



# Northern Ireland (Executive Formation and Organ and Tissue Donation) Bill

## HL Bill 105 of 2022–23

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The House of Lords is scheduled to debate all stages of the [Northern Ireland \(Executive Formation and Organ and Tissue Donation\) Bill](#) on 27 February 2023.

Northern Ireland has been without a fully functioning executive since February 2022 following the collapse of power-sharing over the Democratic Unionist Party's objections to the Northern Ireland Protocol. A Northern Ireland Assembly election took place in May 2022. The statutory period for forming a new executive after the election passed with no executive being formed. The deadline for doing so of 27 October 2022 was extended to 19 January 2023 using powers in the Northern Ireland Executive Formation Act 2022. As this date also passed without the formation of a new executive, the secretary of state for Northern Ireland is currently under a statutory duty to set a date for another election to the Assembly, to take place on or before 13 April 2023.

The government has assessed that an immediate election would not support the restoration of the devolved institutions. The Northern Ireland (Executive Formation and Organ and Tissue Donation) Bill would therefore retrospectively extend the deadline for forming an executive from 19 January 2023 to 18 January 2024. It would also allow the secretary of state to set an Assembly election date earlier than this if no executive had yet been formed.

There was cross-party support in the House of Commons for these provisions. The government intends that the extension will create time and space for negotiations between the UK and the EU on the operation and application of the Northern Ireland Protocol. There has been heightened

anticipation recently that the government is on the verge of announcing it has reached a deal with the EU, but at the time of writing this briefing, negotiations were still ongoing.

The bill was amended in the House of Commons to allow regulations to be made in the absence of a functioning Northern Ireland Assembly about organ donation in Northern Ireland. The Assembly passed legislation in February 2022, known as 'Dáithí's law', that would see Northern Ireland move to a 'deemed consent' system of organ donation. Similar legislation already applies in the rest of the UK. However, the Northern Ireland system cannot come into operation until regulations have been passed specifying which organs are covered by deemed consent. These regulations would normally require the approval of the Northern Ireland Assembly. The bill would change the procedure required, so the Northern Ireland Department of Health could make them without needing approval from the Assembly. All MPs who spoke in the House of Commons debate supported these amendments.

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## 1. Overview

The [Northern Ireland \(Executive Formation and Organ and Tissue Donation\) Bill](#) completed all its stages in the House of Commons in one day on 23 February 2023. Its second reading and remaining stages in the House of Lords are scheduled to take place in one day on 27 February 2023. The government has published [explanatory notes](#) and a [delegated powers memorandum](#) alongside the bill.

## 2. Background to the bill

### 2.1 Collapse of the Northern Ireland executive in February 2022

Northern Ireland has been without a fully functioning executive since February 2022 following the collapse of power-sharing over the Democratic Unionist Party's (DUP) objections to the Northern Ireland Protocol. Its position is that the protocol undermines Northern Ireland's place within the United Kingdom by effectively placing a trade barrier in the Irish Sea between Northern Ireland and the rest of the UK, and by making Northern Ireland subject to EU laws over which it has no say.<sup>1</sup>

Paul Givan of the DUP resigned as first minister of the Northern Ireland executive on 3 February 2022, citing the impact of the protocol on the "delicate balance created by the Belfast and St Andrew's Agreements".<sup>2</sup> Under the Northern Ireland Act 1998, if the first minister resigns, the deputy first minister also ceases to hold office. Therefore, Mr Givan's resignation meant that Michelle O'Neill of Sinn Féin ceased to be deputy first minister. The Northern Ireland executive was no longer able to meet as it is chaired jointly by the first and deputy first ministers. Other executive ministers stayed in post in a 'caretaker' capacity but could not make decisions on "significant or controversial" matters or those that cut across

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<sup>1</sup> Democratic Unionist Party, '[DUP leader announces seven tests for HMG plans on NI protocol](#)', 15 July 2021.

<sup>2</sup> Paul Givan, '[Personal Twitter account](#)', 3 February 2022.

the responsibilities of more than one minister.<sup>3</sup> This included agreeing a budget.<sup>4</sup>

## 2.2 Northern Ireland Assembly election in May 2022

A scheduled election to the Northern Ireland Assembly was held on 5 May 2022. These returned Sinn Féin as the largest party, with 27 seats, followed by the DUP, on 25 seats.<sup>5</sup> The Alliance Party had 17 seats, the Ulster Unionist Party (UUP) had nine and the Social Democratic and Labour Party (SDLP) had eight. These results gave Sinn Féin, as the largest party, the right to nominate a first minister, the first time a nationalist party in Northern Ireland has been in this position. As the second largest party, the DUP was entitled to nominate the deputy first minister.

