

NORTHERN IRELAND BUDGET (NO. 2) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland Budget (No. 2) Bill as brought from the House of Commons on 5 September 2023 (HL Bill 167).

- These Explanatory Notes have been prepared by the Northern Ireland Office in order to assist the reader of the Bill and 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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These Explanatory Notes relate to the Northern Ireland Budget (No. 2) Bill as brought from the House of Commons on 5 September 2023 (HL Bill 167)

Overview of the Bill

- 1 This Budget legislation authorises Northern Ireland departments and certain other bodies to incur expenditure and use resources for the financial year ending on 31 March 2024.

Policy background

- 2 Ordinarily the passage of a Budget Bill to authorise the issue of sums from the Consolidated Fund of Northern Ireland would be taken through the Northern Ireland Assembly following the agreement of a budget by the Northern Ireland Executive and its approval by the Assembly. However, there have been no functioning devolved institutions in Northern Ireland since 3 February 2022, when the then First Minister of Northern Ireland resigned, which also resulted in the deputy First Minister ceasing to hold office. The Executive failed to form after the 5 May 2022 Assembly elections, and the subsequent failures to elect a Speaker means that the Assembly cannot conduct any business, so it falls to Parliament to legislate to provide authority for departmental expenditure in Northern Ireland.
- 3 In the continued absence of the Northern Ireland Executive, the Secretary of State for Northern Ireland set out draft budget allocations for the 2023-24 financial year (the Budget) in a Written Ministerial Statement to Parliament on 27 April 2023. It is necessary to introduce legislation to put the budget allocations on a legal footing and authorise the issue of sums to, and use of resources by, Northern Ireland departments for the full financial year ending 31 March 2024. It will provide certainty for the Northern Ireland departments in order to protect public finances and maintain the delivery of Northern Ireland's public services. This Budget will require devolved spending decisions to be made by senior officers of Northern Ireland departments in respect of which provision is made in the Northern Ireland (Executive Formation etc) Act 2022.
- 4 The Northern Ireland Budget Act 2023, which received Royal Assent on 8 February 2023, included a Vote on Account (VoA) which has allowed Northern Ireland departments and other bodies to continue to deliver services into the current financial year 2023-24, up to a limit of approximately 65% of the previous year's (2022-23) budget. The VoA ensures that there has been technical access to cash and provides legal authority for the Northern Ireland Civil Service (NICS) to use this money to deliver public services pending the passing of a further Northern Ireland Budget Bill for the full 2023-24 year.
- 5 This Bill is a necessary step to ensure that public services can continue to be provided in Northern Ireland.
- 6 No new money will be allocated as a result of the Bill. Instead it will appropriate sums provided to the Consolidated Fund of Northern Ireland through the UK Estimates process, together with revenue generated within Northern Ireland under the Assembly's devolved powers.

Legal background

- 7 In the continuing absence of a Northern Ireland Executive, and the consequent inability of the Northern Ireland Assembly to pass a Budget Act, this Bill provides the required authorisations and appropriations, based on the Budget statement announced in Parliament by the Secretary of State on 27 April 2023. Specific provision is made for the authorisations and limits set by the Bill to take effect as if they were contained in an Act of the NI Assembly and for estimates laid before Parliament to take effect as if they had been approved by the Assembly.

Territorial extent and application

- 8 The Bill extends across the United Kingdom but applies only to Northern Ireland. See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Fast-track legislation

- 9 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards¹, the House of Lords Select Committee on the Constitution recommended that the Government should provide more information as to why a piece of legislation should be fast-tracked².

Why is fast-tracking necessary?

- 10 It is necessary to fast-track this Bill to safeguard the continued delivery of public services and provide clarity for Northern Ireland departments to safeguard public finances and therefore it cannot be delayed further in the absence of a Northern Ireland Executive and a sitting Assembly.
- 11 If there is delay in authorising the issue of sums and use of resources for the full financial year ending 31 March 2024 there is a risk that departments and other bodies in Northern Ireland will reach the limits of cash and resources which were authorised in the Vote on Account in the Northern Ireland Budget Act 2023, and that services would cease to be delivered as a result.

What is the justification for fast-tracking each element of the bill?

- 12 The provisions of this Bill are required to provide the necessary authorisations and appropriations to allow public services to continue to be delivered for the full financial year ending 31 March 2024. The Budget legislation is required to put the budget allocations, as set out in the Secretary of State's statement on 27 April, on a legal basis.
- 13 If the Bill does not proceed at pace, the Northern Ireland departments risk exceeding their VoA limits and running out of cash and public services could cease to be delivered as a result unless emergency powers in section 59 of the Northern Ireland Act 1998 are used by the Permanent Secretary of the Northern Ireland Department of Finance to authorise further

¹ House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I: <https://publications.parliament.uk/pa/ld200809/ldselect/ldconst/116/116.pdf>

² House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I, para. 186: <https://publications.parliament.uk/pa/ld200809/ldselect/ldconst/116/116.pdf>

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funding. Departments would also be legally unable to access any income which would result in a significant reduction in the departmental budgets.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

