



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

HL Bill 60 of 2021–22

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On 22 November 2021, the second reading of the Northern Ireland (Ministers, Elections and Petitions of Concern) Bill is scheduled to take place in the House of Lords.

The bill would implement aspects of the January 2020 *New Decade, New Approach* deal that require primary legislation in Westminster. The deal was agreed by the five main political parties in Northern Ireland, following talks in 2018 and 2019 to restore the Northern Ireland executive, which had been unable to function since January 2017. Following the agreement, the executive was restored on 12 January 2020.

The bill contains nine clauses, and would:

- Make amendments to the timescales for appointing Northern Ireland Executive ministers following resignations or elections.
- Reform the Northern Ireland Assembly's petition of concern mechanism to reduce its use. The mechanism currently allows 30 assembly members to force a matter to be decided on a cross-community basis, instead of a simple majority basis.
- Revise Northern Ireland's current ministerial code of conduct.

The Government hopes the changes would improve the stability of Northern Ireland institutions and would improve transparency and accountability.

During its progress through the House of Commons, the bill received qualified support from Labour and the participating Northern Ireland parties (the Democratic Unionist Party (DUP), the Social Democratic and Labour Party (SDLP) and the Alliance Party). However, the DUP did express its concern over Westminster involvement in Northern Ireland politics and the UK Government's approach to devolution. In addition, Labour, the SDLP and the Alliance Party believed the bill could be improved, and tabled amendments to that effect.

Amendments discussed included proposals to change the roles and selection mechanisms for the first minister and deputy first minister and to force progress on the implementation of other aspects of the *New Decade, New Approach* agreement. The Government rejected all amendments on the basis that the bill was simply concerned with delivering aspects of the agreement requiring primary legislation in Westminster and that other changes should be driven by the parties in Northern Ireland.

The only amendments agreed were technical government amendments moved at committee stage. One SDLP amendment (about the first and deputy first ministers) was moved and defeated at a division held at committee stage. The bill passed each Commons stage without a vote.

I. Background

The [Northern Ireland \(Ministers, Elections and Petitions of Concern\) Bill](#) implements aspects of the January 2020 *New Decade, New Approach* deal agreed by the five main Northern Ireland political parties: the Democratic Unionist Party (DUP), Sinn Féin, the Ulster Unionist Party, the Social Democratic and Labour Party (SDLP), and the Alliance party.¹

The agreement followed talks in 2018 and 2019 to restore the Northern Ireland Executive, which had not been able to function since the resignation of the deputy first minister in January 2017. The political talks included the UK Government and the Irish Government.

The Northern Ireland Executive was restored on 12 January 2020, following the publication of *New Decade, New Approach* on 9 January 2020.

The deal covered a range of subjects, many of which are devolved matters that would need to be pursued by the Northern Ireland Executive and the assembly. This includes health and social care reforms and new frameworks for language and culture. However, some aspects of the deal require primary legislation to be passed by the UK Parliament, as covered in this bill.

In particular, the bill would:

- Make amendments to the timescales for appointing ministers (including the first minister and deputy first minister) following resignations or elections. The Government hopes this will improve continuity and reduce incentives for parties to leave the executive.²
- Reform the Northern Ireland Assembly's 'petition of concern' mechanism to reduce its use and to "return it to its intended purpose" of protecting all sections of society.³ The mechanism currently allows 30 assembly members to force a matter to be decided on a cross-community basis (ie supported by both the majority of "designated" nationalists voting and unionists voting in the assembly), instead of a simple majority basis.⁴
- Revise Northern Ireland's current ministerial code of conduct.

The Government hopes the bill will improve the sustainability of the Northern Ireland Executive and institutions and will increase transparency and accountability.⁵

2. Provisions

The bill contains nine clauses.

¹ HM Government, [New Decade, New Approach](#), 9 January 2020.

² [Explanatory Notes](#), p 3.

³ *ibid.*

⁴ For more information, see: Northern Ireland Office, [Third Report on the Use of the Petition of Concern Mechanism in the Northern Ireland Assembly](#), July 2021, CP 476.

⁵ [Explanatory Notes](#), p 2.