## 2.3 Failure to elect Assembly speaker since the 2022 election

The Assembly has not functioned fully since the election and has failed to form a new executive. The Northern Ireland Assembly Act 1998 requires the Assembly to meet within eight days of an election.<sup>6</sup> It must elect a new speaker and deputy speaker before it can fill the offices of first and deputy first minister or conduct any other business.<sup>7</sup> The Assembly duly met on 13 May 2022, but the DUP refused to support the nomination of a speaker.

Explaining this stance to the Assembly on 13 May 2022, Paul Givan stated that the “Irish Sea border has fundamentally undermined the Belfast Agreement [and] has changed our relationship with the United Kingdom”.<sup>8</sup> He said his party had “received a mandate in the election to remove the Irish Sea border” and that would need to be respected. Writing in a newspaper article, Sir Jeffrey Donaldson, leader of the DUP, described it as

<sup>3</sup> Northern Ireland Executive, ‘[Ministerial code](#)’, accessed 23 February 2023.

<sup>4</sup> BBC News, ‘[Stormont ministers advised budget cannot pass without NI executive](#)’, 9 March 2022.

<sup>5</sup> BBC News, ‘[Northern Ireland Assembly election results 2022](#)’, accessed 23 February 2023.

<sup>6</sup> Northern Ireland Act 1998, section 31.

<sup>7</sup> Northern Ireland Assembly, ‘[Letter to all members](#)’, 28 September 2022.

<sup>8</sup> Northern Ireland Assembly, ‘[Official Report](#)’, 13 May 2022.

“unfortunate” that as leader he had “had to cease operating the political institutions before Dublin and Brussels fully recognise[d] the lack of cross-community support for the protocol”.<sup>9</sup> He stated that: “If the protocol is not resolved, then Northern Ireland will be without a devolved government”.

Other parties were critical of the actions of the DUP, with Michelle O’Neill, Sinn Féin’s first minister designate, saying they were denying democracy and obstructing the executive from serving the public and properly supporting public services.<sup>10</sup> Doug Beattie, leader of the UUP, argued that electing a speaker would ensure the Assembly would not be silent on important issues, without compromising the DUP’s position on the protocol.<sup>11</sup>

The Assembly was recalled several more times, on 30 May 2022, 3 August 2022 and 27 October 2022, but on each occasion the DUP did not vote for either of the candidates nominated for speaker. No candidate was therefore able to secure the cross-community vote needed to be elected. With no speaker in place, the Assembly cannot proceed to other business, including nominating first and deputy first ministers and other ministers in the executive.

## **2.4 Previous extension of the deadline to form a new executive**

There is a statutory time limit on how long Northern Ireland can continue without a full executive following an election. Under new rules brought into force by the [Northern Ireland \(Ministers, Elections and Petitions of Concern\) Act 2022](#), if a first minister and deputy first minister are not appointed within 24 weeks, the secretary of state for Northern Ireland must propose a date as soon as practicable for new Assembly elections to be held

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<sup>9</sup> News Letter, [‘Sir Jeffrey Donaldson: Prime Minister Boris Johnson must deal with Northern Ireland Protocol once and for all’](#), 7 June 2022.

<sup>10</sup> Northern Ireland Assembly, [‘Official report’](#), 13 May 2022.

<sup>11</sup> Northern Ireland Assembly, [‘Official report’](#), 13 May 2022.

within the subsequent 12 weeks.<sup>12</sup>

That deadline elapsed at the end of 27 October 2022, placing the secretary of state under a duty as of 28 October 2022 to propose a date for a new election to take place before 19 January 2023. Additionally, with the expiry of the period for forming an executive, the caretaker ministers were no longer able to remain in post.

To address this situation, Parliament passed the [Northern Ireland \(Executive Formation etc\) Act 2022](#), which received royal assent on 6 December 2022.<sup>13</sup> The act:

- Extended the period for forming an executive to 8 December 2022.
- Gave the secretary of state power to extend this by a further six weeks to 19 January 2023.
- Clarified that Northern Ireland senior civil servants can exercise departmental functions in the absence of ministers if they are satisfied it is in the public interest. This power lasts until 5 June 2023 (six months from the day the act received royal assent) or until a new executive is formed, whichever is sooner.
- Enabled UK ministers to deal with certain public appointments until a new executive is formed.
- Gave the secretary of state powers to determine the pay of Assembly members (MLAs) until the Assembly is functioning again, and in future periods where there is no functioning Assembly.
- Gave the secretary of state the power to set the regional rate (a Northern Ireland tax) for the 2023/24 financial year in the absence

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<sup>12</sup> This act received royal assent on 8 February 2022. Before this, the secretary of state was required to propose a new date for an Assembly election if Northern Ireland ministers, including a first and deputy first minister, were not appointed within a 14-day period following the Assembly's first meeting after an election. The change was introduced following the '[New decade, new approach](#)' deal of January 2020.

