



Northern Ireland (Interim Arrangements) Bill

HL Bill 137 of 2022–23

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The [Northern Ireland \(Interim Arrangements\) Bill](#) would make provisions about governance and public finances in Northern Ireland in the ongoing absence of fully functioning devolved institutions. 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.

In response to this situation, the UK Parliament has already passed several pieces of legislation. These have extended until 18 January 2024 the time allowed for forming an executive before a new election must be held, clarified the arrangements for certain public functions to continue in the absence of an executive and set a budget for Northern Ireland.

An existing provision in one of these acts clarifying that senior Northern Ireland civil servants can exercise departmental functions in the public interest in the absence of Northern Ireland ministers is set to expire on 5 June 2023. The bill would extend this arrangement until the next executive is formed.

The bill would also give the secretary of state for Northern Ireland powers to direct Northern Ireland departments to provide advice or consult on options to raise revenue or deliver sustainable public finances in the ongoing absence of Northern Ireland ministers. There are concerns about the sustainability of Northern Ireland's public finances, highlighted by a shortfall of £297mn to be repaid to the Treasury to cover spending in the 2022/23 financial year.

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The bill would also require certain accounts, reports and other financial documents to be laid before the UK Parliament when the Northern Ireland Assembly is not functioning. The bill contains four substantive clauses.

The government has asked Parliament to fast-track the passage of the bill. It completed all its stages in the House of Commons on 10 May 2023. It was not amended and passed both second reading and third reading without division. The House of Lords is due to consider the bill at second reading on 18 May 2023, with the remaining stages scheduled for 23 May 2023.

The government has published [explanatory notes](#) and a [delegated powers memorandum](#) alongside the bill.

1. Background

The government has introduced the [Northern Ireland \(Interim Arrangements\) Bill](#) in response to the ongoing absence in Northern Ireland of fully functioning devolved institutions and concerns about the sustainability of Northern Ireland's public finances. Chris Heaton-Harris, the secretary of state for Northern Ireland, announced the bill on 27 April 2023, the same day he set a budget for Northern Ireland for the 2023/24 financial year.¹ The government has said that “in the context of ongoing political instability in Northern Ireland [...] further legislation is required to manage the governance gap”.² Mr Heaton-Harris said his approach would “ensure important work progresses if an executive is still not in place”.³

¹ Northern Ireland Office, '[Northern Ireland secretary announces 2023/24 budget and contingency plans for governance](#)', 27 April 2023.

² [Explanatory notes](#), p 5.

³ Northern Ireland Office, '[Northern Ireland secretary announces 2023/24 budget and contingency plans for governance](#)', 27 April 2023.

1.1 Absence of fully functioning devolved institutions

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 Democratic Unionist Party (DUP) objections to the Northern Ireland Protocol. 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 [Good Friday] and St Andrew’s Agreements”.⁴ The DUP argued that the protocol was undermining Northern Ireland’s place within the UK by effectively placing a trade barrier between Northern Ireland and the rest of the UK, and by making Northern Ireland subject to EU laws over which it has no say.⁵

Under the Northern Ireland Act 1998, if the first minister resigns the deputy first minister also ceases to hold office. Mr Givan’s resignation therefore 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 the responsibilities of more than one minister.⁶ This included agreeing a budget.⁷

Northern Ireland Assembly election in May 2022

A scheduled election to the Northern Ireland Assembly was held on 5 May 2022. This returned Sinn Féin as the largest party, with 27 seats, followed by

⁴ Paul Givan, ‘[Personal Twitter account](#)’, 3 February 2022.

⁵ Democratic Unionist Party, ‘[DUP leader announces seven tests for HMG plans on NI protocol](#)’, 15 July 2021.

⁶ Northern Ireland Executive, ‘[Ministerial code](#)’, accessed 23 February 2023.

⁷ BBC News, ‘[Stormont ministers advised budget cannot pass without NI executive](#)’, 9 March 2022.

the DUP, on 25 seats.⁸ The Alliance Party received 17 seats, the Ulster Unionist Party (UUP) received nine and the Social Democratic and Labour Party (SDLP) received 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 a deputy first minister.

The Assembly has not functioned fully since the election and has failed to form a new executive. The [Northern Ireland Act 1998](#) requires the Assembly to meet within eight days of an election. 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.⁹ The Assembly duly met on 13 May 2022, but the DUP refused to support the nomination of a speaker.

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. The caretaker ministers remained in post until 27 October 2022.

Northern Ireland (Executive Formation etc) Act 2022

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 of the Assembly first meeting after an election, the secretary of state for Northern Ireland must propose a date as soon as

⁸ BBC News, '[Northern Ireland Assembly election results 2022](#)', accessed 23 February 2023.

⁹ Northern Ireland Assembly, '[Letter to all members](#)', 28 September 2022.

practicable for new Assembly elections to be held within the subsequent 12 weeks.¹⁰

That deadline elapsed at the end of 27 October 2022, placing the secretary of state under a duty 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 2022.¹¹ The act:

- Extended the period for forming an executive before another election had to be called, initially to 8 December 2022. Chris Heaton-Harris, used a one-off power in the act to extend this by another six weeks to 19 January 2023.¹²
- 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,

¹⁰ 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.

¹¹ More detailed information about the provisions of the act is 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.