Clause 1 would amend the Northern Ireland Act 1998 to extend the timeframes for appointing Northern Ireland ministers after an election or when appointing a new first minister and deputy first minister after one of them leaves office. The explanatory notes give further details of the change, explaining:

In place of the two current limits of:

- a. 14 days from the first meeting of the assembly after a poll; and
- b. 7 days from the first minister or deputy first minister ceasing to hold office,

there will instead be a single six-week period. This period is automatically renewed three times, for a total period of up to 24 weeks from the assembly's first meeting after a poll or from the first minister or deputy first minister ceasing to hold office, whichever is shortest.⁶

Clause 2 would provide that Northern Ireland ministers will no longer cease to hold office after the election of a new assembly. Instead, ministers could continue to hold office for up to 24 weeks after an election or 48 weeks since there has been a functioning executive in place, whichever is shorter, subject to those offices otherwise being filled.

The explanatory notes explain that ministers will now cease to hold office in the following scenarios:

- If the 24-week period after an election ends without new ministers, including the first minister and deputy first minister, being appointed.
- If the 48-week period since a functioning executive has been in place ends without new ministers, including the first minister and deputy first minister, being appointed.
- If the secretary of state has exercised their power to propose a date for an election [...] on the basis that they consider it necessary to give effect to the purpose underlying paragraph 3.15 of annex c of the *New Decade, New Approach* deal [see clause 3 below].
- If a minister is not returned as a member of the assembly at an election, in which case the party to which the minister belonged may nominate a replacement.
- If new ministers (including the first minister and deputy first minister) are appointed within the 24/48-week time limits referred to above.⁷

Clause 3 would amend the secretary of state's duties concerning extraordinary assembly elections.

Currently, the secretary of state can propose a date for an assembly election in two cases:

- first, where the assembly resolves to dissolve itself (by a two-thirds majority); and
- second, where the period for appointing Northern Ireland ministers or the period for appointing the first minister and deputy first minister expires without those offices being filled.

⁶ [Explanatory Notes](#), p 4.

⁷ *ibid.*

Clause 3 would amend section 32 of the Northern Ireland Act 1998 to require the secretary of state to propose an election date “as soon as practicable” in these scenarios, and that it must be within 12 weeks from the day an assembly resolution has been passed or from the date either time limit has elapsed.

In addition, clause 3 would allow the secretary of state to call an assembly election at any point after the first six-week period for filling ministerial offices (but before the end of the 24-week period for appointing them) if they consider it necessary to give effect to the purpose of paragraph 3.15 of annex c of *New Decade, New Approach*. This paragraph states:

These changes will be given legislative effect consistent with the shared commitment to the principles of power-sharing and cross-community protection contained in the Belfast (Good Friday) Agreement and ensuring there is sufficient representation to command cross-community confidence in the assembly.⁸

If the power is exercised, ministers would cease to hold office on the date of the poll, rather than at the expiry of the 24 or 48-week period set out in clause 2.

Clause 4 would substitute a revised ministerial code of conduct into the Northern Ireland Act 1998. It would set out expectations on the behaviour of ministers, including their treatment of the civil service, public appointments and the use of official resources. The revised code would apply to new and existing ministers from the time it comes into force. The explanatory notes explain that Northern Ireland ministers cannot take office until they have pledged to comply with the code of conduct.⁹

Clause 5 makes amendments to the procedure for petitions of concern. This includes the introduction of a new 14-day “consideration period” and that the petition must be signed and confirmed by at least 30 assembly members covering two or more political parties. It also specifies it could not be used for sanctions relating to the conduct of an assembly member or for votes on the general principles of a bill.

Clauses 6 to 9 contain miscellaneous provisions. Clause 6 repeals legislation no longer required. Clause 8 states that the bill will come into force two months after it is passed.

3. House of Commons stages

3.1 Second reading

Introducing the bill’s second reading on 22 June 2021, the Secretary of State for Northern Ireland, Brandon Lewis, set out the Government’s intention to support the functioning of the Northern Ireland Executive and the implementation of the *New Decade, New Approach* deal. He stated:

The UK Government and this Parliament have a duty to ensure good and functional governance in Northern Ireland. Today, through this bill, we discharge that duty by bringing forward

⁸ HM Government, [New Decade, New Approach](#), 9 January 2020, p 25.

