

NORTHERN IRELAND (MINISTERS, ELECTIONS AND PETITIONS OF CONCERN) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland (Ministers, Elections and Petitions of Concern) Bill as brought from the House of Commons on 27 October 2021 (HL Bill 60).

- These Explanatory Notes have been prepared by the Northern Ireland Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 This Bill will deliver aspects of the New Decade, New Approach deal which was agreed by the five main Northern Ireland political parties when a power-sharing Executive was formed and the Assembly returned in January 2020.
- 2 The Bill relates to the sustainability of the Northern Ireland institutions, the transparency and accountability of the Executive and Petitions of Concern. It will:
 - Provide up to four, 6-week periods for appointing Northern Ireland Ministers, including the First Minister and the deputy First Minister, after an election;
 - Provide up to four, 6-week periods for appointing a First Minister and deputy First Minister after they cease to hold office (in the case of one of them resigning for instance);
 - Provide that Northern Ireland Ministers remain in office after an election for up to a maximum of 24 weeks;
 - Where the First Minister and deputy First Minister cease to hold office, provide that other Northern Ireland Ministers remain in office for a maximum period of 48 weeks after the First Minister and deputy First Minister ceased to hold office or 24 weeks following the subsequent election (whichever is the shortest) unless the Secretary of State triggers the “sufficient representation” provisions;
 - Implement reforms to the Petition of Concern mechanism in the Assembly, including a new 14-day consideration period before a valid petition can be confirmed;
 - Require petitioners to come from more than one Northern Ireland political party;
 - Prevent the mechanism being used for matter which concern the conduct of an Assembly member or for second reading votes on a Bill; and
 - Update the code of conduct for Northern Ireland Ministers in accordance with a request from the Northern Ireland Executive and in line with New Decade, New Approach.

Policy background

- 3 The Northern Ireland Executive was restored on 12 January 2020 after there had been no functioning Executive since 9 January 2017, when the then deputy First Minister of Northern Ireland resigned. This also resulted in the First Minister ceasing to hold office. All other Northern Ireland Ministers ceased to hold office when an extraordinary Assembly election was held on 2 March 2017. The parties did not nominate Ministers after that election.
- 4 Political talks took place in 2018 and 2019 with the aim of restoring the Northern Ireland Executive. The talks involved the UK Government and the Irish Government in accordance with the three stranded approach set out in the Belfast (Good Friday) Agreement.
- 5 Political talks concluded in January 2020 with the publication of the New Decade, New Approach deal on 9 January 2020.
- 6 The five main political parties (the Democratic Unionist Party, Sinn Féin, the Ulster Unionist Party, the Social Democratic and Labour Party, and the Alliance party) entered into a power sharing Executive on 12 January 2020 following their agreement to the New Decade, New Approach deal.

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- 7 Aspects of the New Decade, New Approach deal are devolved matters that will require the Executive and the Assembly to pursue. This Bill deals in part with excepted matters that can only be legislated for by Parliament in Westminster and amends the Northern Ireland Act 1998.
- 8 Under the current provisions, from the First Minister and deputy First Minister ceasing to hold office, there are only 7 days within which to nominate and appoint a new First Minister and deputy First Minister before the Secretary of State is under a duty to propose a date for an election and the offices may no longer be filled. Following an election, there is a period of only 14 days to appoint all Ministers including the First and deputy First Ministers before the Secretary of State again falls under a duty to propose a date for an election and offices may no longer be filled.
- 9 These timescales are short and provide little time for the political parties to reach any agreement or for the Secretary of State to attempt to resolve any issues before the election duty arises. The Northern Ireland departments are extremely limited in the business that they can undertake in the absence of a Minister.
- 10 The Bill will extend the time for the appointment of Ministers before the Secretary of State comes under the duty to propose a date for an election. It will provide for Ministers to remain in post longer to allow for greater continuity of decision making and may reduce the incentive for a party to leave the Executive. These provisions also ensure that there are certain safeguards in place should the Assembly resolve on a cross-community basis not to extend the period for appointing Ministers and if the Secretary of State believes that there is not sufficient representation within the Executive to command cross-community confidence in the Assembly. See further details at paragraph 27.
- 11 These new provisions reform the Petitions of Concern mechanism in order to reduce its use (and return it to its intended purpose which was to ensure that all sections of the community are protected) and to prevent one party being able to block measures or business which otherwise would have cross-community consensus. These specific changes and commitments from the Northern Ireland parties aim to reduce the use of the mechanism to only in the most exceptional circumstances and as a last resort, having exhausted every other available mechanism.
- 12 The updates to the Ministerial Code of Conduct, as requested by the Northern Ireland Executive, will increase the transparency, accountability and functioning of the Executive.