¹² This was done through the [Northern Ireland \(Extension of Period for Making Ministerial Appointments\) Regulations 2022](#) (SI 2022/1296).

and in future periods where there is no functioning Assembly. 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 2023.¹³

- 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 of an executive.¹⁴ Mr Heaton-Harris exercised this power in February 2023, maintaining non-domestic rates at the 2022/23 level and increasing domestic rates by 6%.¹⁵

Northern Ireland (Executive Formation and Organ and Tissue Donation) Act 2023

The newly extended deadline of 19 January 2023 passed without an executive being formed. This followed another recall of the Northern Ireland Assembly on 7 December 2022, where once more the Assembly did not agree to elect a speaker.¹⁶ 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”.¹⁷ A further recall took place on 14 February 2023; once again no speaker was elected.¹⁸

The expiry of the 19 January 2023 deadline meant the secretary of state was again under a duty to propose a date for another Assembly election to take

¹³ Northern Ireland Office, [‘Northern Ireland Secretary writes to MLAs to confirm pay cut from 1 January 2023’](#), 8 December 2022.

¹⁴ 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.

¹⁵ Northern Ireland Office, [‘Explanatory memorandum to the Regional Rates \(Northern Ireland\) Regulations 2023’](#), February 2023.

¹⁶ Northern Ireland Assembly, [‘Official report’](#), 7 December 2022.

¹⁷ Democratic Unionist Party, [‘Assembly stunt provides useful distraction for Sinn Féin: Lyons’](#), 7 December 2022.

¹⁸ Northern Ireland Assembly, [‘Official report’](#), 14 February 2023.

place within 12 weeks, in other words on or before 13 April 2023.

Parliament passed another piece of legislation to extend the deadline again. The [Northern Ireland \(Executive Formation and Organ and Tissue Donation\) Act 2023](#) received royal assent on 28 February 2023. It retrospectively extended the deadline for forming an executive from 19 January 2023 to 18 January 2024.¹⁹ It also gives the secretary of state the power to set an Assembly election date earlier than this if no executive has yet been formed.

Windsor Framework

The government and the EU agreed on a package of changes to the Northern Ireland Protocol, known as the Windsor Framework, on 27 February 2023.²⁰ However, to date this has not resulted in the resumption of power-sharing in Northern Ireland and the formation of a new executive.

Announcing the agreement of the Windsor Framework, Prime Minister Rishi Sunak described it as a “decisive breakthrough”.²¹ He said it “delivers free-flowing trade within the whole United Kingdom [...] protects Northern Ireland’s place in our union [...] safeguards sovereignty for the people of Northern Ireland” and “preserves the delicate balance inherent in the Belfast/Good Friday Agreement”. He declared the Windsor Framework “marks a turning point for the people of Northern Ireland”, arguing it was “clearly in the interests of the people, and those of us who are passionate

¹⁹ More information about the act’s provisions is available in the House of Lords Library briefing [‘Northern Ireland \(Executive Formation and Organ and Tissue Donation\) Bill’](#) (24 February 2023). This was published before the bill’s passage through the House of Lords, but no amendments were made to the bill subsequently.

²⁰ For further information about the Windsor Framework, see House of Commons Library, [‘Northern Ireland Protocol: Windsor Framework’](#) (21 March 2023); and House of Lords Library, [‘Windsor Framework \(Democratic Scrutiny\) Regulations 2023 and the Stormont brake’](#) (24 March 2023).

²¹ [HC Hansard, 27 February 2023, col 570.](#)

about the cause of unionism, for power-sharing to return”.²² He also said he recognised that parties would need time to consider the agreement in detail.

Sir Jeffrey Donaldson, leader of the DUP, said in the House of Commons debate on the Stormont brake element of the Windsor Framework that “improvements have undoubtedly been made” in the deal.²³ However, he argued it did not fully address the “fundamental problem of the continued application of EU law for the manufacturing of all goods in Northern Ireland” and the resulting potential for divergence over time between Northern Ireland and the rest of the UK. He said that until a solution was reached that ensured the application of EU law “does not impede our ability to trade with the rest of our own country in the internal market of our own country”, he could not give a political commitment to restore the devolved institutions.

1.2 Northern Ireland public finances

Northern Ireland Budget Act 2022

In the continuing absence of an executive and a functioning Assembly, the UK Parliament passed the [Northern Ireland Budget Act 2023](#) in February 2023 to authorise Northern Ireland departments and certain other bodies to incur expenditure and use resources for the financial year ending on 31 March 2023.

The Northern Ireland Budget Act 2023 was based on a budget set out by Chris Heaton-Harris in a written ministerial statement in November 2022.²⁴ He said that the Northern Ireland executive had failed to agree a budget and the caretaker ministers who remained in post until October 2022 had “left Northern Ireland’s finances with a black hole of some £660mn”. He said that in setting a budget, he “recognise[d] that the people of Northern Ireland

²² [HC Hansard, 27 February 2023, col 574](#).

²³ [HC Hansard, 22 March 2023, col 355](#). The Stormont brake is a mechanism to give the Northern Ireland Assembly the power to object to changes to EU laws that apply in Northern Ireland.

²⁴ House of Commons, ‘[Northern Ireland finances 2022/23](#)’, 24 November 2022, HCWS385.

must be protected in future by bringing the public finances under control today”.

The act also provided for a ‘vote on account’ to allow Northern Ireland departments and public bodies to continue to deliver public services into the early months of the 2023/24 financial year. A vote on account is a way for the government to obtain an advance on the money needed for the next financial year before a bill authorising the full year’s estimates is agreed.²⁵

Budget for 2023/24

Mr Heaton-Harris set out a budget for Northern Ireland for the full 2023/24 financial year in a written ministerial statement on 27 April 2023.²⁶ He said the “challenging” budget position meant that Northern Ireland departments needed clarity on their budget allocations now to deliver a balanced budget. He said he would bring forward a budget bill in due course.

