course”.¹³

¹⁰ This list does not include other primary legislation relating to reserved or excepted matters in Northern Ireland. Even when the Assembly and Executive are fully functioning, these remain Westminster responsibilities.

¹¹ [Explanatory Notes, Northern Ireland \(Interim Arrangements\) Bill](#), p4.

¹² With the exception of some powers in the Northern Ireland Executive Formation Act 2022.

¹³ [Department of Finance statement on 2023/24 Northern Ireland Budget](#), Department of Finance website, 27 April 2023.

2 Northern Ireland (Interim Arrangements) Bill

The Northern Ireland (Interim Arrangements) Bill 2022-23 will:

- provide for senior civil servants in nine Northern Ireland Departments to continue to exercise certain functions when in the public interest, notwithstanding the ongoing lack of Northern Ireland Ministers;
- confer on the Secretary of State for Northern Ireland the power to commission advice or request information from Northern Ireland Departments for the purpose of developing options for raising more public revenue in Northern Ireland, or otherwise improving the sustainability of public finances in Northern Ireland;
- confer on the Secretary of State the power to direct Northern Ireland Departments to carry out consultations for the same two purposes; and
- require certain accounts, reports and other financial documents that **must** be laid in the Northern Ireland Assembly also to be laid in the UK Parliament when the Northern Ireland Assembly is not fully functioning.

The Explanatory Notes state that:

In the context of ongoing political instability in Northern Ireland, and the expiry of the senior official decision-making powers on 5 June 2023, further legislation is required to manage the governance gap in Northern Ireland.

This is intended to “to avoid the emergence of a governance gap” and to enable the “necessary decisions to be made which could not otherwise be taken by civil servants”.¹⁴

2.1 Decision-making

The first part of the Bill concerns the decision-making powers of senior civil servants in Northern Ireland Departments.

Executive functions in Northern Ireland are conferred upon Departments rather than on Ministers, as is the case in Scotland and Wales.¹⁵ However, under Article 4 of the [Departments \(Northern Ireland\) Order 1999](#) these

¹⁴ [Explanatory Notes, Northern Ireland \(Interim Arrangements\) Bill](#), pp4 & 7.

¹⁵ Northern Ireland Act 1998, [section 22](#).

Departments must “at all times” exercise their functions subject to the direction and control of the Minister in charge of that Department.

During the 2017-20 period in which the Assembly and Executive were not fully functioning, there was a legal challenge to the exercise of powers by Departments in the absence of Executive Ministers. The Northern Ireland Court of Appeal held, in *Buick*,¹⁶ that those Departmental powers were subject to limitations in the absence of ministerial oversight.¹⁷

In particular – and for the purposes of that appeal case – the Court held that Departments may not exercise functions in respect of matters that would normally be required to be referred to the Executive Committee of the Assembly because they are “cross-cutting, significant or controversial”. The Court also observed that Northern Ireland Departments could not take decisions that would normally, as a matter of convention or otherwise, go before a Northern Ireland Minister for approval.

It follows, therefore, that Article 4 of the Departments (Northern Ireland) Order 1999 continues to apply even when Ministers are not in office, meaning that Departments are limited to carrying on only “business as usual” type functions and cannot make decisions which would require approval from an Executive Minister or the Executive Committee of the Assembly. As the Explanatory Notes state:

This severely restricts the ability of departments to exercise their functions, to ensure continued delivery of public services in [Northern Ireland], and to address the difficult decisions required to ensure departments operate within budgetary constraints. It also creates great uncertainty around what day to day decisions can be made and exposes departments to a high risk of legal challenge if they exercise any functions in the absence of Ministers.¹⁸

The conclusions of *Buick* were considered again in the case of *JR80* which 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 the independent inquiry during the then ongoing hiatus in the devolved institutions.¹⁹ The Court of Appeal confirmed the court’s findings in *Buick* as to the limitations on decisions that can be made by Northern Ireland Departments in the absence of Ministers, subject to the effect of the primary legislation passed in response to that case.

The effect of *Buick* and *JR80* meant that legislation was required to clarify that Departments could continue to exercise functions in the absence of Ministers where it was in the public interest to do so. The Northern Ireland Executive Formation etc Act 2022 therefore clarified that a “senior officer” (civil servant) of a Northern Ireland Department was not prevented from

¹⁶ This concerned the approval of planning permission for a major waste disposal incinerator by the Northern Ireland Department for Infrastructure.