<sup>13</sup> More detailed information about the provisions of the act are available in the House of Lords Library briefing on the bill, '[Northern Ireland \(Executive Formation etc\) Bill](#)' (1 December 2022). The briefing was published before the bill's passage through the House of Lords, but no amendments were made to the bill in the House of Lords.

of an executive.<sup>14</sup>

Chris Heaton-Harris, the secretary of state for Northern Ireland, has already exercised some of the powers in this act. On 7 December 2022, he extended the deadline for forming an executive by a further six weeks, from 8 December 2022 to 19 January 2023, by making the [Northern Ireland \(Extension of Period for Making Ministerial Appointments\) Regulations 2022](#) (SI 2022/1296).

On 8 December 2022, Mr Heaton-Harris wrote to MLAs to inform them that their pay would be reduced by 27.5% from 1 January 2023.<sup>15</sup> MLAs' annual salaries (before the reduction) were £51,500 for the financial year commencing 1 April 2022.<sup>16</sup>

Mr Heaton-Harris has not yet exercised the power to set the Northern Ireland regional rate for 2023/24. In separate legislation, the UK Parliament recently made provision for a budget for Northern Ireland for the financial year ending 1 March 2023 in the absence of a functioning executive and Assembly. The [Northern Ireland Budget Act 2023](#) received royal assent on 8 February 2023. It provides the relevant authorisations and appropriations for the full 2022/23 financial year and includes provisions to allow public spending into the early months of the 2023/24 financial year.<sup>17</sup>

## 2.5 Expiry of extended deadline for forming new executive

The Northern Ireland Assembly was recalled again on 7 December 2022 in a

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<sup>14</sup> The Northern Ireland Assembly normally determines the regional rate annually. Individual district councils set the district rate annually. The regional rate and the district rate are the two components of domestic rates (for residential properties) and non-domestic rates (for businesses and other non-residential properties) in Northern Ireland.

<sup>15</sup> Northern Ireland Office, '[Northern Ireland Secretary writes to MLAs to confirm pay cut from 1 January 2023](#)', 8 December 2022.

<sup>16</sup> Northern Ireland Assembly, '[Salaries and expenditure rates 2016–2022](#)', accessed 21 February 2023.

<sup>17</sup> For further information about the provisions, see House of Lords Library, '[Northern Ireland Budget Bill](#)', 26 January 2023.



further attempt to elect a speaker. Sinn Féin tabled a motion calling for the DUP “to end its boycott of this Assembly” and supporting “the immediate appointment of an executive to provide urgent help for those struggling with the cost-of-living crisis through the winter months”.<sup>18</sup> The Assembly again failed to elect a speaker.<sup>19</sup> The DUP said it would vote for a speaker and nominate ministers once the protocol was “sorted, restoring Northern Ireland’s place in the UK internal market and removing the democratic deficit”.<sup>20</sup>

Subsequently, the newly extended deadline of 19 January 2023 passed without an executive being formed. This meant the secretary of state was again under a duty to propose a date, as soon as practicable, for another Assembly election to take place within 12 weeks, in other words on or before 13 April 2023. Chris Heaton-Harris said he would use the next few weeks to “assess carefully all options about what happens next”.<sup>21</sup> He said he would continue to talk to all parties before he made any decisions. He also said he would keep under review the powers provided to Northern Ireland civil servants to make decisions in the absence of ministers.

Mr Heaton-Harris confirmed his plans to legislate to extend the deadline again in a written ministerial statement on 9 February 2023.<sup>22</sup> He said he would extend the period for ministerial formation for a further year, to 18 January 2024, with the ability to hold an election earlier than this “if necessary”. He said it was “disappointing that people in Northern Ireland still do not have the strong devolved institutions that they deserve”. Having spoken to political representatives, businesses and communities in Northern Ireland, he had concluded that “another election at this time is not the best course of action to facilitate the return of the executive”. He emphasised

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<sup>18</sup> Northern Ireland Assembly, ‘[Order paper](#)’, 7 December 2022.

<sup>19</sup> Northern Ireland Assembly, ‘[Official report](#)’, 7 December 2022.

<sup>20</sup> Democratic Unionist Party, ‘[Assembly stunt provides useful distraction for Sinn Féin: Lyons](#)’, 7 December 2022.

<sup>21</sup> Chris Heaton-Harris, ‘[Difficult decisions’ needed if Stormont fails to return](#)’, Irish Times (£), 19 January 2023.

<sup>22</sup> House of Commons, ‘[Written statement: Northern Ireland executive formation](#)’, 9 February 2023, HCWS558.

that restoration of the executive remained his top priority.

## 2.6 Assembly recall and legislation on organ donation

There was another recall of the Assembly on 14 February 2023. Once again, this did not result in the election of a speaker, but it led to the secretary of state tabling amendments to the bill relating to organ donation. These amendments were accepted at the bill's committee stage in the House of Commons (see [section 5.2 of this briefing](#)).