⁹ [Explanatory Notes](#), p 6.

measures that will help continue to enhance the public's confidence in the Northern Ireland institutions through increased transparency and improved governance arrangements. Those measures will ensure that the institutions will be more sustainable, more resilient and for the benefit of the people of Northern Ireland.¹⁰

He stressed that the bill only implemented aspects of the deal, and that the Government was working with the Northern Ireland Executive and the Irish Government on other commitments set out in the agreement.¹¹ He concluded by stating that the UK Government was delivering on its promises by introducing the bill, and called upon the Northern Ireland parties to also come together to progress the full package of measures in the deal.

The bill received qualified support from the participating Northern Ireland parties, although there were some concerns about the Government's approach to devolution in Northern Ireland and to some of the other aspects of the *New Decade, New Approach* deal.

For example, the DUP chief whip, Sammy Wilson, said his party would be supporting the bill, as it helped ensure Northern Ireland would not have to go long periods without a government again.¹² However, he highlighted his party's concerns about the Northern Ireland protocol and about the Government's commitment to introduce legislation dealing with the *New Decade, New Approach* agreement's cultural and language aspects in Westminster, due to a lack of progress on the matter in the Northern Ireland Assembly.¹³ He saw the introduction of such legislation as a concession to Sinn Féin and an interference with Northern Ireland politics. He said that the Government needed to show more respect to devolution in Northern Ireland for it to succeed.

The SDLP leader, Colum Eastwood, stated he was "not a massive fan of much of [the] bill", but that his party would support it as they did not "win the argument" during the *New Decade, New Approach* negotiations.¹⁴ He expressed frustration that legislation in Westminster was necessary, but wanted progress on the language and cultural aspects of the deal. He said:

I do not want this place legislating at all in the devolved space, but if parties like the DUP and Sinn Féin cannot deliver in government, this is what is going to keep happening time and again. If you want to stop Westminster going over the heads of the devolved government, do the things that you agreed to do in the first place, and then we will not be in this situation.¹⁵

The deputy Alliance leader, Stephen Farry, indicated his support for the bill, although he also expressed concern about agreements regularly being breached in Northern Ireland.¹⁶ He believed there were some ambiguities in the *New Decade, New Approach* agreement, and therefore hoped the bill and the agreement could be improved.

¹⁰ [HC Hansard, 22 June 2021, col 776.](#)

¹¹ *ibid*, col 780.

¹² *ibid*, cols 789–92.

¹³ See: BBC News, '[UK government "must deliver on Irish language pledge"](#)', 26 October 2021.

¹⁴ [HC Hansard, 22 June 2021, cols 796–8.](#)

¹⁵ *ibid*, col 798.

¹⁶ *ibid*, cols 800–4.

Labour also supported the bill. However, the shadow secretary of state for Northern Ireland, Louise Haigh, did state that Labour would be looking to “tighten up” its provisions:

We welcome attempts to safeguard power sharing and improve the sustainability of the executive and the assembly. Although we will suggest amendments to tighten up provisions in the bill, the lessons from the past should offer a clear warning to all of us. Institutions are much easier to collapse than they are to get back up and running. Recent events could scarcely have provided a clearer example of why the provisions contained in the bill are necessary.¹⁷

The bill passed second reading without a division.

3.2 Committee stage

The bill was considered by public bill committee across two days. The first day, held on 29 June 2021, involved two oral evidence sessions, and included witnesses from the civil service, academia and officials in the Northern Ireland Assembly.¹⁸ Amendments to the bill were then considered on the second day, 6 July 2021.¹⁹

Several government amendments were made to the bill during committee. Robin Walker, then Minister of State in the Northern Ireland Office, described these as technical amendments to rectify an inadvertent alteration to the petition of concern procedure that the bill would have brought about. These amendments were agreed without division.²⁰

A number of opposition amendments were also tabled, with one of these moved to a division, where it was defeated by 10 votes to 2. The amendment concerned the appointment of first ministers and was tabled by the SDLP. It would have changed the mechanism for the Northern Ireland Assembly selecting first ministers and would have required two to be appointed jointly (rather than having the deputy post).²¹

Speaking to the proposed amendment, Claire Hanna (SDLP MP for Belfast South), expressed concern that the current system, introduced by the St Andrews agreement, had “privatised” elections in Northern Ireland to the two larger parties. This system requires the first minister to be nominated from the largest party in the largest designation in the assembly, and for the deputy first minister to be nominated from the largest party in the second largest designation. Currently, this is the DUP and Sinn Féin respectively. She believed this arrangement had a negative impact on politics in Northern Ireland and on joint working in the assembly.

