



# EXPLANATORY NOTES

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## Northern Ireland (Interim Arrangements) Act 2023

Chapter 21

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# NORTHERN IRELAND (INTERIM ARRANGEMENTS) ACT 2023

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Northern Ireland (Interim Arrangements) Act 2023 which received Royal Assent on 24 May 2023 (c. 21).

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

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# Overview of the Act

- 1 In summary, this Act:
  - provides for a continuation of existing powers allowing the senior officers of Northern Ireland departments to exercise the functions of those departments when in the public interest, notwithstanding the ongoing lack of Northern Ireland Ministers;
  - confers on the Secretary of State the power to commission advice or request information from Northern Ireland departments, 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;
  - confers on the Secretary of State the power to direct Northern Ireland departments to carry out consultations, 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; and
  - requires certain accounts, reports and other financial documents that must be laid in the Northern Ireland Assembly to also be laid in Parliament when the Northern Ireland Assembly is not functioning.

## Policy background

- 2 Northern Ireland Assembly elections were held on 5 May 2022, as five years had passed since the previous Assembly was elected. Prior to the election, there was no functioning Executive due to the resignation of the First Minister on 4 February 2022. The First Minister's resignation meant that the deputy First Minister also ceased to hold office and that there was no longer any functioning Executive Committee.
- 3 As a result of the election on 5 May, 90 Members of the Legislative Assembly were elected, forming a new Assembly. The Northern Ireland Act 1998 requires that the Assembly first meets within 8 days of a poll, and that meeting commences the period for filling Ministerial offices.
- 4 The Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022 implemented changes agreed within New Decade, New Approach (NDNA), the agreement that restored the devolved institutions in 2020. These changes include provision for a longer period of time in which to form an Executive, and allowed for an initial period of 6 weeks from the date that the Assembly first meets, followed by 3 successive periods of 6 weeks (i.e. 24 weeks in total), unless the Assembly resolves (with cross-community support) that the period should not be further extended. During this time, Northern Ireland Ministers who were in post before the election were allowed to remain so in a caretaker capacity.
- 5 The period for filling Ministerial offices after the Assembly election in May 2022 initially came to an end on 27 October 2022, with Northern Ireland Ministers ceasing to hold office on 28 October 2022. As those offices were not filled, the Secretary of State for Northern Ireland fell under a duty to propose a date for a further Assembly election as soon as practicable to take place within 12 weeks.

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- 6 Parliament subsequently passed the Northern Ireland (Executive Formation etc) Act 2022 (NIEFA 2022), providing for powers that allow the senior officers of Northern Ireland departments to exercise the functions of those departments when in the public interest, notwithstanding the ongoing lack of Northern Ireland Ministers. NIEFA 2022 also retrospectively extended the period for Executive formation from when it ended on 27 October until 8 December 2022, and for the powers to be extended until 19 January 2023 by regulations. The Secretary of State exercised that power on 7 December, thereby extending the period for Executive formation until 19 January 2023. The period was further extended until 18 January 2024 by the Northern Ireland (Executive Formation and Organ and Tissue Donation) Act 2023.
- 7 To date, the UK Government has made limited interventions to ensure financial stability and respond to the governance situation in Northern Ireland including NIEFA 2022, legislating to set the level of regional rates for 2022-23, giving indicative budget allocations and providing a full Northern Ireland Budget for 2022-23, and enabling a reduction in pay for Members of the Northern Ireland Assembly. These have largely been direct legislative interventions, rather than transferring to UK Ministers powers normally exercised by Northern Ireland Ministers, with the exception of the power to issue guidance and to make specified public appointments under NIEFA 2022.
- 8 In the context of ongoing political instability in Northern Ireland, and the expiry of the senior official decision-making powers on 5 June 2023, further legislation is required to manage the governance gap in Northern Ireland.

