

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

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Northern Ireland Office, have been ordered to be published as HL Bill 60—EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Viscount Younger of Leckie has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Northern Ireland (Ministers, Elections and Petitions of Concern) Bill are compatible with the Convention rights.



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

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[AS BROUGHT FROM THE COMMONS]

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## [AS BROUGHT FROM THE COMMONS]

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**B I L L**

TO

Make provision about Ministerial appointments, extraordinary Assembly elections, the Ministerial Code of Conduct and petitions of concern in Northern Ireland.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Executive formation***1 Period for making Ministerial appointments**

- (1) The Northern Ireland Act 1998 is amended as follows.
- (2) In section 16A (appointment of Ministers following Assembly election), in subsection (3), for the words before paragraph (a) substitute “Before the end of the period for filling Ministerial offices—”. 5
- (3) After subsection (3) of that section insert—
  - “(3A) In this section “the period for filling Ministerial offices” means the period comprising—
    - (a) the period of six weeks beginning with the day on which the Assembly first meets, and 10
    - (b) the next three successive periods of six weeks (each referred to as an “extension period”), except for any period that is excluded by subsection (3B).
  - (3B) An extension period is excluded if, before it begins, the Assembly resolves that the period for filling Ministerial offices should not be extended (or further extended). 15
  - (3C) The Assembly may not pass a resolution under subsection (3B) without cross-community support.”

(4) In section 16B, for subsection (3) substitute –

“(3) Where at any time the offices of First Minister and deputy First Minister become vacant otherwise than by virtue of section 16A(11A), they shall be filled by applying subsections (4) to (7) before the end of the period for filling the offices of First Minister and deputy First Minister. 5

(3A) In this section “the period for filling the offices of First Minister and deputy First Minister” means the period comprising –

(a) the period of six weeks beginning with the day on which the offices of First Minister and deputy First Minister become vacant, and 10

(b) the next three successive periods of six weeks (each referred to as an “extension period”), except for any period that is excluded by subsection (3B).

(3B) An extension period is excluded if, before it begins, the Assembly resolves that the period for filling the offices of First Minister and deputy First Minister should not be extended (or further extended). 15

(3C) The Assembly may not pass a resolution under subsection (3B) without cross-community support.”

(5) In consequence of the amendments made by this section, in the Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016, omit section 6 and Schedule 1. 20

## **2 Duration of Ministerial appointments**

(1) The Northern Ireland Act 1998 is amended as follows.

(2) In section 16A – 25

(a) omit subsection (2) (Northern Ireland Ministers cease to hold office following Assembly election);

(b) in subsection (10), for “and the deputy First Minister” substitute “, the deputy First Minister and the Northern Ireland Ministers”;

(c) after subsection (11) insert – 30

“(11A) The First Minister and deputy First Minister cease to hold office if the period of 24 weeks beginning with the day on which an Assembly first meets expires without those offices having been filled by virtue of this section.”

(3) In section 18 – 35

(a) before subsection (1) insert –

“(A1) Where –

(a) an Assembly is elected –

(i) at a poll the date for which is proposed under section 32(3B), or 40

(ii) following the issue of a certificate under subsection (A2),

- (b) the period of 24 weeks beginning with the day on which an Assembly first meets expires without the offices mentioned in section 16A(3) having been filled, or
    - (c) the period of 48 weeks beginning with the day on which a vacancy arises in the offices of First Minister and deputy First Minister expires without those offices having been filled, 5

all Northern Ireland Ministers shall cease to hold office (and the Ministerial offices shall remain vacant until next filled by virtue of section 16A). 10
  - (A2) Where the Secretary of State—
    - (a) has proposed, or is under a duty to propose, a date for the poll for the election of the next Assembly under section 32(1) or (3), and
    - (b) considers that, in order to give effect to the purpose underlying paragraph 3.15 of Annex C of Part 2 of The New Decade, New Approach Deal so far as it relates to representation, it is necessary for the Northern Ireland Ministers to cease to hold office on the election of that Assembly, 15 20

the Secretary of State may issue a certificate that the conditions in paragraphs (a) and (b) are met.”;

  - (b) in subsection (9) (circumstances in which an individual Northern Ireland Minister ceases to hold office), after paragraph (a) insert—
    - “(aa) there is an Assembly election at which the Minister is not returned as a member;”;
  - (c) in subsection (10), after “subsection” insert “(A1) or”.
- (4) In section 98, in subsection (1), at the appropriate place insert—
 

““The New Decade, New Approach Deal” means the deal to restore devolved government in Northern Ireland published by that name in January 2020;”.