The Alliance party raised similar concerns about the designation system used to appoint first and deputy first ministers, believing it increased polarisation. The party also tabled an amendment to move away from it, but did not move it to a division.

¹⁷ [HC Hansard, 22 June 2021, col 780.](#)

¹⁸ UK Parliament, ‘[Northern Ireland \(Ministers, Elections and Petitions of Concern\) Bill: Committee stage](#)’, accessed 2 November 2021.

¹⁹ Public Bill Committee, [Northern Ireland \(Ministers, Elections and Petitions of Concern\) Bill](#), 6 July 2021, session 2021–22, 3rd sitting.

²⁰ *ibid*, cols 86–7.

²¹ *ibid*, cols 94–7.

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

Other amendments discussed at committee stage covered matters including further changes to petitions of concern and calling for the Government to publish a report on progress implementing the *New Decade, New Approach* agreement.

In addition, Labour asked about the powers of caretaker ministers (those allowed to continue in post for a period of time after an election or the functioning of the executive, as provided for by clause 1), and what safeguards would be in place to ensure they did not act beyond what was reasonable.²² Responding, Robin Walker explained that the Government believed there were already adequate safeguards to protect against this:

The fundamental protection in the case of caretaker ministers is the absence of an executive. If there is no first minister and deputy first minister, significant, controversial or cross-cutting decisions cannot be taken by the executive. In a resignation scenario, assembly committees will also continue to function for the Assembly's duration and can continue to discharge their important duties of scrutinising ministers and departments and holding them accountable. Under the Northern Ireland Act 1998, ministers cannot take any decisions that ought to have been taken by the executive. We therefore believe there is no need to provide further statutory clarifications given that legal safeguards are already in place. We also know, and as we saw during the period of absence of an executive, that the courts are prepared to step in if they feel that decisions are being taken beyond the remit of whoever is taking them. We have seen examples of that.²³

3.3 Report stage

Report stage and third reading were held on 26 October 2021.

No amendments were made to the bill at report stage. In addition, although a number of opposition amendments were discussed, none of these were moved to a division. Amendments were tabled by Labour, the SDLP and the Alliance party.

Speaking to the Alliance party's amendments, Stephen Farry explained that they covered four broad areas: the election or nomination of first minister and deputy first minister; reforms to petitions of concern; the operation of the executive; and shortening the bill's commencement date.²⁴ He accepted the point that the bill reflected the *New Decade, New Approach* agreement, but noted the deal was published in January 2020. He said that a lot had happened in Northern Ireland since then and was concerned about tensions rising again and the prospect of another crisis in Northern Ireland politics.

²² Public Bill Committee, [Northern Ireland \(Ministers, Elections and Petitions of Concern\) Bill](#), 6 July 2021, session 2021–22, 3rd sitting, cols 71–2.

²³ *ibid*, col 74.

²⁴ [HC Hansard, 26 October 2021, cols 157–61.](#)

He stated he would not be pushing his amendments to a division but hoped ministers would reflect on some of the points raised during the debate.²⁵

Colum Eastwood spoke about the SDLP's amendments concerning the first minister and deputy first minister roles. In particular, he urged the Government to at least consider the idea of calling them joint first ministers. He believed this would remove a lot of division and debate.²⁶

Representing Labour, the shadow minister for Northern Ireland, Alex Davies-Jones, spoke to her party's amendments to "push forward progress" on a Northern Ireland bill of rights and the establishment of civic forums to give communities a greater say in decision-making.²⁷ Both of these matters were included in the *New Decade, New Approach* agreement, and Alex Davies-Jones believed the bill provided an opportunity to push for their implementation.

