

# NORTHERN IRELAND (EXECUTIVE FORMATION AND ORGAN AND TISSUE DONATION) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Northern Ireland (Executive Formation and Organ and Tissue Donation) Bill as brought from the House of Commons on 22 February 2023 (HL Bill 105).

- 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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## Overview of the Bill

- 1 This Bill seeks to retrospectively extend the period for Executive formation in Northern Ireland by 52 weeks from 19 January 2023 to 18 January 2024.
- 2 The Bill also includes a power for the Secretary of State to set a date for an Assembly election before the end of the Executive formation period.
- 3 As amended in the House of Commons, the Bill also amends the procedure for making regulations defining permitted material for transplantation in Northern Ireland under section 3 of the Human Tissue Act 2004, as amended by the Organ and Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022. This would allow regulations to be made in the absence of devolved institutions regarding rules for organ donation.

## Policy background

- 4 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.
- 5 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.
- 6 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 now allows 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, NI Ministers who were in post before the election are allowed to remain so in a caretaker capacity.
- 7 The period for filling Ministerial offices after the Assembly election in May initially came to an end 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. NI Ministers in post before the election also lost office at this stage.
- 8 Parliament subsequently passed the Northern Ireland (Executive Formation etc) Act 2022 which retrospectively extended the period for Executive formation from when it ended on 27 October until 8 December 2022. It also provided a power for the Secretary of State to further extend that period until 19 January 2023 by SI. As the new deadline provided for by the Northern Ireland (Executive Formation etc) Act 2022 has now passed, without the Ministerial offices being filled, he is now under a legal duty to call a further Assembly election in Northern Ireland.
- 9 At present, as the Assembly has been unable to elect a Presiding Officer and deputies since the May 2022 election, it is unable to conduct any other business<sup>1</sup>. There is therefore no present mechanism by which any draft regulations may be approved by the Assembly.

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<sup>1</sup> See s.39 of the Northern Ireland Act 1998.

## Executive formation

- 10 Following further consultation with the Northern Ireland political parties and the wider public, the Government has assessed that an immediate election would not support the restoration of the devolved institutions. The Bill therefore seeks to further extend the period for Executive formation to 18 January 2024. The Secretary of State will still have the power to call an Assembly election before that date.

## Organ and tissue donation

- 11 As amended in the House of Commons, the Bill also amends the procedure for making regulations under section 3(9A) of the Human Tissue Act 2004, as amended by the Organ and Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022, defining “permitted material” for the purpose of transplantation in Northern Ireland. This would allow regulations to be made regarding rules for organ donation in the absence of a Presiding Officer and deputies in the Assembly.
- 12 The Government took the decision to bring forward these amendments to progress this issue in the absence of properly functioning devolved institutions.

## 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.
- 15 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

## Fast-track legislation

- 16 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards<sup>2</sup>, 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-tracked<sup>3</sup>.

### Why is fast-tracking necessary?

- 17 Following consultation with the Northern Ireland political parties and the wider public after the end of the Executive formation period under the Northern Ireland (Executive Formation etc) Act 2022, the Government has assessed that an immediate election would not support the restoration of the devolved institutions. This Bill therefore includes urgent provisions that would provide a retrospective extension to the Executive formation period by 52 weeks to 18 January 2024.

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

- 18 The provisions extend the period for Executive formation from 19 January 2023 to 18 January 2024, and therefore require urgent passage. The Secretary of State is currently under a legal

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<sup>2</sup> House of Lords’ Constitution Committee, 15th report of session 2008/09, HL paper 116-I

<sup>3</sup> House of Lords’ Constitution Committee, 15th report of session 2008/09, HL paper 116-I, para. 186

duty to propose a date for a further election as soon as practicable, which must be within 12 weeks of 20 January. Parliament is being asked to consider this Bill urgently in the context of these requirements.

- 19 The relevant changes to the Human Tissue Act 2004, as amended by the Organ and Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022, facilitate the implementation of changes previously passed by the Assembly. The Government has taken the decision that this Bill is an appropriate vehicle to ensure those changes are fully implemented.

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

- 20 The Government has sought to introduce the Bill as soon as the parliamentary timetable allowed.

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

- 21 The Secretary of State for Northern Ireland has been in frequent contact with the Northern Ireland parties, encouraging the parties to elect an Assembly Presiding Officer and form an Executive at the earliest opportunity following the May 2022 Assembly election, and following the passing of the Northern Ireland (Executive Formation etc) Act 2022. The Secretary of State has also engaged with the Opposition on his intended approach.