## Decision-making

- 9 In 2018, the case of *Buick*<sup>1</sup>, which concerned the approval of planning permission for a major waste disposal incinerator by the Department for Infrastructure, the Court of Appeal upheld the High Court's judgment that powers exercisable by departments in the absence of Ministers are subject to limitations. In particular – and for the purposes of that appeal – it held that departments may not exercise functions in respect of matters that would normally be required to be referred to the Executive Committee of the Assembly because they are cross-cutting, significant or controversial. It also observed that Northern Ireland departments cannot take decisions that would normally, as a matter of convention or otherwise, go before a Northern Ireland Minister for approval.
- 10 The conclusions of *Buick* were considered again in the case of *JR80*<sup>2</sup> which considered whether the Secretary of State for Northern Ireland was legally obliged to establish a scheme of redress for victims of historical institutional abuse as recommended by the independent inquiry during the then ongoing collapse of the devolved institutions. The Court of Appeal confirmed

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<sup>1</sup> [Buick's \(Colin\) Application as Chair Person of NOARC 21 \[2018\] NICA 26](#)

<sup>2</sup> [JR80's Application \[2019\] NICA 58](#)

the court's findings in *Buick* as to the limitations on decisions that can be made by Northern Ireland departments in the absence of Ministers, subject to the effect of the primary legislation passed in response to that case.

- 11 The effect of *Buick* and *JR80* meant that legislation was required to clarify that departments could continue to exercise functions in the absence of Ministers where it is in the public interest to do so. This was considered necessary so as to ensure the continued delivery of public services in Northern Ireland and to provide clarity and certainty about decision making while efforts are made to restore the Executive. NIEFA 2022 therefore clarified that a senior officer of a Northern Ireland department is not prevented from exercising functions of the department, where it is in the public interest to do so, during the period for Executive formation or 6 months from the day on which NIEFA 2022 was passed. Given these existing senior officer decision-making provisions expire on 5 June 2023, this Act therefore will provide for the continuation of these arrangements during the current period where there is no Executive and will continue to require the Secretary of State to publish guidance about the exercise of departments' functions.

## Advice, information and consultation

- 12 Northern Ireland departments operate under the direction and control of their Ministers, and in the absence of those Ministers, the Government considers it necessary to make provision for the Secretary of State to request advice and information on developing options for a sustainable approach to public finances, including revenue raising.
- 13 The Act therefore provides that the Secretary of State may direct Northern Ireland departments to provide advice and information, and to carry out consultations, 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. These powers will expire on the formation of a Northern Ireland Executive.
- 14 Consistent with the approach taken to other advice to Ministers, the Act does not provide for a direction for the provision of advice or information given to a Northern Ireland Department by the Secretary of State to be published or for public notification to be given.

## Accounts and reports

- 15 In periods where the Northern Ireland Assembly is not functioning, relevant Assembly Committees cannot conduct the normal scrutiny of accounts, reports, and other documents laid before the Assembly by Northern Ireland departments. This is despite those accounts continuing to be laid by Northern Ireland departments in accordance with their legal duties.
- 16 The Government considers that transparency and scrutiny is important to the good management of public money, and the operation of the system of accountability that governs that expenditure by public authorities. The Act would therefore require the Secretary of State to lay the accounts of Northern Ireland departments before the House of Commons in periods where there is no functioning Assembly.

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- 17 Similar provision has been made in law previously for periods in which the Northern Ireland institutions have been suspended, including under the Northern Ireland Act 2000. However, at present, there is no requirement for the House of Commons to be informed of the accounts and reports of Northern Ireland departments and for scrutiny to be conducted in accordance with the Standing Orders.
- 18 House of Commons Standing Order 148 provides for the House of Commons Public Accounts Committee to scrutinise accounts laid before Parliament as the Committee may think fit. It will be a matter for the Public Accounts Committee to consider whether they wish to do so in respect of Northern Ireland departments.
- 19 Under the terms of this provision, if the Northern Ireland Assembly is sitting, then reports and the accounts of Northern Ireland Departments will only be laid before the Assembly. If the Northern Ireland Assembly is not sitting, accounts, reports and other relevant documents may be laid in duplicate before the House of Commons and the Assembly.

## Legal background

- 20 The relevant legal background is explained in the Policy Background and Decision-making Powers sections of these Notes.

## Territorial extent and application

- 21 This Act extends to England and Wales, Scotland and Northern Ireland, but only applies in Northern Ireland.