The purpose of the recall was to elect a speaker and to debate a motion tabled by Sinn Féin calling for the commencement of section 1 of the [Organ and Tissue Donation \(Deemed Consent\) Act \(Northern Ireland\) 2022](#).<sup>23</sup>

This act received royal assent in March 2022, having completed its passage through the Northern Ireland Assembly in February 2022. It will change the system for organ donation in Northern Ireland from one where people can choose to opt in or out of the NHS organ donation register to a new statutory opt-out system.<sup>24</sup> Under this system, consent is presumed except in certain exempt circumstances, or if a person has made a decision to opt out in their lifetime. This is known as 'deemed consent'. Deemed consent laws already apply for organ donation in the rest of the UK.<sup>25</sup>

The Northern Ireland legislation is commonly referred to as 'Dáithí's law' after Dáithí Mac Gabhann, a six-year-old boy who has been on the waiting list for a heart transplant since 2018 and whose family has been campaigning for a change in the law.<sup>26</sup>

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<sup>23</sup> Northern Ireland Assembly, '[Letter from the speaker to all members regarding an earlier meeting of the Assembly under standing order 11](#)', 10 February 2023.

<sup>24</sup> Northern Ireland Department of Health, '[Explanatory notes to the Organ and Tissue Donation \(Deemed Consent\) Act \(Northern Ireland\) 2022](#)', March 2022, p 2.

<sup>25</sup> NHS Blood and Transplant, '[Organ donation law in England](#)', '[Organ donation and tissue law in Scotland](#)' and '[Organ donation law in Wales](#)', all accessed 21 February 2023.

<sup>26</sup> Amy Murray, '[Dáithí's law: What is it and why has it been delayed?](#)', BBC News, 20 February 2023.

It was expected the act would come into operation in spring 2023.<sup>27</sup> However, before this can happen, section 1 of the act needs to be commenced and secondary legislation needs to be passed to specify what tissues and organs can be covered by deemed consent.<sup>28</sup> Chris Heaton-Harris said on 8 February 2023 that this secondary legislation should have been passed by the Northern Ireland Assembly.<sup>29</sup> He explained the easiest and quickest route for this to happen was for the Assembly to come back and pass it, but he said he was “looking at all options”.

When the Assembly was recalled on 14 February 2023, once again the DUP did not vote to elect a speaker and the business therefore could not proceed to discussion of the organ donation legislation.<sup>30</sup> Sir Jeffrey Donaldson, leader of the DUP, claimed the government was using the issue as “blackmail for the return of devolution”.<sup>31</sup> He said he would table amendments at Westminster to enable Dáithí’s law to come into force by the spring as planned.

The DUP subsequently tabled amendments to the Northern Ireland (Executive Formation) Bill (as it was then called). Alliance and the SDLP supported the amendments. They would have allowed Westminster rather than Stormont to approve the necessary secondary legislation.<sup>32</sup>

However, on 20 February 2023, Chris Heaton-Harris said he would bring forward amendments to the bill that would allow the Northern Ireland

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<sup>27</sup> NHS Blood and Transplant, ‘[NHSBT board meeting: 29 November 2022—written update from Northern Ireland](#)’, 29 November 2022.

<sup>28</sup> As above; and Northern Ireland Assembly, ‘[Letter to all members on procedural guidance and potential recall of the Assembly](#)’, 10 February 2023.

<sup>29</sup> [HC Hansard, 8 February 2023, col 900](#).

<sup>30</sup> Northern Ireland Assembly, ‘[Official report](#)’, 14 February 2023.

<sup>31</sup> Democratic Unionist Party, ‘[Organ donation should not be used as blackmail for return of devolution](#)’, 10 February 2023.

<sup>32</sup> House of Commons, ‘[Northern Ireland \(Executive Formation\) Bill: Amendment paper](#)’, 17 February 2023. The bill’s title was amended at committee stage in the House of Commons to reflect the inclusion of provisions on organ donation.

Department of Health to make the necessary secondary legislation.<sup>33</sup> He emphasised that the government’s intervention was “exceptional”, in recognition of “just how important this issue is”. He argued that “decisions such as these should be being taken by locally elected decision-makers”.

The DUP welcomed the secretary of state’s decision to table amendments.<sup>34</sup> Sir Jeffrey Donaldson argued that the government knew “the parameters for the restoration of devolved government” and it therefore should “always have taken the necessary steps in Westminster to ensure Dáithí’s law was put in place”.