Legal background

- 13 The relevant legal background is explained in the policy background section of these Notes.

Territorial extent and application

- 14 The Bill extends to England and Wales, Scotland and Northern Ireland, but only applies in Northern Ireland. The matters to which the provisions of the Bill relate are not within the legislative competence of the Northern Ireland Assembly, and so no legislative consent motion is being sought in relation to any provision of the Bill.
- 15 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Period for making Ministerial Appointments

- 16 Clause 1 amends sections 16A and 16B of the Northern Ireland Act 1998 so as to extend the time in which Northern Ireland Ministers must be appointed after an election or the First Minister and deputy First Minister must be appointed following one of them ceasing to hold office.
- 17 In place of the two current limits of:
 - a. 14 days from the first meeting of the Assembly after a poll, and
 - b. 7 days from the First Minister or deputy First Minister ceasing to hold office,there will instead be a single six-week period. This period is automatically renewed three times, for a total period of up to 24 weeks from the Assembly's first meeting after a poll or from the First Minister or deputy First Minister ceasing to hold office, whichever is shortest.
- 18 During any such six-week period, the Assembly can prevent the next six-week period from beginning by passing a resolution to that effect. Such a resolution requires cross-community support. For the effect of such a resolution being passed see paragraphs 29 and 30 below.

Clause 2: Duration of Ministerial Appointments

- 19 Clause 2 amends sections 16A and 18 of, and Schedule 4A to, the Northern Ireland Act 1998 so as to provide that Northern Ireland Ministers will no longer cease to hold office after the election of a new Assembly. Instead, it provides for up to a maximum of 24 weeks after an election or for a maximum of 48 weeks since there has been a functioning Executive in place, whichever is shorter, in which Ministers may continue to hold office, subject to those offices otherwise being filled. Ministers will cease to hold office in the following scenarios.
 - a. If the 24-week period after an election ends without new Ministers, including the First Minister and deputy First Minister, being appointed.
 - b. If the 48-week period since a functioning Executive has been in place ends without new Ministers, including the First Minister and deputy First Minister, being appointed.
 - c. If the Secretary of State has exercised their power to propose a date for an election (or issued a certificate in respect of a duty to propose a date that has already arisen) on the basis that they consider it necessary to give effect to the purpose underlying paragraph 3.15 of the New Decade, New Approach deal so far as it relates to representation, in which case all Ministers will cease to hold office on the day of the poll. (Paragraph 3.15 of the New Decade, New Approach deal is explained further in paragraph 25 below.)
 - d. If a Minister is not returned as a Member of the Assembly at an election, in which case the party to which the Minister belonged may nominate a replacement.
 - e. If new Ministers (including the First Minister and deputy First Minister) are appointed within the 24/48-week time limits referred to above.

Clause 3: Extraordinary Assembly elections

- 20 Clause 3 amends section 32 of the Northern Ireland Act 1998. Section 32 requires the Secretary of State to propose a date for an Assembly election in two cases. The first is where the Assembly resolves to dissolve itself (by a two-thirds majority). The second is where the period

for appointing all Northern Ireland Ministers in section 16A or the period for appointing the First Minister and deputy First Minister in section 16B expires without those offices being filled.