The budget allocated a total of £14.2bn for Northern Ireland executive spending.²⁷ Within this, Mr Heaton-Harris set out resource and capital allocations that he said he considered to be “an appropriate settlement” for Northern Ireland departments. Mr Heaton-Harris had told the House of Commons Northern Ireland Affairs Committee two days earlier that it would be for the Northern Ireland civil service to make spending decisions within the financial envelope he set in the budget, within the “broad” guidance he had set.²⁸

The ministerial statement also set out arrangements for addressing the so-called “black hole” previously identified in the Northern Ireland budget. Mr Heaton-Harris told the Northern Ireland Affairs Committee that the

²⁵ UK Parliament, ‘[Votes on account](#)’, accessed 9 May 2023.

²⁶ House of Commons, ‘[NI finances 2023/24](#)’, 27 April 2023, HCWS748.

²⁷ Northern Ireland Office, ‘[Northern Ireland secretary announces 2023/24 budget and contingency plans for governance](#)’, 27 April 2023.

²⁸ House of Commons Northern Ireland Affairs Committee, ‘[Oral evidence: Work of the secretary of state for Northern Ireland](#)’, HC 86 of session 2022–23, 25 April 2023, Q472.

Northern Ireland Office had worked with the permanent secretaries of the Northern Ireland departments to bring the £660mn shortfall down to a gap of £297mn within the 2022/23 financial year.²⁹ In the ministerial statement, Mr Heaton-Harris said the Treasury had granted some flexibility on repaying this £297mn overspend from the previous year. Rather than taking that amount from this year's expenditure immediately, Mr Heaton-Harris said it would be repaid by committing any future in-year Barnett consequentials for 2023/24 to repaying the overspend.³⁰ If this did not amount to £297mn, Mr Heaton-Harris said he would work with the Treasury to reallocate funding from previously announced Northern Ireland funding packages to ensure the full amount was repaid in 2024/25.

Mr Heaton-Harris said this approach would “provide some protection to front line public services in Northern Ireland from having to take the most severe reductions”.³¹ However, he said that “difficult decisions” would still have to be taken not to exceed the funding available.

Exploring options for revenue raising and budget sustainability

Mr Heaton-Harris also suggested in his budget statement that reform of the funding of public services in Northern Ireland was needed. He said that:

The Northern Ireland budget per person is around 20% higher than equivalent UK government spending in other parts of the UK. Yet, the level of public services offered are still not affordable and outcomes are

²⁹ House of Commons Northern Ireland Affairs Committee, [‘Oral evidence: Work of the secretary of state for Northern Ireland’](#), HC 86 of session 2022–23, 25 April 2023, Q464; and Northern Ireland Fiscal Council, [‘The NIO’s 2022/23 budget for Northern Ireland: An assessment’](#), March 2023, p 5.

³⁰ ‘Barnett consequentials’ are increases in the Northern Ireland block grant that arise when the UK government increases spending in England (or elsewhere in Great Britain) on items that Northern Ireland departments are responsible for delivering in Northern Ireland. Under the Barnett formula, funding per head rises by the same cash amount in Northern Ireland as equivalent UK government spending (Northern Ireland Fiscal Council, [‘The NIO’s 2023/24 budget for Northern Ireland: Initial summary’](#), 2 May 2023, p 2). The House of Lords Library briefing on [‘The Barnett formula: How it operates and proposals for change’](#) (6 March 2023) contains further details about the Barnett formula.

³¹ House of Commons, [‘NI finances 2023/24’](#), 27 April 2023, HCWS748.

not improving. We need the executive back so that they can progress much needed and long-promised public service transformation.³²

He said the Northern Ireland Office was continuing to work closely with the Northern Ireland Department of Finance on “a sustainable and strategic approach to public finances”. This included “options for revenue raising in line with the rest of the UK”. Mr Heaton-Harris argued that “the lower levels of revenue generation but higher public services provision in Northern Ireland compared to the rest of the UK is unsustainable”. He said the Northern Ireland (Interim Arrangements) Bill, which he was introducing to Parliament that day, would grant powers to allow the UK government to explore, with the Northern Ireland civil service, “options for increasing budget sustainability including further revenue raising in Northern Ireland”.

In his evidence to the Northern Ireland Affairs Committee, Mr Heaton-Harris highlighted previous reports by the Northern Ireland Fiscal Council and the Independent Fiscal Commission for Northern Ireland on the long-term sustainability of public services and public finances in Northern Ireland. He said a common theme was “the need for political leaders to tackle the systemic issues that are facing the public sector in Northern Ireland and for strategic leadership to establish them on a sustainable long-term footing, including the consideration of revenue-raising powers”.

The Independent Fiscal Commission for Northern Ireland was appointed by Conor Murphy, Northern Ireland’s then finance minister, in March 2021 to carry out a comprehensive review of the case for increasing fiscal powers available to the Northern Ireland Assembly.³³ It published its final report in May 2022, in which it found there was “a good case for devolving certain fiscal powers to Northern Ireland from an economic and policy perspective”.³⁴

³² House of Commons, ‘[NI finances 2023/24](#)’, 27 April 2023, HCWS748.

³³ Independent Fiscal Commission for Northern Ireland, ‘[Welcome to the Independent Fiscal Commission for Northern Ireland](#)’, accessed 9 May 2023.

³⁴ Independent Fiscal Commission for Northern Ireland, ‘[More fiscal devolution for Northern Ireland?](#)’, May 2022, p 210.