- 14 The need for this Bill arises from the continued absence of a Northern Ireland Executive. The NI political parties have been unable to form a new NI Executive and the Assembly has been unable to elect a Speaker (which must be its first business before it can sit).
- 15 The figures in this Bill are based on the Budget Statement set out to Parliament on 27 April 2023 but in the circumstances, it has not been possible to give Parliament more time to scrutinise this Bill, without risking the delivery of public services in Northern Ireland.
- 16 However, the additional detail provided in these Explanatory Notes and the Estimates provided in the supporting Schedule will allow Parliament to get a comprehensive understanding of what the Bill will mean in practice and will provide the reader of the Bill with ample background information to help facilitate the required level of parliamentary scrutiny. On 3 July 2023 the Secretary of State for Northern Ireland laid accompanying Main Estimates, which provide greater detail as to the expenditure plans of Northern Ireland departments and other bodies.³

To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

- 17 The Bill is being introduced in the absence of a Northern Ireland Executive. The amounts being authorised and appropriated in this Bill are based on a budget position announced in Parliament by the Secretary of State on 27 April 2023. This budget position was prepared on the advice of the Northern Ireland Civil Service. This included provisional screenings for compliance with section 75 of the Northern Ireland Act 1998,⁴ based on provisional departmental budget allocations.
- 18 The Secretary of State set this budget with due consideration of the representations received from stakeholders in correspondence, meetings, and Ministerial visits across Northern Ireland. The approach has also been discussed with the Chair of the Northern Ireland Fiscal Council which has recently published reports on the sustainability of public finances and the relative need for public spending in Northern Ireland. The Fiscal Council published assessments following the 2022-23 Northern Ireland Budget and the Secretary of State has had regular discussions with the Chair.

³ Northern Ireland Main Estimates 2023-24, CP 884:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1167451/Northern_Ireland_Main_Estimates_2023-24.pdf

⁴ Under section 75 of the Northern Ireland Act 1998, when carrying out their functions, Northern Ireland departments must have due regard to the need to promote equality of opportunity between persons of certain specified groups (such as between persons of different age or marital status) and have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group.

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Does the bill include a sunset clause (as well as any appropriate renewal procedure)?

If not, why does the Government judge that their inclusion is not appropriate?

- 19 The Bill does not contain a sunset clause. However, the Bill only applies to the financial year ending 31 March 2024.

Are mechanisms for effective post-legislative scrutiny and review in place? If not,

why does the Government judge that their inclusion is not appropriate?

- 20 As noted above, the clauses in the Bill only make provision for the issue of sums and the authorisation of the use of resources for the financial year ending 31 March 2024.
- 21 Monitoring and reporting arrangements have been established between the Northern Ireland Office and the Northern Ireland departments for the remainder of the 2023-24 financial year.

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all the issues in question?

- 22 Yes. In anticipation of the amounts authorised and appropriated in the 2023-24 Vote on Account being exhausted, the Permanent Secretary of the Department of Finance in Northern Ireland could technically exercise the powers under section 59 of the Northern Ireland Act 1998 and section 7 of the Government Resources and Accounts Act (Northern Ireland) 2001 in order to continue to allocate resources and allow public services to continue to be delivered.
- 23 However, these powers are emergency powers intended to be used only in the absence of more orthodox legal authority. They also involve a limit of up to 95% of the previous year's provision and cannot authorise the use of income, therefore legislation would still be required regardless, albeit at a later point in the year. As a result, they are insufficient to provide the additional sums and use of additional resources required to safeguard the delivery of public services in Northern Ireland for the full 2023-24 financial year.
- 24 Legislation is therefore required in order to allow public services to continue to be delivered in Northern Ireland for the full financial year up to and including 31 March 2024.

Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?

- 25 Due to the need to implement the Bill urgently, the Northern Ireland Affairs Committee has not scrutinised the Bill in draft. However, the committee will be offered an informal technical briefing from NIO officials.

Commentary on provisions of Bill

Clauses 1 and 2: Use of resources and limits on use of resources

- 26 Clauses 1 and 2 authorise the use of resources by Northern Ireland departments and other specified public bodies amounting to £27,403,514,000 in the year ending 31 March 2024 for the purposes specified in Part 2 of the Schedule and subject to the limits set out in subsections (4) to (7) of clause 2. The authorisations in clauses 1 and 2 supersede those made by sections 8 and 9 of the Northern Ireland Budget Act 2023.

Clauses 3 and 4: Issue and use of sums out of the Consolidated Fund (of Northern Ireland)

- 27 The purpose of clauses 3 and 4 is to authorise the Northern Ireland Department of Finance to issue out of the Consolidated Fund of Northern Ireland the sum of £22,790,893,000 for the purposes set out in Part 2 of the Schedule. The authorisations in clauses 3 and 4 supersede the authorisations made by sections 10 and 11 of the Northern Ireland Budget Act 2023.

