



Northern Ireland (Executive Formation etc) Act 2019

CHAPTER 22

Explanatory Notes have been produced to assist in the understanding of this Act and are available separately



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CHAPTER 22

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Northern Ireland (Executive Formation etc) Act 2019

2019 CHAPTER 22

An Act to extend the period for forming an Executive under section 1(1) of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 and to impose a duty on the Secretary of State to report on progress towards the formation of an Executive in Northern Ireland and other matters; to impose duties to make regulations changing the law of Northern Ireland on certain matters, subject to the formation of an Executive; and for connected purposes. [24th July 2019]

BE 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 Extension of period for forming an Executive

In section 1(1) of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018, for “25 August 2019” substitute “21 October 2019”.

2 Limited power to further extend period for forming an Executive

For section 2 of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 substitute—

“2 Limited power to further extend period for Executive formation

- (1) The Secretary of State may by regulations amend section 1(1) so as to replace “21 October 2019” with “13 January 2020”.

- (2) The power under subsection (1) may only be used on or before 21 October 2019.
- (3) Regulations under subsection (1) are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under subsection (1) must be laid before Parliament after being made.
- (5) If the instrument is not approved by a resolution of each House of Parliament within the period of 28 days beginning with the day on which it is made, the regulations cease to have effect.
- (6) If the regulations cease to have effect in accordance with subsection (5) on or before 21 October 2019, the period mentioned in section 1(1) is to be treated for all purposes as ending with that date.
- (7) If the regulations cease to have effect in accordance with subsection (5) after 21 October 2019, the period mentioned in section 1(1) is to be treated for all purposes as ending when the regulations cease to have effect.
- (8) In calculating the period of 28 days mentioned in subsection (5), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.”

Reports

3 Reports on progress towards forming an Executive and other matters

- (1) The Secretary of State must, on or before 4 September 2019, publish a report explaining what progress has been made towards the formation of an Executive in Northern Ireland (unless an Executive has already been formed).
- (2) The Secretary of State must make arrangements for—
 - (a) a copy of each report published under subsection (1) to be laid before each House of Parliament by the end of the day on which it is published,
 - (b) a motion in neutral terms, to the effect that the House of Commons has considered the report, to be moved in the House of Commons by a Minister of the Crown, and
 - (c) a motion for the House of Lords to take note of the report to be tabled in the House of Lords and moved by a Minister of the Crown.
- (3) The motions required under subsections (2)(b) and (c) must be moved in the relevant House by a Minister of the Crown within the period of five calendar days beginning with the end of the day on which the report is laid before Parliament.
- (4) If, as a result of Parliament standing prorogued or adjourned, a Minister of the Crown cannot comply with the obligations in subsection (2) or (3), a proclamation under the Meeting of Parliament Act 1797 shall require Parliament to meet on a specified day within the period within which compliance with subsection (3) is required and to meet on the five following days (other than Saturdays, Sundays or a day which is a bank holiday in the United Kingdom or in any part of the United Kingdom) to allow for

- compliance with subsection (3).
- (5) The Secretary of State shall make a further report under subsection (1) on or before 9 October 2019 and at least every fourteen calendar days thereafter until either an Executive is formed or until 18 December 2019, whichever is the sooner.
 - (6) The report under subsection (1) must include a report on progress made towards preparing legislation to provide for transparency of political donations and loans from 1 January 2014.
 - (7) The report under subsection (1) must include a report on the improvement of higher education provision in Northern Ireland and the establishment of a university whose principal campus is in Derry/Londonderry.
 - (8) The report under subsection (1) must include a report on progress made towards protecting veterans of the Armed Forces and other security personnel from repeated investigation for Troubles-related incidents by introducing a presumption of non-prosecution, in the absence of compelling new evidence, whether in the form of a Qualified Statute of Limitations or by some other legal mechanism.
 - (9) The report under subsection (1) must include a report on progress made towards developing new prosecution guidance for legacy cases of Troubles-related incidents by the Attorney General for Northern Ireland to take into account whether or not the person who allegedly committed an offence had the means to do so because that person had been lawfully supplied with a deadly weapon, with a presumption in favour of prosecuting in cases where a person who has allegedly committed an offence had the means to do so because that person had been unlawfully supplied with a deadly weapon.
 - (10) The report under subsection (1) must include a review of the current legal framework on abortion in Northern Ireland with an analysis of how that framework could be amended by Parliament during the period when there is no Executive, subject to a sunset clause to respect devolution, in order to comply with the human rights obligations of the United Kingdom.
 - (11) The report under subsection (1) must include a report to be published on or before 4 September 2019 on progress made in Northern Ireland on—
 - (a) the law on gaming machines,
 - (b) the law on online gambling,
 - (c) the number of people who are seeking treatment for problem gambling,
 - (d) the services available to people seeking problem gambling,
 - (e) the level of support from the gambling industry for problem gambling, and
 - (f) delivering regulatory alignment between Northern Ireland and the rest of the United Kingdom in regard to gambling.
 - (12) The report under subsection (1) must include a report to be published on or before 4 September 2019 on progress on the use of discretionary powers to provide assistance and support under section 18(9) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. The report must cover—
 - (a) how many times the Department has decided it is necessary to provide assistance and support for victims of human trafficking for whom there has been a conclusive determination that the person is a victim of trafficking in human beings,