The Northern Ireland Fiscal Council was also established in March 2021.³⁵ Its remit is to report annually on the Northern Ireland executive's revenue streams and spending proposals and the sustainability of Northern Ireland's public finances. It has identified several interventions that it believes could help bring Northern Ireland's finances onto a more sustainable footing, including:³⁶

- increasing the regional rates
- introducing explicit domestic water charges allied to an increase in the regional rate
- public sector pay restraint
- departmental savings from ceasing lower-priority areas of expenditure
- increasing the efficiency of public service delivery
- increasing or introducing other fees and charges
- accepting a lower quantity or quality of public services in Northern Ireland than elsewhere in the UK
- seeking more money from the Treasury
- increasing the executive's tax raising and/or borrowing powers

The Fiscal Council assessed in May 2023 that the relative level of public spending in Northern Ireland per head needed to be around 24% higher than in England to deliver the same standard of public service.³⁷ It said the current level of spending was 23% higher than in England in 2024/25 based on current spending plans and this was “broadly in line with relative need”. However, it noted this had fallen significantly in recent years (from 40% higher than England in 2018/19), which had “contributed to the current pressures on NI departments”.

³⁵ Northern Ireland Fiscal Council, '[About us](#)', accessed 9 May 2023.

³⁶ Northern Ireland Fiscal Council, '[NI Fiscal Council response to NI Affairs Committee: Call for evidence—the funding and delivery of public services in NI](#)', 2 May 2023, pp 30–1.

³⁷ Northern Ireland Fiscal Council, '[Updated estimate of the relative need for public spending in Northern Ireland](#)', 2 May 2023, p 3.

Assessing the newly announced budget for 2023/24, the Fiscal Council found that the flexibility over repaying the £297mn reserve claim “avoids a very sharp real terms cut in departmental spending this year”. However, it said “tough decisions are still going to be needed on spending and revenue raising by departments to remain within their allocations”. It reported that the Northern Ireland civil service believed it may need to find £800mn this year.³⁸ The Fiscal Council concluded that “revenue raising would likely be focused on fees and charges” as the secretary of state for Northern Ireland has already set the regional rate, Northern Ireland’s only major locally determined tax, for 2023/24.

The government emphasised in a press release announcing the bill that the proposed legislation “does not enable the UK government to direct action on options to raise revenue and increase the sustainability of NI public finances”.³⁹ Rather, it said the bill would enable “preparatory work” to take place in the absence of Northern Ireland ministers.

Press reports in mid-April 2023 claimed that a leaked memo from the Northern Ireland Office included estimates of how much money could be saved in Northern Ireland through measures such as ending free bus and train travel for over-60s, ending free prescriptions, setting university tuition fees at the same level as in England and Wales, or introducing water charges such as those that already apply in other parts of the UK.⁴⁰

The House of Commons Northern Ireland Affairs Committee is carrying out an inquiry into Northern Ireland’s public service funding, including

³⁸ Northern Ireland Fiscal Council, [‘The NIO’s 2023/24 budget for Northern Ireland: Initial summary’](#), 2 May 2023, p 3.

³⁹ Northern Ireland Office, [‘Northern Ireland secretary announces 2023/4 budget and contingency plans for governance’](#), 27 April 2023.

⁴⁰ ITV News, [‘Leaked Northern Ireland Office briefing note outlines public sector savings and staff cuts’](#), 18 April 2023; and David Young, [‘Revenue-raising steps should be focus of future Stormont budgets: NI Office’](#), Evening Standard, 18 April 2023.

examining the effectiveness of the Barnett formula and the viability of other options for increasing revenue.⁴¹

2. Bill provisions

2.1 Departmental functions

Clause 1 would extend the period during which Northern Ireland senior civil servants can exercise departmental functions in the absence of a Northern Ireland executive.

Section 3 of the Northern Ireland (Executive Formation etc) Act 2022 (NIEFA 2022) provides that the absence of Northern Ireland ministers does not prevent a senior officer of a Northern Ireland department from exercising a function of the department if the officer is satisfied it is in the public interest to do so. This replicates time-limited provisions that applied during previous periods without an executive.

The government has said this provision was necessary to clarify that Northern Ireland departments could continue to exercise functions in the absence of a Northern Ireland executive.⁴² This was because two judicial review cases during a previous period when the devolved institutions were not functioning established certain limitations about what civil servants could do in such circumstances. In the case of *Buick*,⁴³ the Northern Ireland Court of Appeal upheld an earlier judgment by the High Court of Northern Ireland:

[...] that departments may not exercise functions in respect of matters that would normally be required to be referred to the Executive

⁴¹ House of Commons Northern Ireland Affairs Committee, '[Northern Ireland's public service funding to be examined by committee](#)', 10 March 2023. Evidence received by the committee is available on the [inquiry's publications page](#).

⁴² [Explanatory notes](#), p 6.

⁴³ [\[2018\] NIQB 43](#).

Committee of the Assembly because they are cross-cutting, significant or controversial. It also observed that NI [Northern Ireland] departments cannot take decisions that would normally, as a matter of convenience or otherwise, go before a NI minister for approval.⁴⁴

In the case of JR80⁴⁵ in 2019, the Court of Appeal confirmed these findings, subject to the effect of the primary legislation passed in 2018 in response to the Buick case. In 2018, the government had argued the Buick ruling was “significantly restricting the ability of senior officers of Northern Ireland departments to take decisions that are necessary to ensure the continued delivery of public services”.⁴⁶ The government legislated in response to Buick; the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 provided that:

The absence of Northern Ireland ministers does not prevent a senior officer of a Northern Ireland department from exercising a function of the department during the period for forming an executive if the officer is satisfied that it is in the public interest to exercise the function during that period.

The provision in the 2018 act applied for a limited time only. Section 3 of NIEFA 2022 makes a similar provision, but also for a limited time. It applies for six months from the passing of NIEFA 2022, or until a Northern Ireland executive is formed, whichever is sooner. NIEFA 2022 received royal assent on 6 December 2022, so the provision in section 3 is due to expire on 5 June 2023 (or sooner, should an executive be formed before that date).