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# Commentary on provisions of the Act

## Section 1: Exercise of functions by Northern Ireland departments

- 22 This section extends existing provisions in NIEFA 2022 which clarify the exercise of Northern Ireland departmental functions by senior officers. This provision will continue to apply during the current period where there is no Executive, until the NI Ministerial offices are next filled.
- 23 This ensures that the absence of Ministers does not prevent a senior officer of a Northern Ireland department from exercising a function of the department if she or he is satisfied that it is in the public interest to do so until an Executive is next formed. The Secretary of State remains under a requirement to publish guidance about the exercise of these departmental functions, including guidance as to the principles to be taken into account in deciding whether or not to exercise a function, and senior officers of departments are required to have regard to that guidance.

## Section 2: Power to direct departments to provide advice and information, and to carry out consultations

- 24 Section 2 confers powers on the Secretary of State to direct Northern Ireland departments to provide advice and information, and/or to carry out consultations, 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, during the current period in which there is no Executive.
- 25 A direction for advice or information under this section may include provision about the manner or form in which such advice or information is to be provided, or the timing of doing so. Where a direction is given to provide information that is not within a Northern Ireland department's possession, the provision requires the department to take reasonable steps to obtain the information for the purpose of complying with the direction.
- 26 A direction to carry out a consultation may include provision about who is to be consulted, how the consultation is to be carried out, the content of the consultation (including provision requiring the approval of the Secretary of State to whatever is consulted on), and the consultation timetable.
- 27 The power in section 2 may be exercised so as to require two or more Northern Ireland departments to provide joint advice or collate information.
- 28 Section 2 provides that a direction under this section would lapse at the end of the current period in which there is no Executive, and provides that disclosures from Northern Ireland departments under must not contravene relevant data protection legislation.

## Section 3: Exception to assembly power to call for witnesses and documents

- 29 This section disapplies the Assembly's power in s.44 of the Northern Ireland Act 1998 to require a person to provide evidence in respect of Ministers of the Crown or those in Crown employment (which includes Northern Ireland civil servants) in connection with the exercise of certain functions conferred under this Act. Specifically, the exercise of functions in connection with the giving of a direction to a Northern Ireland department to provide advice or information or launch a consultation; or the exercise of a function in accordance with any such direction.

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## Section 4: Accounts etc to be laid before House of Commons

- 30 Section 4 requires that the Secretary of State be sent a copy of any minutes, accounts, reports, or other documents that would be laid before the Assembly under the terms of relevant provisions in law, during a period in which the Assembly is not functioning. The relevant provisions are contained within the Government Resources and Accounts Act (Northern Ireland) 2001 and the Financial Provisions (Northern Ireland) Order 1993.
- 31 Section 4 also places the Secretary of State under a legal duty to lay before the House of Commons any documents received under the terms of this provision.

## Commencement

- 32 This Act will come into force on Royal Assent.

## Related documents

- 33 The following documents are relevant to the Northern Ireland (Interim Arrangements) Act:
  - [Financial Provisions \(Northern Ireland\) Order 1993](#)
  - [The Northern Ireland Act 1998](#)
  - [Government Resources and Accounts Act \(Northern Ireland\) 2001](#)
  - [The Northern Ireland \(Executive Formation etc Act\) 2022](#)
  - [The Budget Act \(Northern Ireland\) 2022](#)
  - [Northern Ireland Budget Act 2023](#)
  - [Northern Ireland \(Executive Formation and Organ and Tissue Donation\) Act 2023](#)

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## Annex A – Hansard References

34 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	27 April 2023	<a href="#">Vol. 731. Col. 987</a>
Second Reading	10 May 2023	<a href="#">Vol. 732 Col. 359</a>
Committee of the Whole House	10 May 2023	<a href="#">Vol. 732. Col. 395</a>
Third Reading	10 May 2023	<a href="#">Vol. 732. Col. 406</a>
<i>House of Lords</i>		
Introduction	11 May 2023	<a href="#">Vol. 829. Col. 1948</a>
Second Reading	18 May 2023	<a href="#">Vol. 830 Col. 380</a>
Committee of the Whole House	23 May 2023	<a href="#">Vol. 830 Col. 748</a>
Third Reading	23 May 2023	<a href="#">Vol. 830 Col. 764</a>
Royal Assent	24 May 2023	<a href="#">House of Commons Vol. 733 Col. 371</a>
		<a href="#">House of Lords Vol. 830 Col. 924</a>

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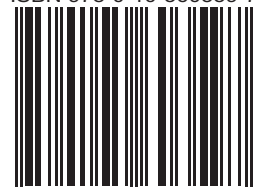
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