## 2.7 Attempts to change the Northern Ireland Protocol

The DUP position is that it will not return to power-sharing until issues with the Northern Ireland Protocol are resolved.<sup>35</sup> It has set seven tests it says any new arrangements would need to meet for its concerns to be satisfied.<sup>36</sup>

Successive UK governments have been acting to try and bring about changes to the protocol. In June 2022, the government, then led by Boris Johnson, introduced the Northern Ireland Protocol Bill in the House of Commons. The bill would make some provisions of the Northern Ireland Protocol ‘excluded provision’. This would mean they would no longer apply in domestic law and much of the EU legislation listed in the annexes to the protocol would no longer automatically apply to Northern Ireland. It would also give ministers delegated powers to make new law in connection with the protocol, such as on the movement and regulation of goods, replacing the EU law that applies under the protocol.

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<sup>33</sup> Kurtis Read, [‘Dáithí’s law to proceed following ‘exceptional’ Westminster intervention’](#), Belfast Telegraph, 20 February 2023.

<sup>34</sup> Democratic Unionist Party, [‘Sir Jeffrey: “sensible action on Dáithí’s law”](#)’, 20 February 2023.

<sup>35</sup> Sky News, [‘DUP says no return to Northern Ireland executive until ‘long shadow’ of protocol is resolved’](#), 9 May 2022.

<sup>36</sup> Democratic Unionist Party, [‘DUP leader announces seven tests for HMG plans on NI protocol’](#), 15 July 2021.

Liz Truss, who was then foreign secretary with responsibility for the bill, identified the breakdown of power-sharing in Northern Ireland as one of the factors that had led the government to introduce the bill.<sup>37</sup> However, the bill's introduction did not resolve the formation of a new executive in Northern Ireland. Sir Jeffrey Donaldson described its introduction as an “important step” but said it did not “deliver anything in and of itself”.<sup>38</sup>

Non-unionist parties in the Northern Ireland Assembly objected strongly to the approach taken by the government in this bill, arguing that the way to achieve “smooth implementation” of the protocol was through negotiation with the EU.<sup>39</sup>

The bill also attracted criticism because of the wide scope of its delegated powers and because it envisages the non-performance of some of the UK's international obligations. The government argued this was justified in international law by the doctrine of necessity, but many legal commentators were not convinced by this argument.<sup>40</sup>

The bill passed the House of Commons unamended on 20 July 2022. At the time of writing its report stage is pending in the House of Lords, with no date scheduled. There has been recent speculation about whether the government intends to move forward with it.<sup>41</sup> Chris Heaton-Harris said on 22 February 2023 that it was proceeding, but the government would prefer a negotiated solution.<sup>42</sup>

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<sup>37</sup> [HC Hansard, 27 June 2022, col 38.](#)

<sup>38</sup> Steven Swinford, [‘Northern Ireland Protocol: DUP refuses to commit to return of power-sharing’](#), Times (£), 14 June 2022.

<sup>39</sup> Social Democratic and Labour Party, [‘MLAs write to Johnson opposing protocol legislation’](#), 13 June 2022.

<sup>40</sup> For further detail about the bill and its reception, see the House of Lords Library briefing [‘Northern Ireland Protocol Bill’](#) (5 October 2022).

<sup>41</sup> For example: Camilla Turner and Will Hazell, [‘Boris Johnson’s warning to Rishi Sunak over Brexit deal’](#), Telegraph (£), 18 February 2023.

<sup>42</sup> [HC Hansard, 22 February 2023, col 270.](#)

Since mid-October 2022, the government has been in renewed talks with the European Commission about possible changes to the protocol. Since mid-February 2023, there has been heightened anticipation that the government is on the verge of announcing it has reached a deal with the EU. However, at the time of writing this briefing, there has been no official confirmation of the outline of a deal. Prime Minister Rishi Sunak said on 22 February 2023 that the UK was “still in active discussions with the European Union”.<sup>43</sup> He said that any deal would have to meet the following tests he had set:

It needs to ensure sovereignty for Northern Ireland, it needs to safeguard Northern Ireland’s place in our Union, and it needs to find practical solutions to the problems faced by people and businesses.

### **3. Bill provisions**

#### **3.1 Extension of period for making ministerial appointments**

Clause 1 would retrospectively extend the period for forming an executive in Northern Ireland after the May 2022 election from 19 January 2023 to 18 January 2024.

If no executive was formed by the end of 18 January 2024, the secretary of state would once again be under a legal duty to propose a date for an election to take place within 12 weeks.

The mechanism by which clause 1 would extend the period for making ministerial appointments is through an amendment to the Northern Ireland (Executive Formation etc) Act 2022. The amendment would require that the Northern Ireland Act 1998 to be read as though “the period for filling ministerial offices” is the period beginning with 13 May 2022 and ending with 18 January 2024. This would apply for the “current post-election period” that started on 5 May 2022, the day the most recent Assembly election was

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<sup>43</sup> [HC Hansard, 22 February 2023, col 217.](#)

held. After the next Assembly election, the standard provisions on the period for filling ministerial offices would once again apply. These are set out in section 16A of the Northern Ireland Act 1998.<sup>44</sup>

Clause 1 would also enable the secretary of state to call an Assembly election before 18 January 2024. At any time during this period, if no executive has been formed, the secretary of state would be able to propose a date for the next Assembly election.