- 21 Subsections (1) and (4) amend section 32 such that where the Assembly resolves to dissolve itself or where the Secretary of State is under a duty to propose a date for an election because Ministerial offices have not been filled, the Secretary of State must now exercise that duty as soon as reasonably practicable.
- 22 Subsection (3) amends section 32 such that where the Assembly resolves to dissolve itself, the Secretary of State must propose a date for an election that is within 12 weeks of the resolution being passed.
- 23 Similarly, subsection (5) (by virtue of new subsection (3A)) introduces a requirement when the period for filling Ministerial offices expires without those offices being filled. That the Secretary of State must propose a date for an election that is within 12 weeks of the period for filling offices expiring.
- 24 Subsection (5) also inserts new subsections (3B) to (3G).
- 25 New subsections (3B) and (3C) enable the Secretary of State to call an Assembly election at any point after the first six-weeks in the period for filling Ministerial offices (but before that expires) if they consider it is necessary to do so to give effect to the underlying purpose of paragraph 3.15 of Annex C of New Decade, New Approach so far as it relates to representation. Paragraph 3.15 provides as follows:

“[These changes] will be given legislative effect consistent with the shared commitment to the principles of power-sharing and cross-community protection contained in the Belfast (Good Friday) Agreement and ensuring there is sufficient representation to command cross-community confidence in the Assembly.”
- 26 The effect of exercising this power is that Ministers will cease to hold office on the date of the poll (rather than at the expiry of the 24 or 48-week period)
- 27 Because there may be concerns about sufficient representation once a duty to propose a date for an election has already arisen, the Secretary of State may, in such a case issue a certificate under new section 18(A2) on the same basis as the power described above may be exercised (see clause 2). This will mean, therefore, that as above, Ministers will cease to hold office on the date of the poll.
- 28 New subsections (3D) to (3F) ensure that competing duties to propose a date for an election do not arise at the same time. New subsection (3D) prevents the duty to propose a date from arising where the Assembly resolves to dissolve itself and either a duty to propose a date has already arisen under subsection (3) because Ministerial offices haven't been filled or because the Secretary of State has already proposed a date for a poll under subsections (3) or (3B) and that date has not yet been reached.
- 29 New subsection (3E) prevents the duty under subsection (3) from arising (because Ministerial offices have not been filled) where the Assembly has already resolved to dissolve itself or where the Secretary of State has exercised the power in new subsection (3B).
- 30 New subsection (3F) prevents the Secretary of State from exercising their power to propose a date under subsection (3B) (when the Secretary of State considers it necessary to do so for the purposes of New Decade, New Approach) when a duty has already arisen, or a date has already been proposed, because the Assembly has resolved to dissolve itself (but the Secretary of State may still issue a certificate in respect of such an election – see clause 2).

- 31 New subsection (3G) allows the Secretary of State, where they have already proposed a date for an election to propose a different date, or in the case of a date proposed under subsection (3B) (see paragraph 24) to withdraw the proposal providing they do so before the Assembly has been dissolved. They might withdraw the proposal under subsection (3B) for example because an Executive has been formed.

Clause 4: Amendments to the Ministerial Code of Conduct

- 32 Clause 4 substitutes a revised Ministerial Code of Conduct in Schedule 4 to the Northern Ireland Act 1998. The code of conduct sets out expectations on the behaviour of Ministers, including provisions around the treatment of the Northern Ireland Civil Service, public appointments and the use of official resources and information management.
- 33 Northern Ireland Ministers may not take office until they have affirmed the pledge of office (also in Schedule 4 to the Act) which includes a pledge to comply with the Ministerial Code of Conduct. Subsection (2) is a transitional provision. The revised code will apply to Ministers who are in office at the time this provision comes into force, from the time the provisions come into force. In respect of actions before the new code applies, the old code will continue to apply.

