



EXPLANATORY NOTES

Northern Ireland (Executive Formation and Organ and Tissue Donation) Act 2023

Chapter 4

£6.90

NORTHERN IRELAND (EXECUTIVE FORMATION AND ORGAN AND TISSUE DONATION) ACT 2023

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland (Executive Formation and Organ and Tissue Donation) Act 2023 which received Royal Assent on 28 February 2023 (c. 4).

- 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 This Act 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 Act 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 The Act 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.

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- 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 business¹. There is therefore no present mechanism by which any draft regulations may be approved by the Assembly.

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 Act 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 The Act 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 Section 1 extends to England and Wales, Scotland and Northern Ireland, but only applies in Northern Ireland.
- 15 Section 2 extends and applies in Northern Ireland only.
- 16 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Section 1: Executive formation

- 17 By making amendments to section 1 of the Northern Ireland (Executive Formation etc) Act 2022, these sections 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

¹ See s.39 of the Northern Ireland Act 1998.

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.

Section 2: Organ and tissue donation

- 18 Section 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

- 19 The Act came into force on the day it was passed.

Local elections

- 20 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

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

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

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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?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 1	Extends to E & W, but does not apply	Extends to E & W, but does not apply	Extends to Scotland but does not apply	Yes
Section 2	No	No	No	Yes
Section 3	Extends to E & W, but does not apply	Extends to E & W, but does not apply	Extends to Scotland but does not apply	Yes

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Annex B - Hansard References

22 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	9 February 2023	Vol. 727. Col. 1057
Second Reading	22 February 2023	Vol. 728 Col. 233
Committee of the Whole House	22 February 2023	Vol. 728 Col. 273
Report	22 February 2023	Vol. 728 Col. 278
Third Reading	22 February 2023	Vol. 728 Col. 278
<i>House of Lords</i>		
Introduction	22 February 2023	Vol. 827. Col. 1667
Second Reading	27 February 2023	Vol. 828 Col. 21
Third Reading	27 February 2023	Vol. 827 Col. 76
Royal Assent	28 February 2023	House of Commons Vol 728 Col. 700
		House of Lords Vol. 828 Col. 155

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