Clause 1 would also remove from the Northern Ireland (Executive Formation etc) Act 2022 the provision that allowed the secretary of state to extend the deadline from 8 December 2022 to 19 January 2023. This was a one-off power that has already been used.

### **3.2 Organ and tissue donation in Northern Ireland**

Clause 2 would change the procedure for making regulations defining what types of organ and tissue would be covered by the new ‘deemed consent’ organ donation scheme in Northern Ireland. It would allow the regulations to be made in the absence of a functioning Assembly.

The Organ Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022 as passed requires the Northern Ireland Assembly to approve these regulations before they can be made (the affirmative procedure). Clause 2 would amend this so that if there are no speaker and deputy speakers in

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<sup>44</sup> The Northern Ireland Act 1998, as amended by the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022, provides that the period for filling ministerial offices after an Assembly election runs for:

- the period of six weeks beginning with the day on which the Assembly first meets
- the next three successive periods of six weeks, unless the Assembly resolves on a cross-community basis against an extension

If this period ends without the offices of first minister, deputy first minister and other ministerial offices having been filled, the secretary of state is obliged, as soon as practicable, to propose a date for a new Assembly election. The proposed election date must be within 12 weeks of this duty arising.

post in the Northern Ireland Assembly, the regulations can be made using the negative resolution procedure. This would allow the Northern Ireland Department of Health to make the regulations without requiring the Assembly to approve them.<sup>45</sup>

The government has said it believes it is appropriate for the procedure to remain with the Northern Ireland Assembly because the existing power to make the regulations is exercisable by the Northern Ireland Department of Health, which is accountable to the Assembly.<sup>46</sup>

### 3.3 Extent, commencement and short title

Clause 3 sets out the bill's extent, commencement and short title. The provisions on extending the period for ministerial appointments would extend to England and Wales, Scotland and Northern Ireland, but would apply only in Northern Ireland.<sup>47</sup> The provisions on organ and tissue donation would extend to Northern Ireland only. The bill would come into force on the day it was passed.

## 4. Fast-tracking the bill

The government is asking Parliament to expedite the passage of the bill.<sup>48</sup> The 'Companion to the standing orders and guide to the proceedings of the House of Lords' states that for any legislation subject to expedited procedures ('fast-tracked') the explanatory notes will contain a full

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<sup>45</sup> Under the negative resolution procedure, the Assembly would be able to annul the regulations within the 'statutory period', which is 30 calendar days or 10 days on which the Assembly has sat after the date on which the statutory rule was laid before the Assembly, whichever is longer (Northern Ireland Assembly, '[Statutory rules FAQ](#)', accessed 22 February 2023). Section 1 of the Organ and Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022 provides that the power of the Northern Ireland Department of Health to make the relevant regulations is exercisable by statutory rule.

<sup>46</sup> Northern Ireland Office, '[Delegated powers memorandum](#)', 22 February 2023, pp 3–4.

<sup>47</sup> [Explanatory notes](#), p 8.

<sup>48</sup> As above, p 4.



explanation of the reasons for using a fast-track procedure.<sup>49</sup>

The explanatory notes state that the government is seeking to fast-track the bill because it assesses that “an immediate election would not support the restoration of the devolved institutions”.<sup>50</sup> It reached this view following consultation with the Northern Ireland political parties and wider public. However, the secretary of state is currently under a legal duty to propose a date for a further election as soon as practicable, which must be within 12 weeks of 20 January 2023. The government has said that it is in this context that the bill includes urgent provisions to provide a retrospective extension to the executive formation period by 52 weeks to 18 January 2024. The explanatory notes point out that the bill is “tightly drafted and is no way extendable without further primary legislation”.<sup>51</sup>

On the organ donation provision, the explanatory notes state that the government has decided the bill is “an appropriate vehicle” to ensure that the changes already passed by the Northern Ireland Assembly are fully implemented.<sup>52</sup>

The bill passed through all its House of Commons stages in one day on 22 February 2023. The House of Lords has already agreed a motion to allow all the Lords stages to be taken in one day on 27 February 2023.<sup>53</sup>

## **5. House of Commons scrutiny of the bill**

### **5.1 Second reading**

At the bill’s second reading in the House of Commons, Chris Heaton-

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<sup>49</sup> House of Lords, ‘[Companion to the standing orders and guide to the proceedings of the House of Lords](#)’, 28 October 2022, para 8.6.

<sup>50</sup> [Explanatory notes](#), p 4.

<sup>51</sup> As above, p 5.

<sup>52</sup> As above.

<sup>53</sup> [HL Hansard, 22 February 2023, col 1661](#).