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- (5) In Schedule 4A (Minister of Justice), in paragraph 3D—
  - (a) before sub-paragraph (1) insert—
    - “(A1) Where—
      - (a) an Assembly is elected— 35
        - (i) at a poll the date for which is proposed under section 32(3B), or
        - (ii) following the issue of a certificate under section 18(A2),
      - (b) the period of 24 weeks beginning with the day on which an Assembly first meets expires without the offices mentioned in section 16A(3) having been filled, or 40
      - (c) the period of 48 weeks beginning with the day on which a vacancy arises in the offices of First Minister and

deputy First Minister expires without those offices having been filled,  
the relevant Minister shall cease to hold office (and the relevant Ministerial office shall remain vacant until next filled by virtue of section 16A).”; 5

(b) in sub-paragraph (11), after paragraph (a) insert—

“(aa) there is an Assembly election at which the Minister is not returned as a member,”;

(c) in sub-paragraph (14), after “sub-paragraph” insert “(A1) or”.

### **3 Extraordinary Assembly elections**

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(1) Section 32 of the Northern Ireland Act 1998 (extraordinary elections) is amended as follows.

(2) In subsection (1) (Secretary of State’s duty to trigger election if Assembly resolves to dissolve itself), after “shall” insert “, as soon as practicable,”.

(3) After subsection (1) insert—

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“(1A) The proposed date must be within the period of 12 weeks beginning with the day on which the resolution is passed.”

(4) In subsection (3) (Secretary of State’s duty to trigger election if Ministerial offices not filled), in the words after paragraph (b), after “shall” insert “, as soon as practicable,”.

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(5) After subsection (3) insert—

“(3A) The proposed date must be within the period of 12 weeks beginning when the duty in subsection (3) arises.

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

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(3C) The Secretary of State may exercise the power in subsection (3B) only if the Secretary of State considers that it is necessary to do so in order to give effect to the purpose underlying paragraph 3.15 of Annex C of Part 2 of The New Decade, New Approach Deal so far as it relates to representation.

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(3D) The Assembly may not pass a resolution under subsection (1)—

(a) during a period when the Secretary of State is under a duty to propose a date under subsection (3), or

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(b) if the Secretary of State has proposed a date under subsection (3) or (3B) and that date has not yet been reached.

(3E) The duty in subsection (3) does not arise if—

(a) the Assembly passes a resolution under subsection (1) during the period mentioned in section 16A(3) or 16B(3), or

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- (b) the Secretary of State proposes a date under subsection (3B) during that period.
- (3F) The Secretary of State may not propose a date under subsection (3B) –
  - (a) during a period when the Secretary of State is under a duty to propose a date under subsection (1), or 5
  - (b) if the Secretary of State has proposed a date under subsection (1) and that date has not yet been reached.
- (3G) Where the Secretary of State has proposed a date under subsection (1), (3) or (3B), the Secretary of State may, before the Assembly has been dissolved – 10
  - (a) propose a different date under that subsection, or
  - (b) in the case of a date proposed under subsection (3B), withdraw the proposal;
 and an Order in Council under subsection (4) may be amended or revoked accordingly.” 15
- (6) In subsection (4), for “or (3)” substitute “, (3) or (3B)”.

#### *Ministerial Code of Conduct*

### **4 Ministerial Code of Conduct**

- (1) In Part 2 of Schedule 4 to the Northern Ireland Act 1998 (code of conduct), for paragraph 1 substitute – 20
  - “1 (1) Ministers must at all times –
    - (a) maintain the highest standards of conduct and behave in a way that upholds the highest standards of propriety;
    - (b) be accountable to the Assembly and the public for the decisions and actions of their departments and agencies, including stewardship of public funds and the extent to which key performance targets and objects have been met; 25
    - (c) uphold the Nolan principles;
    - (d) comply with this code and with rules relating to the use of public funds; 30
    - (e) operate in a way that is conducive to promoting good community relations and equality of opportunity, treating all those with whom they come into contact with consideration and respect;
    - (f) ensure that no conflict arises, or could be reasonably perceived to arise, between Ministers’ public duties and their private interests, financial or otherwise, and comply with rules concerning conflicts of interest; 35
    - (g) refrain from using information gained in the course of their service for personal gain and from using the opportunity of public service to promote their private interests; 40
    - (h) ensure that official resources are not used for party political purposes;