Addressing the amendments tabled about the selection and roles of the first and deputy first ministers, Alex Davies-Jones urged the Government to give the subject serious consideration.²⁸ She believed they raised important questions about the evolution of power-sharing since the Good Friday agreement.

The Minister of State for Northern Ireland, Conor Burns, stressed that the bill was "deliberately limited in scope" and would only implement aspects of the *New Decade, New Approach* deal.²⁹ Addressing the amendments tabled about the first minister and deputy first minister roles, the minister stated that it would be up to the parties in Northern Ireland to agree a new approach:

Some of the amendments concerning the titles of first minister and deputy first minister and some of the points made about the changing demographics within Northern Ireland may be things that the parties in Northern Ireland will want to come together to address, but we do not believe it is our role to be forcing that change on the parties in Northern Ireland within the devolved space without their consent.³⁰

3.4 Third reading

Opening third reading, Brandon Lewis reiterated that the bill was about implementing aspects of the *New Decade, New Approach* agreement, and expressed his belief that it would be "remiss of us to begin to tweak and change the details here in Westminster without further agreement from the parties". However, he stated that he looked forward to future debate on the subjects raised, both in Northern Ireland and during the bill's progress through the House of Lords:

During the passage of the bill, including this afternoon, there has been sensible, interesting and well-argued debate on the wider institutions and options in Northern Ireland. I look forward to seeing discussions continue among the Northern Ireland parties and to engaging on these

²⁵ [HC Hansard, 26 October 2021, col 174.](#)

²⁶ *ibid*, cols 162–3.

²⁷ *ibid*, cols 167–9.

²⁸ *ibid*, col 170.

²⁹ *ibid*, cols 170–2.

³⁰ *ibid*, col 172.

matters with them and with colleagues here, as well as to following discussions in the other place [...]

Mr Lewis said he would always listen to ideas and options that received cross-party support in Northern Ireland. He also stressed he would continue to work together with Labour, the Northern Ireland Executive and the Northern Ireland parties to deliver on the commitments set out in the *New Decade, New Approach* deal.³¹

Alex Davies-Jones indicated Labour's support for the bill, but criticised the Government for the delays and its handling of the implementation of the *New Decade, New Approach* deal.³² She believed this, and other government actions affecting Northern Ireland, had led to more instability. She also said the bill missed several opportunities to progress peace in Northern Ireland:

Although Labour supports the bill, we believe that there are several missed opportunities for the Government to refocus on delivering on the promise of peace, which they have allowed to stall. A bill of rights, integrated education and housing, women's rights and giving communities a real say in decision making were the essence of the Good Friday agreement and the shared future that it imagined, but progress on them has been virtually non-existent over the past decade. We do not believe that the instability we see can be separated from the failure to deliver on such commitments. Above all, the way to guarantee stability is to demonstrate that commitments made will be honoured, and that Westminster is still prepared to step up and honour our side of the bargain.³³

The DUP spokesperson for the Cabinet Office and International Development, Gregory Campbell, indicated his party's support for the bill, despite having some reservations about it. He also highlighted the importance of the Northern Ireland parties working together to take the *New Decade, New Approach* agreement forward themselves.³⁴

The SDLP's Claire Hanna said that her party agreed with the general "thrust of the bill", but again believed it could have gone further: "we are beset and bedevilled by a culture of veto and stand-off, and this would have been an appropriate opportunity to try to fix some of those things".³⁵

4. Read more

- House of Commons Northern Ireland Affairs Committee, [New Decade, New Approach Agreement](#), 16 July 2020, HC 160 of session 2019–21; and [Government response](#), 14 September 2020, HC 792 of session 2019–21
- House of Commons Library, [Northern Ireland \(Ministers, Elections and Petitions of Concern\) Bill 2021–22](#), 11 June 2021
- Northern Ireland Executive, '[Your executive](#)', 4 November 2021

³¹ [HC Hansard, 26 October 2021, col 175](#).

³² *ibid*, cols 176–8.

³³ *ibid*, col 178.

³⁴ *ibid*, cols 183–4.

³⁵ *ibid*, col 183.

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