- (b) the reasons the Department has decided it is necessary to provide assistance and support for victims of human trafficking for whom there has been a conclusive determination that the person is a victim of trafficking in human beings, and
 - (c) the immigration status of those victims of human trafficking for whom there has been a conclusive determination that the person is a victim of trafficking in human beings who are receiving assistance and support beyond the relevant period.
- (13) Before making a report under subsection (1), the Secretary of State must publish a report on or before 4 September 2019 on progress made towards preparing legislation implementing a pension for seriously injured victims and survivors of Troubles-related incidents.
 - (14) Before making a report under subsection (1), the Secretary of State must publish a report on or before 4 September 2019 on progress made towards implementing the recommendations made by the Report of the Inquiry into Historical Institutional Abuse in Northern Ireland between 1922 and 1995, including the establishment of a publicly funded compensation scheme under an HIA Redress Board, distinct from the Northern Ireland Criminal Injuries Compensation Scheme 2009.
 - (15) Before making a report under subsection (1), the Secretary of State must publish a report on or before 4 September 2019 on progress made towards preparing legislation confirming the application of the Armed Forces Covenant in the provision of public services in Northern Ireland.
 - (16) Before making a report under subsection (1), the Secretary of State must publish a report on or before 4 September 2019 on whether the definition of “victim” in Article 3 of the Victims and Survivors (Northern Ireland) Order 2006 (S.I. 2006/2953 (N.I. 17)) should be revised to apply only to a person who is injured or affected wholly through the actions of another person.
 - (17) The Secretary of State must, on or before 21 October 2019, publish a report on progress on the establishment of a Renewable Heat Incentive Hardship Unit in the Department for the Economy (unless an Executive has already been formed).
 - (18) The Secretary of State must, on or before 21 October 2019, publish a report on progress on libel legislation in Northern Ireland and any plans to align Northern Irish legislation with libel legislation in the rest of the United Kingdom (unless an Executive has already been formed).
 - (19) The Secretary of State must, on or before 21 October 2019, publish a report on progress of the implementation of the Protect Life 2 – Strategy for Suicide Prevention in Northern Ireland (unless an Executive has already been formed).
 - (20) The Secretary of State must, on or before 21 October 2019, publish a report on an assessment of how much demand there is for elective care services and how this is exceeding health service capacity for both new and existing patients across Northern Ireland, and detailing each of the current measures being taken to reduce health and social care waiting times, as well as those that are planned, and the impact of NHS waiting times on children (unless an Executive has already been formed).
 - (21) The Secretary of State must, on or before 1 December 2019, publish a report on the future welfare mitigation support measures that will be in place after March 2020 (unless an Executive is formed on or before 1 December 2019).

- (22) For the purposes of this section an Executive is formed once the offices of the First Minister, deputy First Minister and the Northern Ireland Ministers are all filled.