- (i) comply with rules regarding the management of official information;
  - (j) comply with rules on the acceptance of gifts and hospitality;
  - (k) uphold the political impartiality of the civil service, not asking civil servants to act in any way which would conflict with the Northern Ireland Civil Service Code of Ethics; 5
  - (l) make civil service and public appointments in accordance with relevant legislation and relevant recruitment codes; and ensure that the rules on management and conduct of special advisers, including discipline, are complied with. 10
- (2) “The Nolan principles” means the seven general principles of public life set out in the First Report of the Committee on Standards in Public Life (Cm 2850) as revised or replaced from time to time.”
- (2) In relation to a person holding office as a Minister or junior Minister immediately before the amendments made by this section come into force, the reference in that person’s pledge of office to complying with the Ministerial Code of Conduct is to be taken to include a pledge to comply with the amended Ministerial Code of Conduct from the time when those amendments come into force. 15
- (3) In subsection (2)— 20
  - “junior Minister” means a person appointed as a junior Minister in accordance with section 19 of the Northern Ireland Act 1998;
  - “Minister” has the meaning given by section 7(3) of the Northern Ireland Act 1998.

### *Petitions of concern* 25

## 5 **Petitions of concern**

For section 42 of the Northern Ireland Act 1998 substitute—

### **“42 Petitions of concern**

- (1) If a petition expressing concern about a matter which is to be voted on by the Assembly is— 30
  - (a) presented to the Assembly by 30 members, and
  - (b) on the day after the consideration period, confirmed by 30 members,
 the vote on that matter requires cross-community support.
- (2) If such a petition is presented, the vote on the matter to which it relates may not take place until after the day mentioned in subsection (1)(b). 35
- (3) The members presenting or confirming a petition must include—
  - (a) one member who belongs to a political party and one member who belongs to a different political party,
  - (b) one member who belongs to a political party and one member who does not belong to a political party and did not belong 40

- to a political party when returned as a member of the Assembly, or
- (c) two members who do not belong to a political party and did not belong to a political party when returned as members of the Assembly. 5
- (4) A matter may not be the subject of a petition if it—
- (a) concerns a sanction in relation to the conduct of a Minister or other member of the Assembly;
- (b) concerns the vote on the general principles of a Bill referred to in section 13(1)(a); 10
- (c) is a matter specified in standing orders made under subsection (6)(c).
- (5) A petition under this section may not be presented or confirmed by the Presiding Officer or a deputy Presiding Officer.
- (6) Standing orders must— 15
- (a) make provision with respect to the procedure to be followed in presenting and confirming a petition under this section (which may include provision specifying a minimum period between the presentation of the petition and the time when the vote on the matter to which it relates would take place if not postponed by the petition); 20
- (b) provide that the matter to which a petition under this section relates may be referred, in accordance with paragraphs 11 and 13 of Strand One of the Belfast Agreement, to the committee established under section 13(3)(a); 25
- (c) specify further matters that may not be the subject of a petition under this section, for the purposes of fully implementing paragraph 2.2.4 of Annex B of Part 2 of The New Decade, New Approach Deal;
- (d) make provision for such steps to be taken during the consideration period as may be necessary for the purposes of fully implementing paragraph 2.2.7 of Annex B of Part 2 of The New Decade, New Approach Deal. 30
- (7) If the day mentioned in paragraph (b) of subsection (1) is not a working day that paragraph is to be read as referring to the next day that is a working day. 35
- (8) In this section—
- “the consideration period” means the period of 14 days beginning with the day on which the petition is presented;
- “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in Northern Ireland.” 40

*Repeals and final provisions***6 Repeal of spent provisions**

The following are repealed –

- (a) the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018;
- (b) in the Northern Ireland (Executive Formation etc) Act 2019, sections 1 to 7.

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**7 Extent**

This Act extends to England and Wales, Scotland and Northern Ireland.

**8 Commencement**

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This Act comes into force at the end of the period of two months beginning with the day on which it is passed.

**9 Short Title**

This Act may be cited as the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2021.

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*Brought from the Commons on 27th October 2021*

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Ordered to be Printed, 27th October 2021.

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