Harris, the secretary of state for Northern Ireland, expressed his “profound disappointment” that there was still no functioning Assembly or executive.<sup>54</sup> His view was that another Assembly election now would be “unwelcome, expensive and, crucially, it would bring us no closer to our objective of delivering fully functioning devolved institutions”.

He said the best approach to facilitating the return of the devolved institutions was “flexibility, to allow time and space” for negotiations between the UK and the EU on the Northern Ireland Protocol and collaboration by the Northern Ireland parties to form a government. In this context, the minister said the bill represented a “delicate balance”.<sup>55</sup> It would prevent “the prospect of forcing an election when it would be unwelcome or unhelpful” but would allow an election if the impasse continued, which Mr Heaton-Harris said the people of Northern Ireland would “rightly expect”.

Mr Heaton-Harris addressed the issue of decision-making in Northern Ireland in the absence of an executive. The Northern Ireland (Executive Formation etc) Act 2022 allows civil servants to take certain decisions in the absence of ministers until 5 June 2023, or until an executive is formed, whichever is sooner. In the continuing absence of an executive, Mr Heaton-Harris noted that unless he called an early election, the extension provided for by the bill would run past 5 June 2023. He said he had been clear when the 2022 act was passed that the governance arrangements were “not a sustainable long-term solution”. He said he would keep them under review, but “sincerely hope[d] that an executive are in place before those arrangements expire”.

Turning to his amendments on organ donation, Mr Heaton-Harris said it would have been in the Northern Ireland parties’ power to work together to elect an Assembly speaker, which would have enabled them to pass the regulations. He said this could have been done without the parties

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<sup>54</sup> [HC Hansard, 22 February 2023, col 233.](#)

<sup>55</sup> [HC Hansard, 22 February 2023, col 234.](#)

necessarily nominating first and deputy first ministers.<sup>56</sup> However, he said that recognising the cross-party support the issue had in Northern Ireland and in the House of Commons, the government had worked with lawyers to table the amendments to allow the secondary legislation to be made.

Concluding, Mr Heaton-Harris said the bill alone would not be enough to end the current impasse in Northern Ireland.<sup>57</sup> He called on Northern Ireland's locally elected leaders to work together once again to make the most of the space provided by the bill.

Peter Kyle, the shadow secretary of state for Northern Ireland, said Labour would not oppose the bill. He said Labour supported Dáithí's law and agreed that it was "not clear what an election at this point would achieve other than hardening positions".<sup>58</sup> However, he argued it would be better if the legislation was not needed, and that having to fast-track Northern Ireland bills through Parliament did not serve Northern Ireland well. He expressed his concerns that the "vacuum caused by the absence of Stormont" was having a "profound effect on Northern Ireland" and its public services.

Mr Kyle said he supported the "extremely long" deadline set by the bill, having argued that the previous deadline in the Northern Ireland (Executive Formation etc) Act 2022 was too short.<sup>59</sup> He said the government's plan for restoring devolution by finding a negotiated solution to the protocol was the "correct" one, compared to proceeding with the Northern Ireland Protocol Bill, which Labour opposed. He called on the UK and the EU to "strain every sinew to find a compromise that will be acceptable to all communities".<sup>60</sup>

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<sup>56</sup> [HC Hansard, 22 February 2023, col 235.](#)

<sup>57</sup> [HC Hansard, 22 February 2023, col 236.](#)

<sup>58</sup> [HC Hansard, 22 February 2023, col 238.](#)

<sup>59</sup> [HC Hansard, 22 February 2023, col 239.](#)

<sup>60</sup> [HC Hansard, 22 February 2023, col 240.](#)

Simon Hoare (Conservative MP for North Dorset), chair of the House of Commons Northern Ireland Affairs Committee, agreed that the secretary of state was “right to have gone long” with the length of the extension.<sup>61</sup> He believed that in terms of resolving issues with the Northern Ireland Protocol, “it is a question of getting it right rather than getting it done by a particular time”.

Sir Jeffrey Donaldson, leader of the DUP, said he was clear that he wanted to get a functioning executive and Assembly up and running as soon as possible.<sup>62</sup> He said when he took the decision in February 2022 to withdraw the first minister from the Northern Ireland executive, it was a “measured response to the inactivity and failure of the EU to engage with the government meaningfully to bring forward proposals that would address the concerns of unionists”. He said he understood why the secretary of state had brought forward the bill, to “create space in which progress can be made”. He said that while the DUP did not “fear” an election, the party shared this desire and was engaging with the government on the “vital matters that now need to be resolved to enable an agreement to be reached with the EU”.

Sir Jeffrey said his party expected that any agreement reached with the EU would “result in fundamental change”. He emphasised that “first and foremost”, this needed to “respect Northern Ireland’s place within the United Kingdom”, something that was at the heart of the Belfast-Good Friday Agreement. He said it was important that any deal addressed not just trading issues but also democratic and constitutional issues arising from the protocol.