Debates

4 Law on gambling and support for those experiencing problem gambling

- (1) A Minister of the Crown must, within the period of two sitting days beginning with the first sitting day on or after the day on which the report on gambling in Northern Ireland mentioned in section 3 is published, make arrangements for—
- (a) a motion to the effect that the House of Commons has approved that report to be moved in that House by a Minister of the Crown within the period of seven Commons sitting days beginning with the day on which the relevant report mentioned in section 3 is published, and
 - (b) a motion for the House of Lords to take note of the report mentioned in paragraph (a) to be moved in that House by a Minister of the Crown within the period of seven Lords sitting days beginning with the day on which the relevant report mentioned in section 3 is published.
- (2) In this section—
- “Commons sitting day” means a day on which the House of Commons is sitting (and a day is only a day on which the House of Commons is sitting if the House begins to sit on that day);
 - “Lords sitting day” means a day on which the House of Lords is sitting (and a day is only a day on which the House of Lords is sitting if the House begins to sit on that day).

5 Assistance and support for victims of human trafficking

- (1) A Minister of the Crown must, within the period of two sitting days beginning with the first sitting day on or after the day on which the report on assistance and support for victims of human trafficking in Northern Ireland mentioned in section 3 is published, make arrangements for—
- (a) a motion to the effect that the House of Commons has approved that report to be moved in that House by a Minister of the Crown within the period of seven Commons sitting days beginning with the day on which the relevant report mentioned in section 3 is published, and
 - (b) a motion for the House of Lords to take note of the report mentioned in paragraph (a) to be moved in that House by a Minister of the Crown within the period of seven Lords sitting days beginning with the day on which the relevant report mentioned in section 3 is published.
- (2) In this section—
- “Commons sitting day” means a day on which the House of Commons is sitting (and a day is only a day on which the House of Commons is sitting if the House begins to sit on that day);
 - “Lords sitting day” means a day on which the House of Lords is sitting (and a day is only a day on which the House of Lords is sitting if the House begins to sit on that day).

6 Pension for victims and survivors of Troubles-related incidents

- (1) A Minister of the Crown must, within the period of two sitting days beginning with the first sitting day on or after the day on which the report on progress made towards preparing legislation to implement a pension for seriously injured victims and survivors of Troubles-related incidents mentioned in section 3 is published, make arrangements for –
 - (a) a motion to the effect that the House of Commons has approved that report to be moved in that House by a Minister of the Crown within the period of seven Commons sitting days beginning with the day on which the relevant report mentioned in section 3 is published, and
 - (b) a motion for the House of Lords to take note of the report mentioned in paragraph (a) to be moved in that House by a Minister of the Crown within the period of seven Lords sitting days beginning with the day on which the relevant report mentioned in section 3 is published.
- (2) In this section –
 - “Commons sitting day” means a day on which the House of Commons is sitting (and a day is only a day on which the House of Commons is sitting if the House begins to sit on that day);
 - “Lords sitting day” means a day on which the House of Lords is sitting (and a day is only a day on which the House of Lords is sitting if the House begins to sit on that day).

7 Historical institutional abuse

- (1) A Minister of the Crown must, within the period of two sitting days beginning with the first sitting day on or after the day on which the report on progress made towards implementing the recommendations made by the Report of the Inquiry into Historical Institutional Abuse in Northern Ireland between 1922 and 1995 is published, make arrangements for –
 - (a) a motion to the effect that the House of Commons has approved that report to be moved in that House by a Minister of the Crown within the period of seven Commons sitting days beginning with the day on which the relevant report mentioned in section 3 is published, and
 - (b) a motion for the House of Lords to take note of the report mentioned in paragraph (a) to be moved in that House by a Minister of the Crown within the period of seven Lords sitting days beginning with the day on which the relevant report mentioned in section 3 is published.
- (2) In this section –
 - “Commons sitting day” means a day on which the House of Commons is sitting (and a day is only a day on which the House of Commons is sitting if the House begins to sit on that day);
 - “Lords sitting day” means a day on which the House of Lords is sitting (and a day is only a day on which the House of Lords is sitting if the House begins to sit on that day).