Clause 1 of the bill would amend section 3 of NIEFA 2022 so that it would continue to apply until an executive is next formed.

⁴⁴ [Explanatory notes](#), p 5.

⁴⁵ [\[2019\] NICA 58](#).

⁴⁶ Northern Ireland Office, [‘Explanatory notes to the Northern Ireland \(Executive Formation and Exercise of Functions Act 2018’](#), November 2018, p 4.

Following this extension, section 3 of NIEFA 2022 would continue to require the secretary of state to publish guidance about the exercise of departmental functions by senior Northern Ireland civil servants, and to require the civil servants to have regard to that guidance. The guidance must include guidance as to the principles to be taken into account in deciding whether or not to exercise a function.

The secretary of state published guidance on decision-making for Northern Ireland departments in December 2022.⁴⁷ This document stated that the guidance would no longer apply if an executive was formed or six months after the NIEFA 2022 received royal assent (5 June 2023), whichever was sooner. The government published draft revised guidance on 10 May 2023 to accompany the bill.⁴⁸ This would apply until such time as it was amended by the secretary of state, or until an executive was formed.

2.2 Advice and information

Clause 2 of the bill would give the secretary of state the power to commission certain advice or request information from Northern Ireland departments. The secretary of state would also be able to require Northern Ireland departments to carry out a consultation on certain matters relating to public finances.

Clause 2 would insert a new section 5A into NIEFA 2022 to confer these powers. The secretary of state would be given the power to direct a Northern Ireland department to give advice or information as specified in the direction, or to carry out a consultation as specified in the direction. A direction could also require two or more departments to give joint advice or jointly collate information.

⁴⁷ Northern Ireland Office, '[Guidance on decision-making for Northern Ireland departments](#)', 19 December 2022, CP 766.

⁴⁸ Northern Ireland Office, '[Draft guidance on decision-making for Northern Ireland departments 2023](#)', 10 May 2023.

The secretary of state could make such a direction only 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”.

The secretary of state’s power to issue a direction would end once the next Northern Ireland executive is formed. Any direction made under this section would also end once the next executive is formed.

Clause 2 would also insert a new section 5B into NIEFA 2022. This would specify that if the secretary of state directed a department to provide information, it would not have to be provided if doing so would breach data protection legislation.

The government has argued the secretary of state needs to be able to request advice or information about the budgetary sustainability of Northern Ireland departments or what policy choices may be available for revenue raising, efficiencies or savings, and for there to be a requirement for Northern Ireland departments to comply with such a request.⁴⁹ Currently, Northern Ireland departments have no specific powers to provide such information and there is no basis on which the secretary of state can require compliance with requests for advice or information.⁵⁰

The government has suggested how it might use the new powers:

It may be the case that the secretary of state wants work to be advanced on a matter in time for an incoming executive, in which case these powers (together with the power to direct a consultation where relevant) may be used to ensure that policies have been explored and progressed so that an incoming executive is able to make decisions about them without delay.⁵¹

⁴⁹ Northern Ireland Office, ‘[Delegated powers memorandum](#)’, 27 April 2023, p 4.

⁵⁰ As above, p 2.

⁵¹ As above, p 4.

The government has pointed out in the explanatory notes that the bill does not provide for a direction for a Northern Ireland department to give advice or information to the secretary of state to be published or for public notification to be given.⁵² The government says this is consistent with the approach taken to other advice to ministers.

Clause 3 of the bill would prevent the Northern Ireland Assembly from requiring ministers or people in crown employment (including Northern Ireland civil servants) to provide evidence to the Assembly about giving a direction under new section 5A or exercising a function in accordance with such a direction. Clause 3 would do this by amending section 44 of the Northern Ireland Act 1998, which sets out the Northern Ireland Assembly's powers to call for witnesses and documents.

2.3 Accounts

Clause 4 would require that in a period where the Northern Ireland Assembly is not functioning, certain minutes, accounts, reports or other documents that have to be laid before the Northern Ireland Assembly must be sent to the secretary of state. The secretary of state would then be required to lay them before the House of Commons. Clause 4 would achieve this by inserting new section 67A into the Northern Ireland Act 1998. Subsections (4) and (5) of new section 67A define a “period in which the Assembly is not functioning”. Effectively, it would mean a period when the Assembly was not sitting because it had been unable to elect a presiding officer and deputies.⁵³

The requirement would apply to accounts and documents that have to be laid before the Northern Ireland Assembly under specified provisions of the Government Resources and Accounts Act (Northern Ireland) 2001 or article 8 of the Financial Provisions (Northern Ireland) Order 1993.

⁵² [Explanatory notes](#), p 6.

⁵³ Northern Ireland Office, '[Delegated powers memorandum](#)', 27 April 2023, p 3.

Clause 4(2) specifies that the requirement in new section 67A would apply retrospectively to the period in which the Northern Ireland Assembly is not functioning that began before the bill was passed.

Clause 4 would create an ongoing requirement for the laying of documents in any future periods where there was no functioning Assembly. This contrasts with the other provisions in the bill, which relate only to the current period where there is no Northern Ireland executive and would expire once the next executive is formed.

