



# Northern Ireland (Executive Formation and Exercise of Functions) Act 2018

## 2018 CHAPTER 28

An Act to facilitate the formation of an Executive in Northern Ireland by extending the time for making Ministerial appointments following the election of the Northern Ireland Assembly on 2 March 2017; and to make provision about the exercise of governmental functions in, or in relation to, Northern Ireland in the absence of Northern Ireland Ministers. [1st November 2018]

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 Executive formation**

- (1) For the purposes of filling the Ministerial offices on the first occasion following the election of the Northern Ireland Assembly at the poll on 2 March 2017, the Northern Ireland Act 1998 has effect as if in section 16A(3) for the words before paragraph (a) there were substituted “Within the period beginning with the first meeting of the Assembly and ending with 26 March 2019”.
- (2) Subsection <sup>(1)</sup> is to be treated as having had effect at all times on and after 2 March 2017.
- (3) Section 32 of the Northern Ireland Act 1998 has effect as if, during the period for forming an Executive, for subsection (3) there were substituted—
  - “(3) The Secretary of State may propose a date for the poll for the election of the next Northern Ireland Assembly that is earlier than the date determined in accordance with section 31.”

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- (4) In the Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017, omit section 1.
- (5) In this section—
- “the Ministerial offices” means the offices of the First Minister, deputy First Minister and the Northern Ireland Ministers;
- “the period for forming an Executive” means the period beginning when this Act is passed and ending—
- (a) when all of the Ministerial offices are next filled,
  - (b) when the period mentioned in section 16A(3) of the Northern Ireland Act 1998, as modified by subsection (1), ends, or
  - (c) when the Assembly elected on 2 March 2017 is dissolved, whichever happens first.

## 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 “26 March 2019” with any later date falling within the period of five months beginning with 26 March 2019.
- (2) The power under subsection (1) —
- (a) may only be used on or before 26 March 2019, and
  - (b) may only be used once.
- (3) Regulations under subsection (1) are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under subsection (1) may not be made unless—
- (a) a draft of the instrument has been laid before and approved by a resolution of each House of Parliament, or
  - (b) the regulations declare that the Secretary of State considers it to be expedient for the regulations to be made without the approval mentioned in paragraph (a).
- (5) Where regulations contain a declaration under subsection (4)(b) —
- (a) the instrument containing the regulations must be laid before Parliament after being made, and
  - (b) if the replacement date substituted by the regulations is after the end of the period of 28-days beginning with the day on which the instrument is made and the instrument is not approved by a resolution of each House of Parliament within that 28-day period, the regulations cease to have effect.

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- (6) If the regulations cease to have effect in accordance with subsection (5)(b) on or before 26 March 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)(b) after 26 March 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)(b), 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.

*Exercise of departmental functions during period for Executive formation*

**3 Exercise of departmental functions during period for Executive formation**

- (1) The absence of Northern Ireland Ministers does not prevent a senior officer of a Northern Ireland department from exercising a function of the department during the period for forming an Executive if the officer is satisfied that it is in the public interest to exercise the function during that period.
- (2) The Secretary of State must publish guidance about the exercise of functions in reliance on subsection (1), including guidance as to the principles to be taken into account in deciding whether or not to exercise a function.
- (3) Senior officers of Northern Ireland departments must have regard to that guidance.
- (4) The absence of Northern Ireland Ministers is not to be treated as having prevented any senior officer of a Northern Ireland department from exercising functions of the department during the period beginning with 2 March 2017 and ending when this Act is passed.
- (5) The fact that a matter connected with the exercise of a function by a Northern Ireland department has not been discussed and agreed by the Executive Committee of the Northern Ireland Assembly is not to be treated as having prevented the exercise of that function as mentioned in subsection (1) or (4).
- (6) Subsections (4) and (5) do not apply in relation to the exercise of a function before this Act is passed if—
  - (a) proceedings begun, but not finally decided, before this Act is passed involve a challenge to the validity of that exercise of the function, and
  - (b) the application of those subsections would affect the outcome of the proceedings,

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but nothing in this subsection prevents the re-exercise of the function in the same way in reliance on subsection

(1)

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(7) Subsections

(1)

to

(6)

have effect despite anything in the Northern Ireland Act 1998, the Departments (Northern Ireland) Order 1999 (

[S.I. 1999/283 \(N.I. 1\)](#)

) or any other enactment or rule of law that would prevent a senior officer of a Northern Ireland department from exercising departmental functions in the absence of Northern Ireland Ministers.

(8) No inference is to be drawn from subsections

(1)

to

(7)

as to whether or not a senior officer of a Northern Ireland department would otherwise have been prevented from exercising departmental functions.

(9) Before publishing guidance under subsection

(2)

the Secretary of State must have regard to any representations made by members of the Northern Ireland Assembly.

(10) In this section—

“enactment” includes any provision of, or of any instrument made under, Northern Ireland legislation (within the meaning given by section 98 of the Northern Ireland Act 1998);

“Northern Ireland Minister” includes the First Minister and the deputy First Minister;

“the period for forming an Executive” has the meaning given by section 1

(5)

;

“senior officer of a Northern Ireland department” has the same meaning as in the Departments (Northern Ireland) Order 1999 (see Article 2(3) of that Order).