Duties to make regulations

8 Same sex marriage and opposite sex civil partnership

- (1) The Secretary of State must, by regulations, make provision so that –

- (a) two persons who are of the same sex are eligible to marry in Northern Ireland, and
 - (b) two persons who are not of the same sex are eligible to form a civil partnership in Northern Ireland,provided that, apart from the question of sex, they would be eligible to marry or form a civil partnership (as the case may be).
- (2) Regulations under subsection (1) must be made so as to come into force on or before 13 January 2020 (but this does not in any way limit the re-exercise of the power).
- (3) The Secretary of State may, by regulations, make any other provision that appears to the Secretary of State to be appropriate in view of—
 - (a) the extension of eligibility to marry in Northern Ireland to persons of the same sex, and
 - (b) the extension of eligibility to form civil partnerships in Northern Ireland to persons who are not of the same sex.
- (4) Regulations under subsection (3) may, in particular, make provision about—
 - (a) parenthood and parental responsibility of parties to a marriage or civil partnership;
 - (b) the application by a party to a marriage or civil partnership for a gender recognition certificate under the Gender Recognition Act 2004, or the issuing of such a certificate, and the consequences of that application or issuing for the marriage or civil partnership;
 - (c) the financial consequences of marriage or civil partnership (for example, in relation to pensions or social security);
 - (d) the treatment under the law of Northern Ireland of marriages, civil partnerships or relationships similar to civil partnerships formed outside of Northern Ireland.
- (5) The Secretary of State may, by regulations, make provision for and in connection with a right to—
 - (a) convert a marriage into a civil partnership;
 - (b) convert a civil partnership into a marriage.Such regulations may, in particular, make provision equivalent or similar to that contained in or authorised by section 9 of the Marriage (Same Sex Couples) Act 2013.
- (6) The Secretary of State may, by regulations, make any provision that the Secretary of State considers appropriate in order to protect the ability to act in accordance with religious or other belief or opinion in relation to marriage or civil partnership (including the conversion of marriage into civil partnership and vice versa).
- (7) Regulations under this section—
 - (a) may make provision for fees to be payable;
 - (b) may make provision conferring a discretion on a person;
 - (c) may make provision enabling a person to make regulations (and such regulations may make provision for fees to be payable);
 - (d) may include provision amending, repealing or revoking any provision made by an Act of Parliament or Northern Ireland legislation;

- (e) may, in so far as made in reliance on section 11(2), include provision amending or repealing provision made by an Act or Measure of the National Assembly for Wales or an Act of the Scottish Parliament.
- (8) In this section –
- (a) references to marriage in Northern Ireland (however expressed) include references to marriage outside of the United Kingdom by virtue of eligibility to marry in Northern Ireland (in accordance with Part 1 or Part 3 of Schedule 6 to the Marriage (Same Sex Couples) Act 2013);
 - (b) references to forming a civil partnership in Northern Ireland include references to registering as civil partners outside the United Kingdom by virtue of eligibility to do so in Northern Ireland (in accordance with section 210(2)(b) or 211(2)(b) of the Civil Partnership Act 2004).

9 Abortion etc: implementation of CEDAW recommendations

- (1) The Secretary of State must ensure that the recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of Northern Ireland.
- (2) Sections 58 and 59 of the Offences Against the Person Act 1861 (attempts to procure abortion) are repealed under the law of Northern Ireland.
- (3) No investigation may be carried out, and no criminal proceedings may be brought or continued, in respect of an offence under those sections under the law of Northern Ireland (whenever committed).
- (4) The Secretary of State must by regulations make whatever other changes to the law of Northern Ireland appear to the Secretary of State to be necessary or appropriate for the purpose of complying with subsection (1).
- (5) Regulations under subsection (4) must, in particular, make provision for the purposes of regulating abortions in Northern Ireland, including provision as to the circumstances in which an abortion may take place.
- (6) Regulations under subsection (4) must be made so as to come into force by 31 March 2020 (but this does not in any way limit the re-exercise of the power).
- (7) The Secretary of State must carry out the duties imposed by this section expeditiously, recognising the importance of doing so for protecting the human rights of women in Northern Ireland.
- (8) The Secretary of State may by regulations make any provision that appears to the Secretary of State to be appropriate in view of subsection (2) or (3).
- (9) Regulations under this section may make any provision that could be made by an Act of the Northern Ireland Assembly.
- (10) In this section “the CEDAW report” means the Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/OP.8/GBR/1) published on 6 March 2018.