The government has stated that although documents may still be laid in the Assembly during any period when it is not sitting, they are not subject to any scrutiny by the relevant committees.⁵⁴ It argues that if they are also laid in the House Commons, “appropriate scrutiny can more readily take place”. The government has noted that House of Commons standing order 148 provides for the House of Commons Public Accounts Committee to scrutinise accounts laid before Parliament as it thinks fit, and that it would be up to the committee to consider whether it wishes to scrutinise Northern Ireland departments’ accounts.⁵⁵

2.4 General

Clause 5 provides that the bill would extend to England and Wales, Scotland and Northern Ireland. It would apply only in Northern Ireland.⁵⁶

The bill would affect matters within the devolved (transferred) competence of the Northern Ireland Assembly. According to the Sewel convention, the UK Parliament will “not normally” legislate in an area of devolved competence without the agreement of the relevant devolved legislature.⁵⁷ However, in the absence of the Northern Ireland executive and a

⁵⁴ Northern Ireland Office, ‘[Delegated powers memorandum](#)’, 27 April 2023, p 3.

⁵⁵ [Explanatory notes](#), p 7.

⁵⁶ As above.

⁵⁷ UK Parliament, ‘[Sewel convention](#)’, accessed 5 May 2023.

functioning Northern Ireland Assembly, it is not possible for the Assembly to provide a legislative consent motion. The government has stated that it is “satisfied that the circumstances of this act come within the exception allowed by the [Sewel] convention”.⁵⁸

Clause 6 provides that the bill would come into force on the day it is passed.

Clause 7 sets out the bill’s short title.

3. Fast-tracking the bill

The government has asked Parliament to expedite the passage of the bill.⁵⁹ 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 explanation of the reasons for using a fast-track procedure.⁶⁰

The government said the legislation is being taken forward to “avoid any decision-making gap and to enable the necessary decisions to be made which could not otherwise be taken by civil servants” if no Northern Ireland executive is formed before the current arrangements under NIEFA 2022 expire on 5 June 2023.⁶¹ The government said that the provisions on the laying of accounts and reports are needed to ensure “an immediate means of appropriate scrutiny for how public money is being spent” in the absence of a functioning Assembly. It said the powers to require advice or the holding of a consultation would “ensure that unnecessary time to consider options for revenue raising and improving the sustainability of Northern Ireland’s finances is not lost”.

⁵⁸ [Explanatory notes](#), p 7.

⁵⁹ As above.

⁶⁰ House of Lords, ‘[Companion to the standing orders and guide to the proceedings of the House of Lords](#)’, 28 October 2022, para 8.6.

⁶¹ [Explanatory notes](#), p 8.

The government said that the secretary of state has been in “frequent contact” with the Northern Ireland parties, encouraging them to form an executive “at the earliest opportunity following the conclusion of the Windsor framework”.⁶²

4. House of Commons scrutiny of the bill

The Northern Ireland (Interim Arrangements) Bill completed all its stages in the House of Commons on 10 May 2023. The bill was not amended and passed both second and third reading without division.

4.1 Second reading

At the bill’s second reading, Steve Baker, minister of state at the Northern Ireland Office, said that it was with “profound regret” that the legislation was being brought forward.⁶³ He said that the UK government remained committed to supporting the restoration of the Northern Ireland executive “as soon as possible”.⁶⁴ Mr Baker said that functioning governance for Northern Ireland by its elected representatives was the best outcome for the people of Northern Ireland.

Mr Baker said the bill did three important things:

- continuing the provisions related to decision making for Northern Ireland civil servants, as contained in the Northern Ireland (Executive Formation etc) Act 2022
- granting the secretary of state the power to explore with Northern Ireland departments options for budget sustainability, “including further revenue raising”
- ensuring greater political oversight of the management of public money, in the absence of the Assembly, by providing for Northern

⁶² [Explanatory notes](#), p 8.

⁶³ [HC Hansard, 10 May 2023, col 359](#).

⁶⁴ [HC Hansard, 10 May 2023, col 359](#).

Ireland departments' accounts and associated documents to be laid before the House of Commons⁶⁵

On the status of public finances in Northern Ireland, Mr Baker said that “as the bill’s provisions indicate” the government was “acutely concerned” about the long-term sustainability of Northern Ireland’s public finances.⁶⁶ Mr Baker said it was with “considerable disappointment” that the government had had to set a budget for Northern Ireland for 2023/24 in the absence of an executive and the Assembly in Northern Ireland. He said budget decisions should be made by a Northern Ireland executive but the UK government had a responsibility to ensure that public services in Northern Ireland could continue in the executive’s absence. Mr Baker said the government would be introducing legislation to put the budget on a legal footing in due course. He explained:

The government recognise that we need an executive in place to take some of those difficult decisions and make the choices on budget priorities—choices that officials should not have to face without ministers. We stand ready to work with a restored executive on that, but in the meantime, we the government of the UK have a responsibility to ensure that public services and the management of public funds can continue in their absence, so we will in due course take forward legislation to put the budget on a legal footing. Members of this House will have the opportunity to debate those allocations in detail at that time, if and when we come to it.⁶⁷

Mr Baker said that measures in the bill would ensure the continuation of governance arrangements in Northern Ireland should an executive not be formed by 5 June 2023. However, he said they “are not, and cannot be, a substitute for devolved government”.⁶⁸ He described the arrangements as “by no means ideal, particularly in the context of this financial position”. The

⁶⁵ [HC Hansard, 10 May 2023, col 361–2.](#)

⁶⁶ [HC Hansard, 10 May 2023, col 360.](#)

⁶⁷ [HC Hansard, 10 May 2023, cols 360–1.](#)

⁶⁸ [HC Hansard, 10 May 2023, col 363.](#)

minister said that it was the government's belief that a restored executive was "crucial to showing that the union works for the whole community in Northern Ireland", which is why restoration remained a "top priority". He said that the government would continue to do "everything we can to make that happen, and as we do so we will keep these arrangements under review".