### 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?

- 22 The extended period for Executive formation provided for by this Bill is not renewable.
- 23 The amended procedure for the relevant regulations under the Human Tissue Act 2004, as amended by the Organ and Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022, allows for the regulations to be taken forward in the absence of a Presiding Officer and deputies in the Northern Ireland Assembly. When a new Presiding Officer and deputies are elected, the procedure applicable to regulations under section 3(9A) of the Human Tissue Act 2004 will revert to its current state.

### Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?

- 24 The Government does not believe that mechanisms for post-legislative scrutiny and review are necessary. The Bill provides for a defined extension to the Executive formation period, thereby delaying an election that we judge to be unwelcome at this time. It is tightly drafted and is in no way extendable without further primary legislation. More broadly, the Secretary of State for Northern Ireland is held accountable for the Government's approach to governance in Northern Ireland through the usual mechanisms, for instance parliamentary questions, committee appearances and correspondence.

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

- 25 Under the Northern Ireland Act 1998, as amended by the Northern Ireland (Executive Formation etc) Act 2022, the period for forming an Executive ended after 19 January 2023. As such, new legislation is necessary to extend the Executive formation period.
- 26 The Government had hoped that the Northern Ireland Executive and Northern Ireland Assembly would take forward the relevant regulations on organ and tissue donation. The

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Government needs to legislate to change the procedure in the Assembly so that the regulations can be taken forward.

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

- 27 Due to the need to implement the Bill urgently, the Northern Ireland Affairs Committee has not scrutinised the Bill in draft. However, the Secretary of State has written to the Chair of the Committee offering a briefing after introduction.

## Commentary on provisions of Bill

### Clause 1: Executive formation

- 28 By making amendments to section 1 of the Northern Ireland (Executive Formation etc) Act 2022, these clauses amend the effect of section 16A of the Northern Ireland Act 1998 during the period following the 5 May 2022 elections. The legislation will extend the period for filling Ministerial offices which follows from the elections that took place on 5 May 2022 for a further 52 week period to apply retrospectively (so that it applies from 19 January 2023 until 18 January 2024). The legislation will also provide a discretionary power for the Secretary of State to propose a date for a poll at any time within the extended period for Executive formation.

### Clause 2: Organ and tissue donation

- 29 As amended in the House of Commons, clause 2 temporarily amends the procedure for making regulations under section 3(9A) of the Human Tissue Act 2004, as amended by the Organ and Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022, defining “permitted material” for the purpose of transplantation in Northern Ireland. This would allow regulations to be made regarding rules for organ donation in the absence of a Presiding Officer and deputies in the Northern Ireland Assembly.

## Commencement

- 30 The Bill will come into force on the day on which this Act is passed.

## Financial implications of the Bill

- 31 The Bill will not generate additional expenditure.

## Parliamentary approval for financial costs or for charges imposed

- 32 The Bill does not entail any financial costs or charges, so neither a Money Resolution nor a Ways and Means Resolution were necessary in the House of Commons.



## Compatibility with the European Convention on Human Rights

- 33 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).
- 34 The Parliamentary Under-Secretary of State, Lord Caine, has made the following statement:  
“In my view, the provisions of the Northern Ireland (Executive Formation and Organ and Human Tissue Donation) Bill are compatible with Convention rights.”
- 35 The provisions of the Organ and Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022, and this Bill insofar as it provides for the implementation of that Act, are considered compatible with the ECHR and any interference would be justified as a proportionate means of achieving a legitimate aim.
- 36 The Northern Ireland Office does not consider that the clauses on Executive formation engage the convention rights.

## Environmental law for the purposes of the Environment Act 2021

- 37 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.

## Local elections

- 38 Separately, the Government has brought forward the Local Elections (Northern Ireland) Order 2023, the effect of which will be to push back local elections from 4 May 2023 to 18 May 2023. This is to avoid a clash with His Majesty’s Coronation.

## Related documents

- 39 The following documents are relevant to the Northern Ireland (Executive Formation and Organ and Tissue Donation) Bill:

- [The New Decade, New Approach Deal](#)
- [The Northern Ireland Act 1998](#)
- [The Northern Ireland \(Executive Formation etc\) Act 2022](#)

## 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	Extends to E & W, but does not apply	Extends to E & W, but does not apply	No	Extends to Scotland but does not apply	No	Yes	No
Clause 2	No	No	No	No	No	Yes	Yes
Clause 3	Extends to E & W, but does not apply	Extends to E & W, but does not apply	No	Extends to Scotland but does not apply	No	Yes	No



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Ordered by the House of Lords to be printed, 22 February 2023

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