Clause 5: Power of the Department of Finance to borrow

- 28 Clause 5 authorises the temporary borrowing by the Northern Ireland Department of Finance of £11,395,447,000 approximately half the sum covered by clause 3. This is a normal safeguard against the possibility of a temporary deficiency arising in the Consolidated Fund of Northern Ireland and any such borrowing is to be repaid by 31 March 2024.

Clause 6: Use of Income

- 29 Clause 6 authorises the use of income by Northern Ireland departments and other specified public bodies from the sources specified in Part 3 of the Schedule, for the purposes specified in Part 2 of the Schedule in the year ending 31 March 2024. That is subject to limits on how income may be used set out in subsections (2) to (5).

Clause 7: Act to take effect as if it were a Budget Act of the Assembly etc.

- 30 Clause 7 provides for the authorisations and limits in the Bill to have the same effect as if they were contained in a Budget Act of the Northern Ireland Assembly. It also modifies references in other pieces of legislation to the Northern Ireland Estimates which would normally form part of the Assembly's supply process, including the consideration of the estimates by the Assembly's committees and the approval of the estimates document by a vote in the Assembly. For those purposes the Estimates document, which was laid before Parliament on 3 July 2023, is deemed equivalent to those Assembly processes. Section 7(3) would require the Northern Ireland Audit Office and the Northern Ireland Public Service Ombudsman to prepare their accounts in accordance with the Estimates laid before Parliament.

Clauses 8 and 9: Interpretation and Short title

- 31 These provisions are self-explanatory.

Schedule: Part 1 – Authorised Amounts

- 32 For each Department, Part 1 of the Schedule sets out the amount of resources authorised for use by each Northern Ireland department and other public bodies (clauses 1 and 2) and the sums of money granted to each Northern Ireland department and other bodies (clauses 3 and 4) for the year ending 31 March 2024.

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Schedule: Part 2 – Expenditure

- 33 For each Department, Part 2 of the Schedule sets out the purposes for which resources (clause 2) and money (clause 4) can be used by each Northern Ireland department and other bodies for the year ending 31 March 2024.

Schedule: Part 3 – Income

- 34 For each Department, Part 3 of the Schedule sets out the sources from which income can be used by each Northern Ireland department and other body for the year ending 31 March 2024.

Commencement

- 35 The Bill will come into force on Royal Assent.

Financial implications of the Bill

- 36 This Bill will authorise the issue of the sum of £22,790,893,000 from the Consolidated Fund of Northern Ireland and the use of income for the year ending 31 March 2024.

Parliamentary approval for financial costs or for charges imposed

- 37 This Bill will authorise the issue of sums to and the use of resources by Northern Ireland departments and other public bodies. This is not new money, as it is an authorisation for issue from the Consolidated Fund of Northern Ireland and use of resources by departments and other public bodies in Northern Ireland that would normally be done by the Assembly and is money appropriated by Parliament in the UK Estimates process, together with revenue generated locally within Northern Ireland under the Assembly's devolved powers.

Compatibility with the European Convention on Human Rights

- 38 The Government does not consider that the provisions of this Bill engage any rights under the European Convention on Human Rights.
- 39 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).
- 40 The Parliamentary Under-Secretary of State for Northern Ireland, Lord Caine, has made the following statement:
- 41 "In my view, the provisions of the Northern Ireland Budget (No. 2) Bill are compatible with Convention rights."

Environmental law for the purposes of the Environment Act 2021

- 42 The Parliamentary Under-Secretary of State for Northern Ireland, Lord Caine, is of the view that the Bill as introduced into the House of Lords does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Related documents

- 43 The following documents are relevant to the Bill and can be read at the stated locations:

- Northern Ireland Finances 2023 - Statement made on 27 April 2023 by the Secretary of State for Northern Ireland: <https://questions-statements.parliament.uk/written-statements/detail/2023-04-27/hcws748>

Annex A – Territorial extent and application in the United Kingdom

44 The Bill extends across the United Kingdom but applies only to Northern Ireland.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion needed? ⁵
Clause 1	No	No	No	Yes	No
Clause 2	No	No	No	Yes	No
Clause 3	No	No	No	Yes	No
Clause 4	No	No	No	Yes	No
Clause 5	No	No	No	Yes	No
Clause 6	No]	No	No	Yes	No
Clause 7	No	No	No	Yes	No
Clause 8	No	No	No	Yes	No
Clause 9	No	No	No	Yes	No
Schedule	No	No	No	Yes	Yes

Subject matter and legislative competence of devolved legislatures

45 All of the content of this Bill affects matters within the devolved (transferred) competence of the Northern Ireland Assembly. The Sewel Convention sets out that the UK Government will not normally legislate in an area of devolved competence without the agreement of the devolved legislatures. In the absence of the Executive and a sitting Assembly, and given the pressing need to ensure that public services can continue to be delivered within Northern Ireland, there is neither the time available nor the practical ability for the Assembly to provide a Legislative Consent Motion. The UK Government is clear, therefore, that the circumstances in which this Act will be introduced would come within the exception allowed by the Convention.

⁵ Refer to paragraph 44 for rationale on why the UK Government cannot seek a Legislative Consent Motion despite identifying that one would normally be needed.

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