Peter Kyle, shadow secretary of state for Northern Ireland, said Labour would not oppose the bill because it was necessary to continue to allow civil servants to run Northern Ireland departments in the absence of an executive.⁶⁹ He also welcomed the bill's provisions on the laying of Northern Ireland department reports before the House of Commons "to allow some scrutiny in this period". Mr Kyle said that he hoped power sharing would be restored soon.

The chair of the House of Commons Northern Ireland Affairs Committee, Simon Hoare (Conservative MP for North Dorset), said that he supported the bill "as a necessity, without any particular enthusiasm".⁷⁰ Mr Hoare asked a question about the advice and information provisions of the bill. Clause 2 would insert a new section 5A into NIEFA 2022 to allow the secretary of state to direct a Northern Ireland department to give the secretary of state advice or information or to carry out consultations. Under 5A(7) a direction would lapse "at the end of the current period in which there is no executive". Mr Hoare asked whether this information would be lost or if it would be passed to the new executive. Mr Baker stated that "it is our intention that the options developed for budget sustainability will be shared with the new executive".⁷¹

Richard Thomson, shadow SNP spokesperson on Northern Ireland, expressed concern that whilst the advice and information request powers for the secretary of state were necessary, they risked "an element of

⁶⁹ [HC Hansard, 10 May 2023, col 363.](#)

⁷⁰ [HC Hansard, 10 May 2023, col 365.](#)

⁷¹ [HC Hansard, 10 May 2023, col 391.](#)

paralysis by analysis and consultation in Whitehall”.⁷² He argued such powers represented a poor substitute for the people of Northern Ireland and the measure “falls some way short of the level of scrutiny that ought to be applied to the spending of public money”.⁷³ Mr Thomson said the SNP supported the bill but “what we support most of all is the best solution of seeing a swift return of the Assembly and the executive”.⁷⁴

Sammy Wilson, DUP spokesperson on Brexit, said even if the executive was restored and running well “there still would not be enough money in the pot”.⁷⁵ He cited the Northern Ireland Fiscal Council, saying it had “already made it clear that, in relation to the application of the Barnett formula, Northern Ireland is the only part of the United Kingdom that falls below the needs assessment on which public finance, spending in Northern Ireland and the block grant should be based”.⁷⁶ Mr Wilson argued that Northern Ireland’s “extremely challenging difficulties for long-term sustainability” would still be present even if the executive was restored.⁷⁷ He said that “getting back into Stormont is not going to grow the purse, change the financial situation or make it any easier”. He said he did accept that the Assembly had some responsibility “for the situation we are in”, arguing that there had been challenges in agreeing a budget in the previous executive:

[...] when I was finance minister in Northern Ireland we always balanced our budget. In fact, we were able to get three-year rolling budgets, so there was certainty for departments, and we were able to make efficiency savings of 3% almost every year. However, some bad decisions have been made, and the fact that Sinn Féin could not get any of the parties to agree to the budget proposals brought forward when the executive was functioning is an indication that there is such a role there. The finance minister was not capable of delivering a budget on which we could reach agreement, hence the overspend that has

⁷² [HC Hansard, 10 May 2023, col 369.](#)

⁷³ [HC Hansard, 10 May 2023, col 370.](#)

⁷⁴ [HC Hansard, 10 May 2023, col 370.](#)

⁷⁵ [HC Hansard, 10 May 2023, col 370.](#)

⁷⁶ [HC Hansard, 10 May 2023, col 371.](#)

⁷⁷ [HC Hansard, 10 May 2023, col 371.](#)

occurred. The impact of all that is that even if the Assembly were up and running, the detriment to public services in Northern Ireland would not disappear.⁷⁸

Mr Wilson said that restoring the Northern Ireland executive would not resolve Northern Ireland's fiscal problems, although that should not be seen as argument against restoring devolved government.⁷⁹ He said he looked forward to restoration of devolution and cooperative working, "but it will not happen until there is respect for the unionist view in Northern Ireland".⁸⁰

Colum Eastwood, leader of the SDLP, described the bill as one that "nobody wants, least of all the civil service which is being asked to use these powers".⁸¹ He said it was his view that "we have a responsibility to all the people in all our constituencies, no matter what their politics are, to have a government functioning and working together".⁸² He argued that "we are now basically in a period of direct rule, and we are moving inch by inch closer to London-only rule".⁸³ He said this was counter to the Good Friday Agreement and urged the government "to think carefully about what happens next, because this situation cannot be allowed to run and run". Mr Eastwood argued that if Northern Ireland was not to have institutions at Stormont then the UK government "need to look seriously at a greater role for the Irish government in the affairs of Northern Ireland". He said "I say that advisedly", arguing that in previous periods "it was only that promise that encouraged some people to get back and to form a government representing all the traditions on the island".

⁷⁸ [HC Hansard, 10 May 2023, col 371.](#)

⁷⁹ [HC Hansard, 10 May 2023, col 372.](#)

⁸⁰ [HC Hansard, 10 May 2023, col 374.](#)

⁸¹ [HC Hansard, 10 May 2023, col 374.](#)

⁸² [HC Hansard, 10 May 2023, col 374.](#)

⁸³ [HC Hansard, 10 May 2023, col 377.](#)

Stephen Farry (Alliance MP for North Down) argued that the guidance given to civil servants in Northern Ireland was insufficient.⁸⁴ He argued that cuts were not consistent with acting in the public interest:

[W]e have a situation where our guidance is telling civil servants to act in the public interest, not to undermine statutory services or commitments, not to take major public sector decisions and to avoid long-term damage. It is hard to see how taking cuts is consistent with any of those criteria, but that is what they are now being expected to do.⁸⁵

Mr Farry also referenced direct rule, arguing that “we do not want a drift to formal direct rule because of all the implications that flow from that”.⁸⁶ However, he said the current status quo was unsustainable and “something must give”. He argued that if direct rule had to happen “there will have to be an Irish dimension to it—people will have to face up to that”. He clarified that he was not speaking about joint authority which he considered to be a different concept “outside the context of the principle of consent”.