On the trade issues, he said he was looking to the government to bring forward a solution that would ensure EU law did not apply to goods that were not leaving the internal market of the UK.<sup>63</sup> On the issue of a “democratic deficit”, he argued that the protocol undermined the political

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<sup>61</sup> [HC Hansard, 22 February 2023, col 241.](#)

<sup>62</sup> [HC Hansard, 22 February 2023, col 244.](#)

<sup>63</sup> [HC Hansard, 22 February 2023, col 246.](#)

rights of people in Northern Ireland and the rights of Northern Ireland politicians to legislate for the people who elected them. He said he wanted to make clear to the secretary of state that “if the executive are to function again, it cannot be on the basis that we are law takers”.

Sir Jeffrey said he hoped that within the timeframe created by the bill, negotiations and legislation would result in “fundamental change”.<sup>64</sup> He explained this would have to “respect and restore Northern Ireland’s place within the United Kingdom and its internal market”, ensure that Northern Ireland was not a “rule taker” from the EU, and ensure EU law did not affect Northern Ireland’s ability to trade within the United Kingdom.

Claire Hanna (SDLP MP for Belfast South) said it was right not to have an election and to “comprehensively” push back the deadline rather than missing a series of shorter deadlines.<sup>65</sup> She said the negotiations were at a “delicate” and “sensitive” point, but she expressed hope in the possibility they would produce a “deal and an outcome with which most reasonable people can live”. She said the goal was to return to Stormont as soon as possible to make progress on issues such as care, climate, housing, jobs and health. She feared that the current stalemate was “eroding public services”. She described the bill as “a bit of a sticking plaster on failure” but said that nonetheless some good was coming out of it in the form of Dáithí’s law.<sup>66</sup>

Stephen Farry (Alliance MP for North Down) also agreed it was right to change the election timetable. He believed an election in the short to medium term could be “counterproductive”.<sup>67</sup> However, he believed the current arrangements, with civil servants taking decisions, was “not a tenable situation”. He described the “failure to have an Assembly in Northern Ireland that can take control of devolved issues” as “by far the biggest democratic deficit”. He argued that the space created by the bill

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<sup>64</sup> [HC Hansard, 22 February 2023, col 248.](#)

<sup>65</sup> [HC Hansard, 22 February 2023, col 248.](#)

<sup>66</sup> [HC Hansard, 22 February 2023, col 249.](#)

<sup>67</sup> [HC Hansard, 22 February 2023, col 254.](#)

could become “a negative thing” if it resulted in a “political vacuum”.<sup>68</sup> He maintained that if there was no restoration of the devolved institutions in the near future, there would be a need to address reform of the institutions, including the situation whereby parties could veto power-sharing.

On the possibility of a deal with the EU over the protocol, Mr Farry argued that most people in Northern Ireland were “pragmatic”, wanting to “maximise the opportunities that come from it while addressing its deficiencies”. He said the key test of a deal should be whether it preserved Northern Ireland’s market access to both the EU market and the UK economy as a whole. He argued that any deal would have to be “one that works in the interests of all people in Northern Ireland, not just those from a unionist background”.<sup>69</sup>

## 5.2 Committee stage

The House of Commons agreed without division to add a new government clause to the bill on organ and tissue donation in Northern Ireland.<sup>70</sup> This is now clause 2 in the bill as introduced in the House of Lords. The Commons also agreed consequential amendments to the bill’s short and long titles and extent to reflect the addition of the new clause.<sup>71</sup>

Chris Heaton-Harris said the issue was so important that it warranted an exceptional intervention from the government, but it remained his sincere hope that the Assembly would return “sooner rather than later”.<sup>72</sup>

The amendments were welcomed on all sides of the House. All the MPs who spoke paid tribute to Dáithí Mac Gabhann and his family, who were watching in the Commons gallery. Gavin Robinson (DUP MP for Belfast

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<sup>68</sup> [HC Hansard, 22 February 2023, col 255.](#)

<sup>69</sup> [HC Hansard, 22 February 2023, col 258.](#)

<sup>70</sup> [HC Hansard, 22 February 2023, col 277.](#)

<sup>71</sup> [HC Hansard, 22 February 2023, cols 276–8.](#)

<sup>72</sup> [HC Hansard, 22 February 2023, col 274.](#)

East) thanked the secretary of state for bringing forward an amendment that would enable the law to be changed more quickly than the amendment tabled by the DUP, SDLP and Alliance.<sup>73</sup>

### **5.3 Remaining stages**

Report stage and third reading were taken formally immediately after the committee stage, with no further debate on the bill.

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<sup>73</sup> [HC Hansard, 22 February 2023, col 276](#). The DUP/SDLP/Alliance amendment would have enabled the UK Parliament to approve the regulations rather than the Northern Ireland Assembly, under an affirmative resolution procedure.

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