¹⁷ [Buick’s application for judicial review \[2018\] NICA 26](#)

¹⁸ [Explanatory Notes, Northern Ireland \(Interim Arrangements\) Bill](#), p 9.

¹⁹ [Application by JR80 for Judicial Review \[2019\] NICA 58](#)

exercising certain functions during the period for Executive formation or six months from the day on which the 2022 Act was passed.

These provisions proved controversial. One trade union which represents senior civil servants has argued that politicians, not civil servants, should make any “exceptionally difficult decisions” when it comes to Northern Ireland’s public finances.²⁰

The present decision-making provisions expire on 5 June 2023. The Northern Ireland (Interim Arrangements) Bill therefore provides for the continuation of these arrangements during the current period in which there is no Executive and will continue to require the Secretary of State to publish guidance (as under the 2022 Act) regarding the exercise of Departmental functions. These provisions will expire when an Executive is next formed.

2.2 Advice, information and consultation

Northern Ireland Departments operate under the direction and control of their Executive Ministers, but in the continuing absence of those Ministers, the Bill also makes provision for the Secretary of State to direct Northern Ireland Departments to provide advice and information, and to carry out consultations, for the purpose of developing options for raising more public revenue in Northern Ireland or otherwise improving the sustainability of public finances in Northern Ireland.

These powers will expire upon the formation of a Northern Ireland Executive.

As the Explanatory Notes make clear:

Consistent with the approach taken to other advice to Ministers, the Bill does not provide for a direction for the provision of advice or information given to a Northern Ireland Department by the Secretary of State to be published or for public notification to be given.²¹

2.3 Accounts and reports

In periods when the Northern Ireland Assembly is not fully functioning, relevant Assembly Committees cannot conduct the normal scrutiny of accounts, reports, and other documents laid before the Assembly by Northern Ireland Departments. This is despite those accounts continuing to be laid by Northern Ireland Departments in accordance with their legal duties.

²⁰ [Stormont budget: Northern Ireland departments braced for big cuts](#), BBC News online, 27 April 2023.

²¹ [Explanatory Notes, Northern Ireland \(Interim Arrangements\) Bill](#), p5.

The UK Government considers that “transparency and scrutiny is important to the good management of public money”, and so the Bill requires the Secretary of State to lay the accounts of Northern Ireland Departments before the House of Commons in periods during which there is not a fully functioning Assembly.²²

At present, there is no requirement for the House of Commons to be informed of the accounts and reports of Northern Ireland Departments and for scrutiny to be conducted in accordance with its Standing Orders. Commons [Standing Order No 148](#) provides for the Commons Public Accounts Committee to scrutinise accounts laid before Parliament as the Committee sees fit. It will, therefore, be a matter for the Public Accounts Committee to consider whether they wish to do so in respect of accounts provided by Northern Ireland Departments.

Under the terms of this provision, if the Northern Ireland Assembly is sitting, then reports and accounts from Northern Ireland Departments will only be laid before the Assembly. But if the Northern Ireland Assembly is not sitting, then accounts, reports and other relevant documents **must** be laid in duplicate before the House of Commons **and** the Assembly.

These accounts and reports provisions will only apply if the Northern Ireland Assembly is **not** fully functioning.

2.4 Territorial extent

This Bill extends to England and Wales, Scotland and Northern Ireland, but only applies in Northern Ireland. This Act affects matters within the devolved (transferred) competence of the Northern Ireland Assembly.

The [Sewel Convention](#) sets out that the UK Parliament will “not normally” legislate in an area of devolved competence without the agreement of the devolved legislatures.

In the absence of the Executive and a fully functioning Assembly, it is not possible for the Assembly to provide a Legislative Consent Motion. The Explanatory Notes state that the Government “is satisfied that the circumstances of this Act come within the exception allowed by the Convention”.²³

²² Similar provision was made during periods in which Northern Ireland was under “Direct Rule” from Westminster. See, for example, [section 11 of the Schedule](#) to the Northern Ireland Act 2000.

²³ [Explanatory Notes, Northern Ireland \(Interim Arrangements\) Bill](#), p6.

2.5 Fast-tracking

The UK Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards, the House of Lords Constitution Committee recommended that the Government should provide more information as to why a piece of legislation should be fast-tracked.²⁴ The Government has done so via the Bill's Explanatory Notes.²⁵ See also **Section 2** above.