On the restoration of the executive, Mr Farry said that it was “true that this year’s budget allocation will more or less be along the lines set out, regardless of whether an executive were in place”. However, he argued that it was “utterly disingenuous” to say that the presence of an executive was irrelevant to Northern Ireland’s budget allocation:

The governance gap fundamentally matters: without an executive there is not a process for managing the pressures as efficiently and effectively as possible. That matters much more in the context of a crisis than when there is a surplus.⁸⁷

⁸⁴ [HC Hansard, 10 May 2023, col 382.](#)

⁸⁵ [HC Hansard, 10 May 2023, col 383.](#)

⁸⁶ [HC Hansard, 10 May 2023, col 383.](#)

⁸⁷ [HC Hansard, 10 May 2023, col 384.](#)

Responding to the debate on second reading, Steve Baker said the government recognised that civil servants would be uncomfortable taking some of the “difficult decisions” that were needed, but this was why the executive needed to be restored.⁸⁸

On funding, Mr Baker argued that the government had already provided increased funding for Northern Ireland:

On the issue of funding, the government have, for many years, recognised the unique challenges that Northern Ireland faces. We have provided about £7bn in additional funding to Northern Ireland since 2014, on top of the Barnett-based block grant and the Northern Ireland budget. Per person, that is around 20% higher than the equivalent UK government spending in the rest of the UK. I am well aware of the Fiscal Council’s report, which suggests that, on a needs basis, it should be even higher, but I have to say that 20% extra would go a long way in Wycombe—the streets are not all paved with gold there.⁸⁹

Mr Baker said the executive needed to be restored not because the government believed “all the problems will go away” but because the problems should be addressed by Northern Ireland executive ministers.⁹⁰

Mr Baker said the government was “clear” there would need to be a conversation about the Barnett formula and he was “aware of the Barnett squeeze”.⁹¹ However, he argued it was not plausible to solve this issue in a way that was acceptable to all sections of the community until the executive was restored.

⁸⁸ [HC Hansard, 10 May 2023, col 391.](#)

⁸⁹ [HC Hansard, 10 May 2023, col 391.](#)

⁹⁰ [HC Hansard, 10 May 2023, col 391.](#)

⁹¹ [HC Hansard, 10 May 2023, col 392.](#)

In closing, Mr Baker said the UK government did not want “to be here again with bills of this nature”.⁹² He said the government wanted to see a return of devolved government and that it would “continue a conversation about the detail of the Windsor Framework and what we can do to support the union and unionism”.

4.2 Committee stage and third reading

Although a number of amendments were debated at the bill’s committee stage, none were pushed to a division and the bill passed the House of Commons unamended.

Of the amendments selected for debate, several related to clause 2 of the bill. Three of the amendments made reference to the Northern Ireland Fiscal Council in different ways:

- Amendment 5, in the name of Sir Jeffrey Donaldson, leader of the DUP, would have amended new section 5A(2) to include reference to the council’s 2023 report on estimates of the relative need for public spending in Northern Ireland as something in relation to which the secretary of state could direct a Northern Ireland department to give the secretary of state advice about.
- Amendments 7 and 8, in the name of Colum Eastwood, would together have amended new section 5A(4) to specify the council as a body which must be consulted (along with the Equality Commission and Northern Ireland Human Rights Commission).
- Amendment 4, in the name of Stephen Farry, would have inserted a new sub-clause 4A into new section 5A. This would have required the secretary of state to “engage with Northern Ireland departments and the Northern Ireland Fiscal Council to produce a needs-based assessment of funding compared to the Barnett formula in order to address the financial sustainability of Northern Ireland”. This would have to specifically consider “changes in

⁹² [HC Hansard, 10 May 2023, col 394.](#)

relative need arising from differences in population characteristics and socio-economic conditions between Northern Ireland and England, to prevent the funding premium from falling below relative need”.

On amendments 4 and 5, Steve Baker argued provisions in the bill already allowed the UK government to work with the Northern Ireland civil service on fiscal sustainability and therefore “neither amendment is strictly needed”.⁹³ Gavin Robinson, the DUP’s spokesperson on defence and home affairs, asked the minister if the government would engage with him on the issue “so that when advice is commissioned and he is consulting, we can incorporate this as part of the advice he seeks”.⁹⁴ Mr Baker said that in relation to commissioning advice and the draft guidance, the government was very happy to engage with members of all parties.⁹⁵

On amendments 7 and 8, Mr Baker argued that specifying specific bodies would be unnecessarily restrictive.⁹⁶ He said the consultee list for Northern Ireland departments was already “well known”, so “we do not wish to pick out the three bodies over any others because it would beg the question, why not include them all?”. Specifically on the Northern Ireland Fiscal Council, Mr Baker said the government was already engaged with it and the body (and the other bodies mentioned in the amendment) would be consulted on budget sustainability.⁹⁷

As the bill was considered in committee of the whole House, and was unamended, it proceeded from committee to third reading without a report stage. Following a short third reading debate, the bill was passed without division.

⁹³ [HC Hansard, 10 May 2023, col 404.](#)

⁹⁴ [HC Hansard, 10 May 2023, col 404.](#)

⁹⁵ [HC Hansard, 10 May 2023, col 405.](#)

⁹⁶ [HC Hansard, 10 May 2023, col 405.](#)

⁹⁷ [HC Hansard, 10 May 2023, col 405.](#)

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