Clause 5: Amendments to Petitions of Concern

- 34 Clause 5 implements reforms of the Petition of Concern mechanism as set out in paragraph 11 and Annex B of New Decade, New Approach and substitutes a new section 42 in the Northern Ireland Act 1998.
- 35 New subsection (1) provides for a 14-day ‘consideration period’ after a petition has been presented by 30 members of the Northern Ireland Assembly (MLA). The consideration period is the 14-day period beginning on the day the petition is presented (see the definition of “consideration period” in the new subsection (8)). On the 15th day, 30 MLAs must “confirm” the petition for it to have effect (that is, so as to require the vote on the matter petitioned to be decided on a cross-community basis). By virtue of new subsection (2) once a matter is the subject of a petition the vote on that matter may not take place until after the day on which it must be confirmed (i.e. a vote may not take place before the 16th day).
- 36 New subsections (1), (3) and (5) provide that a petition must be signed and confirmed by at least 30 MLAs (although it need not be signed and confirmed by the same 30 MLAs) from two or more political parties (paragraph 2.2.3 of Annex B of New Decade, New Approach) and prohibits the Presiding Officer and their deputies from signing a petition (paragraph 2.2.2).
- 37 The mechanism’s availability is set out in new subsection (4) which prevents its use for matters which concern a sanction relating to the conduct of an MLA and for votes on the general principles of a Bill (that is, the Bill’s “second stage”). The Assembly must also specify further matters that may not be the subject of a petition in standing orders for the purpose of fully implementing paragraph 2.2.4 of Annex B of New Decade, New Approach (see new subsection (6)(c)).
- 38 New subsection (6)(a) requires standing orders to make provision for the procedure for presenting and confirming a petition and effectively restates existing subsection (2):
- “Standing orders shall make provision with respect to the procedure to be followed in petitioning the Assembly under this section, including provision with respect to the period of notice required.”
- 39 Paragraphs (b) and (d) also require standing orders to make provision for matters that are the subject of a petition to be referred to the ad hoc committee on conformity with equality requirements (see section 13(3)(a) of the Northern Ireland Act 1998) and make provision for

such steps as are necessary for the purposes of implementing paragraph 2.2.7 of Annex B of New Decade, New Approach.

- 40 New subsection (7) provides that, if the day on which a petition is to be confirmed is not a working day, then it must be confirmed on the next day that is a working day. Working day for these purposes is defined in new subsection (8) and means a day that is not a Saturday, Sunday, Christmas Day, Good Friday or bank holiday in Northern Ireland.

Clause 6: Repeal of spent provisions

- 41 This clause repeals the following, which are spent, meaning they no longer have any function in law.
- a. The Northern Ireland (Executive Formation and Exercise of Functions) Act 2018.
 - b. Sections 1 to 7 of the Northern Ireland (Executive Formation etc) Act 2019.

Commencement

- 42 The provisions of the Act will commence two months after Royal Assent.

Financial implications of the Bill

- 43 The Bill will not entail additional public expenditure.

Parliamentary approval for financial costs or for charges imposed

- 44 The Bill does not entail any financial costs or charges, so no Money Resolution or Ways and Means Resolution is necessary.

Compatibility with the European Convention on Human Rights

- 45 Section 19 of the Human Rights Act 1998 requires a Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with Convention rights (as defined by section 1 of that Act).
- 46 Viscount Younger of Leckie, Lords Spokesperson, has made the following statement:
- “In my view, the provisions of the Northern Ireland (Ministers, Elections and Petitions of Concern) Bill are compatible with Convention rights.”
- 47 The Northern Ireland Office does not consider that the provisions of the Bill engage Convention rights.

Related documents

48 The following documents are relevant to the Bill can be read at the stated locations:

- The New Decade, New Approach deal:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf
- First Report on the Use of the Petition of Concern Mechanism in the Northern Ireland Assembly:
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901146/First Report on the Use of the Petition of Concern Mechanism in the Northern Ireland Assembly.pdf - Copy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901146/First_Report_on_the_Use_of_the_Petition_of_Concern_Mechanism_in_the_Northern_Ireland_Assembly.pdf_-_Copy.pdf)
- Second Report on the Use of the Petition of Concern Mechanism in the Northern Ireland Assembly:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/951669/20201221_CP_for_second_report_v2.pdf

Annex A – Territorial extent and application in the United Kingdom

| Provision | England | Wales | | Scotland | | Northern Ireland | |
|-----------|--|--|---|----------------------------------|---|--|---|
| | Extends to E & W and applies to England? | Extends to E & W and applies to Wales? | Legislative Consent Motion process engaged? | Extends and applies to Scotland? | Legislative Consent Motion process engaged? | Extends and applies to Northern Ireland? | Legislative Consent Motion process engaged? |
| Clause 1 | No | No | No | No | No | Yes | No |
| Clause 2 | No | No | No | No | No | Yes | No |
| Clause 3 | No | No | No | No | No | Yes | No |
| Clause 4 | No | No | No | No | No | Yes | No |
| Clause 5 | No | No | No | No | No | Yes | No |
| Clause 6 | No | No | No | No | No | Yes | No |

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