## 4 Equal rights for people of Northern Ireland

(1) In the absence of Northern Ireland Ministers to address the matters identified by recent, current and future court proceedings in relation to the human rights of the people of Northern Ireland, the Secretary of State must issue guidance to senior officers of all Northern Ireland departments which will specify how to exercise their functions in relation to—

- (a) the incompatibility of the human rights of the people of Northern Ireland with the continued enforcement of sections 58 and 59 of the Offences against the Person Act 1861 with the Human Rights Act 1998, and

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- (b) the incompatibility of the human rights of the people of Northern Ireland with the continued enforcement of section 13(e) of the Matrimonial Causes (Northern Ireland) Order 1978,  
where they pertain to the provision and management of public services in Northern Ireland.
- (2) The Secretary of State shall report guidance under this section on a quarterly basis to the House of Commons and set out her plans to address the impact of the absence of Northern Ireland Ministers on human rights obligations within three months of the day on which this Act is passed.

*Exercise of appointment functions during period while no Executive*

**5 NI Ministerial appointment functions: specified offices**

- (1) During the period while there is no Executive, an appointment function of a Northern Ireland Minister in relation to a specified office may be exercised by the relevant Minister of the Crown.
- (2) The table defines terms for the purposes of this section.

<i>“specified office”</i>	<i>“relevant Minister of the Crown”</i>
Member of the Northern Ireland Judicial Appointments Commission	Lord Chancellor
Member of the Northern Ireland Policing Board	Secretary of State
Member of the Police Service of Northern Ireland above the rank of chief superintendent	Secretary of State
Member, chair or deputy chair of the Probation Board for Northern Ireland	Secretary of State
Police Ombudsman for Northern Ireland	Secretary of State

- (3) The Secretary of State may by regulations made by statutory instrument add entries to the table.
- (4) A statutory instrument containing regulations under subsection (3) may not be made unless—
- (a) a draft of the instrument has been laid before and approved by a resolution of each House of Parliament, or
- (b) the regulations declare that the Secretary of State considers it to be expedient for the regulations to be made without the approval mentioned in paragraph (a).
- (5) Where regulations contain a declaration under subsection (4)(b)—
- (a) the instrument containing the regulations must be laid before Parliament after being made, and
- (b) if the instrument is not approved by a resolution of each House of Parliament before the end of the period of 28 days beginning with the day on which the instrument is made, the regulations cease to have effect (with the result

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that any entries that the regulations added to the table in subsection (2) are omitted).

- (6) Subsection (5)(b)—
- (a) does not affect the validity of anything done as a result of the regulations before they ceased to have effect;
  - (b) does not prevent the re-exercise of the regulation-making power under subsection (3) in the same way.
- (7) In calculating the period of 28 days mentioned in subsection (5)(b), 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.
- (8) Before exercising an appointment function in reliance on subsection (1) the relevant Minister of the Crown must consult a relevant Northern Ireland department.
- (9) Any enactment or document is to have effect, so far as may be necessary for or in consequence of the exercise of any functions by the relevant Minister of the Crown in reliance on this section, as if references to a Northern Ireland Minister included, or were, references to the relevant Minister of the Crown.

## **6 Minister of the Crown appointment functions**

Any requirement for a Minister of the Crown to consult, or obtain the approval of, a Northern Ireland Minister or the Executive Committee of the Northern Ireland Assembly before exercising an appointment function has effect, during the period while there is no Executive, as a requirement to consult a relevant Northern Ireland department.

## **7 Joint UK appointment functions etc**

- (1) During the period while there is no Executive, the Secretary of State may exercise any appointment function of a Northern Ireland Minister that is exercisable jointly with one or more other persons who include the Secretary of State.
- (2) Before exercising an appointment function in reliance on subsection (1) the Secretary of State must consult a relevant Northern Ireland department.
- (3) Any enactment or document is to have effect, so far as may be necessary for or in consequence of the exercise of any functions by the Secretary of State in reliance on this section, as if references to a Northern Ireland Minister included, or were, references to the Secretary of State.

## **8 Interpretation of sections 5 to 7**

- (1) In sections 5 to 7—
- “appointment function” means—
- (a) the function of appointing a person to an office or recommending a person for appointment;
  - (b) the function of requesting nominations for an appointment;

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- (c) the function of determining terms of appointment;
  - (d) the function of determining remuneration, pensions or other payments in respect of appointments or loss of office or suspension from office;
  - (e) the function of suspending or removing a person from office or receiving notice of a person's resignation from office or calling on a person to resign or retire;
  - (f) the function of approving or being consulted about the exercise of any of the functions listed in paragraphs (a) to (e);
  - (g) the function of requiring or requesting another person to exercise any of the functions listed in paragraphs (a) to (e);
  - (h) a function ancillary to any of the functions listed above;
- “enactment” includes any provision of, or of any instrument made under, Northern Ireland legislation (within the meaning given by section 98 of the Northern Ireland Act 1998);
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
- “Northern Ireland Minister” includes the First Minister and the deputy First Minister;
- “the period while there is no Executive” means the period—
- (a) beginning when this Act is passed, and
  - (b) ending on the next occasion when the offices of all of the Northern Ireland Ministers are filled.
- (2) A reference in those sections to the function of a person includes a function that is exercisable by that person jointly with one or more other persons.
- (3) The Secretary of State may by regulations made by statutory instrument amend the definition of “appointment function”.
- (4) A statutory instrument containing regulations under subsection (3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

### *General*

#### **9 Extent**

This Act extends to England and Wales, Scotland and Northern Ireland.

#### **10 Commencement**

This Act comes into force on the day on which it is passed.

#### **11 Short title**

This Act may be cited as the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018.