10 Victims’ payments

- (1) The Secretary of State must by regulations establish a scheme under the law of Northern Ireland which provides for one or more payments to be made to, or

- in respect of, a person who has sustained an injury as a result of a Troubles-related incident.
- (2) The first regulations under subsection (1) must be made before the end of January 2020 and come into force before the end of May 2020.
 - (3) Regulations under subsection (1) must make provision as to the eligibility criteria for payments under the scheme which may, in particular, relate to—
 - (a) the nature or extent of a person's injury;
 - (b) how, when or where the injury was sustained;
 - (c) residence or nationality;
 - (d) whether or not a person has been convicted of an offence.
 - (4) Regulations under subsection (1) may make provision for the reimbursement of costs incurred by a person in connection with an application under the scheme (whether or not the application is successful).
 - (5) Regulations under subsection (1) may, in particular, make provision—
 - (a) for determining the amount of any payment;
 - (b) for payments to be made in respect of past periods (including periods before this Act was passed);
 - (c) for payments to be reduced or repaid (in whole or in part) in specified circumstances;
 - (d) about the treatment under other legislation (for example social security legislation) of payments under the scheme.
 - (6) Regulations under subsection (1) must make provision of the kind mentioned in subsection (5)(b) so as to ensure that where—
 - (a) a person is eligible under the scheme as the result of an injury sustained by that person before the scheme comes into force, and
 - (b) the person makes an application within a period specified in the regulations (which must not be less than the period of two years beginning with the day on which the scheme comes into force),the person is entitled to a payment to reflect the amount that the person would have received had the scheme been in force since the making of the Stormont House Agreement.
 - (7) Regulations under subsection (1) may, in particular, make provision about—
 - (a) the administration of the scheme (including provision establishing a body or conferring functions on an existing body);
 - (b) the funding of the scheme by money from the Consolidated Fund of Northern Ireland (whether by virtue of grant funding from a Northern Ireland department, the appropriation of money by an Act of the Northern Ireland Assembly or otherwise);
 - (c) the sharing of information between public authorities for the purposes of the scheme;
 - (d) evidential matters;
 - (e) the procedure for the making and deciding of applications (including provision imposing time limits);
 - (f) appeals and reviews;
 - (g) information, advice or assistance in relation to the scheme or payments under it.

- (8) Regulations under subsection (1) may make provision conferring a discretion on a person.
- (9) Regulations under subsection (1) –
 - (a) may include provision amending, repealing or revoking any provision made by an Act of Parliament or Northern Ireland legislation, and
 - (b) in so far as made in reliance on section 11(2), may also include provision amending or repealing provision made by an Act or Measure of the National Assembly for Wales or an Act of the Scottish Parliament.
- (10) In making the first regulations under this section the Secretary of State must have regard to any advice given by the Commission for Victims and Survivors for Northern Ireland.
- (11) In this section –
 - “injury” means any illness or injury (whether physical or mental);
 - “the Stormont House Agreement” means the agreement made between parties represented in the Northern Ireland Assembly, the Government of the United Kingdom and the Government of Ireland on 23 December 2014;
 - “Troubles-related incident” means an incident involving an act of violence or force carried out in Ireland, the United Kingdom or anywhere in Europe for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there.

11 Regulations: supplementary

- (1) A power to make regulations under section 8, 9 or 10 may be used to make different provision for different purposes.
- (2) Regulations under section 8, 9 or 10 may make incidental, supplementary, consequential, transitional or saving provision.

12 Regulations: procedure

- (1) Regulations under section 8, 9 or 10 are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under section 8 or 10 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A statutory instrument containing regulations under section 9 must be laid before Parliament after being made.
- (4) Regulations contained in an instrument laid under subsection (3) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (5) In calculating the period of 28 days mentioned in subsection (4), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (6) If regulations cease to have effect as a result subsection (4), that does not affect –
 - (a) anything previously done under them, or
 - (b) the making of new regulations.

General

13 Extent, commencement and short title

- (1) Except as mentioned in subsection (2), this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) Section 9 extends to Northern Ireland only.
- (3) Except as mentioned in subsection (4), this Act comes into force on the day on which it is passed.
- (4) Sections 8 to 12 come into force on 22 October 2019, unless an Executive in Northern Ireland is formed on or before 21 October 2019 (in which case they do not come into force at all).
- (5) For the purposes of this section an Executive is formed once the offices of the First Minister, deputy First Minister and the Northern Ireland Ministers are all filled.
- (6) This Act may be cited as the Northern Ireland (Executive Formation etc) Act 2019.