2.6 Financial implications

The Explanatory Notes state that the Bill's provisions "will not generate additional expenditure or raise additional revenue". Therefore, neither a Money Resolution nor a Ways and Means Resolution will be required in the House of Commons.

2.7 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 regarding its compatibility with Convention rights.²⁶ The Secretary of State has made the following statement:

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

Furthermore, the Northern Ireland Office does not consider that the provisions of the Bill engage Convention rights.²⁷

2.8 Environmental law

The Secretary of State is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would constitute environmental law for the purposes of [section 20](#) of the Environment Act 2021. Accordingly, no statement under that section has been made.

²⁴ House of Lords Constitution Committee, [15th report of session 2008/09](#), HL paper 116-1.

²⁵ [Explanatory Notes, Northern Ireland \(Interim Arrangements\) Bill](#), p7.

²⁶ As defined by [section 1](#) of that Act.

²⁷ [Explanatory Notes, Northern Ireland \(Interim Arrangements\) Bill](#), p11.

3 The Bill – clause by clause analysis

The Northern Ireland (Interim Arrangements) Bill comprises four substantive clauses.

3.1 Clause 1: Exercise of functions by Northern Ireland Departments

Clause 1 extends existing provisions in the Northern Ireland Executive Formation Act etc 2022 which clarify the exercise of Northern Ireland Departmental functions by senior officers (or civil servants). This provision will continue to apply during the current period where there is no Executive, and until ministerial offices in Northern Ireland are next filled. The Secretary of State for Northern Ireland therefore remains under a requirement to publish guidance regarding the exercise of those functions, and senior officers of Departments will be required to have regard to that guidance.

3.2 Clause 2: Power to direct Departments to provide advice and information, and to carry out consultations

Clause 2 confers powers on the Secretary of State to direct Northern Ireland Departments to provide advice and information, and/or to carry out consultations, for the purpose of developing options for raising more public revenue in Northern Ireland or otherwise improving the sustainability of public finances in Northern Ireland, during the current period in which there is no Executive.

A direction for advice or information under this clause may include provision about the manner or form in which such advice or information is to be provided, or the timing of doing so. Where a direction is given to provide information that is not within a Northern Ireland Department's possession, this provision requires the Department to take reasonable steps to obtain the information for the purpose of complying with the direction. A direction to carry out a consultation may include provision about who is to be consulted, how the consultation is to be carried out, the content of the consultation (including provision requiring the approval of the Secretary of State to whatever is consulted on), and the consultation timetable.

The power in Clause 2 may be exercised so as to require two or more Northern Ireland Departments to provide joint advice or collate information. A direction under this section would lapse at the end of the current period in which there is no Executive. The Clause also provides that disclosures from Northern Ireland Departments must not contravene relevant data protection legislation.

3.3 Clause 3: Exception to Assembly power to call for witnesses and documents

[Section 44](#) of the Northern Ireland Act 1998 gives the Northern Ireland Assembly the power to call for witnesses and documents from “any person” in relation to transferred matters in Northern Ireland. However, subsection (4) states that this power is not exercisable “in relation to a person who is or has been a Minister of the Crown, or a person who is or has been in Crown employment”, which includes civil servants in Northern Ireland.

Clause 3 of the present Bill disapplies this power by expanding the definition of “transferred matters” to include “the giving of a direction under section 5A of the Northern Ireland (Executive Formation etc) Act 2022 or the exercise of a function in accordance with such a direction”. This takes account of the fact that when the Assembly and Executive are not fully functioning, Northern Ireland Department officials have the authority to take certain decisions and could therefore be compelled to produce documents or evidence.

3.4 Clause 4: Accounts etc to be laid before House of Commons

Clause 4 requires that the Secretary of State be sent a copy of any minutes, accounts, reports, or other documents that would be laid before the Assembly under the terms of relevant provisions in law, during a period in which the Assembly is not fully functioning.²⁸ Clause 4 also places the Secretary of State under a legal duty to lay before the House of Commons any documents received under the terms of this provision.

3.5 Commencement

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

²⁸ The relevant provisions are contained within the [Government Resources and Accounts Act \(Northern Ireland\) 2001](#) and the [Financial Provisions \(Northern Ireland\) Order 1993](#).

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