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Speech

Secretary of State speech at the opening debate on Executive Formation & Exercise of Functions Bill

Rt Hon Karen Bradley MP today opened the debate on legislation to allow a period where an Executive can be formed at any time during which there will be no duty to call an election. This will provide an opportunity and the necessary time and space to restart political talks with the aim of restoring devolved government as soon as possible.

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From: [Northern Ireland Office](#) and [The Rt Hon Karen Bradley MP](#)

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Background

Mr Speaker, I would like to begin by inviting the House to join me in remembering those who lost their lives in the horrific Shankill Road bombing, Greysteel massacre and the series of attacks that followed. These atrocities took place 25 years ago but their effects are still felt by those who lost loved ones and by the dozens of people injured. Those who lost their lives will never be forgotten. People from across the community in Northern Ireland suffered in those dark days and we must not forget that suffering.

When the people of Northern Ireland voted, by a huge majority, in favour of the Belfast Agreement - they voted for a shared future in which no one would have to experience the suffering and loss we saw take place during the Troubles. None of us in this House should forget, or underestimate, what was lost before the Belfast Agreement, nor what has been achieved since.

Mr Speaker, this Government remains completely and unequivocally committed to the Belfast Agreement. Not just because of what it stands for, but also for what it has delivered for the people of Northern Ireland. At the heart of that agreement is a devolved power-sharing Executive Government - and restoring that Executive remains my top priority. Northern Ireland needs devolved government.

It needs all the functioning political institutions of the Belfast Agreement and its successors. The only sustainable way forward lies in stable, fully functioning and inclusive devolved government. And as Secretary of State achieving this aim is my absolute priority. The Bill before us today delivers on a number of commitments which I set out in my last statement to this House on 6 September.

It is an important step towards our goal of restoring the devolved power-sharing Executive and Assembly. It seeks to provide for a fixed period in which an Executive can be formed at any time.

It provides the time and space for this Government to continue our engagement with the political parties in Northern Ireland, and with the Irish Government where appropriate, to renew the talks process

towards the shared aim of restoring devolved government at the earliest possibility.

This Bill also provides the Northern Ireland Departments with the certainty and clarity they need to continue to deliver public services during this fixed period.

It does not give them any new powers. Rather it gives clarity on the exercise of their existing powers in the absence of Ministers, and will be underpinned by supporting guidance which provides a framework for decision making for NI departments when judging if those powers should be used in the absence of Ministers.

The Bill also enables key public appointments to be made in the absence of Northern Ireland Ministers, including reconstituting the Northern Ireland Policing Board.

Turning to the specifics of the Bill:

Executive Formation Period

First, the Bill extends the period provided for in the Northern Ireland Act 1998 for Northern Ireland Ministers to be appointed before the local elections next year. As the House is aware, because Ministers were not appointed by 29 June 2017, the 1998 Act requires a further election before an Executive can be formed. As I set out in my 6 September statement, an election at this time would neither be helpful nor, I believe, increase the prospects of restoring the Executive. The provisions of Clause 1 aim to create a period in which an Executive can be formed and talks can take place, by removing that current legal impediment to an Executive being formed for a defined period.

The Bill also contains a provision (in Clause 2) that this period may be extended once, for up to 5 months. This would remove the need for further primary legislation in the event that, for example, NI parties have made progress to a deal but a short extension is judged necessary to finalise an agreement and form an Executive.

I want to be clear to the House - I will not be waiting until March to begin efforts to bring the parties together to work towards Executive formation. Following the passage of this legislation, I intend to meet party leaders to discuss the basis, process, and timing for a further phase of talks - and will at all times continue to stress the urgent need to restore devolution.

I welcome all efforts to improve political dialogue between the parties in Northern Ireland - including those by church leaders, who I met earlier this month, following their meeting with the parties, to discuss how best to encourage meaningful political engagement towards the restoration of an Executive.

Decision making

During that same period, it will be necessary to provide the Northern Ireland Departments with certainty around their decision making powers. Clarity is needed concerning the decisions that they should or should not take.

This follows a recent Court ruling against a Northern Ireland department's decision to approve a major waste disposal and energy generation facility. This Bill clarifies that a senior officer of a Northern Ireland department is not prevented from exercising departmental functions in the absence of Ministers during the period for forming an Executive, if the officer is satisfied it is in the public interest to do so. The Bill also requires that I, as Secretary of State, publish guidance about the exercise of departmental functions that includes principles that senior officers in NI Departments must take into account when deciding whether or not to exercise a function; and senior officers of departments are required to have regard to that guidance.

I have published a draft copy of that guidance - and placed it in the Library of the House - to give the Hon and RH Members a clear sense of what the guidance would seek to do.

It is vital that members read the guidance alongside the legislative measures as the bill clarifies the legal basis for decisions, and the guidance sets out a clear framework to support NI Departments in making a judgment on whether those decisions should be made in the absence of Ministers.

The Bill stipulates that I must have regard to representations from MLAs before publishing the guidance, which would of course also be the case should there be any need to revise the guidance. I would welcome representations from MPs as well as MLAs on its content before I publish a final iteration, which I intend to do shortly after this Bill receives Royal Assent.

The NI Civil Service have a difficult task weighing up which decisions they can take in the absence of Ministers, and I would like to pay tribute to their hard work and dedication. This Bill and this proposed guidance seeks to provide a framework to inform their decision making. For example, it advises that opportunities should be taken to work towards the 12 outcomes published in the 2018-19 Outcomes Delivery Plan based on the draft Programme for Government developed in conjunction with the political parties of the previous Executive.

The guidance takes as its starting points that there are certain decisions that should not be taken in the absence of Ministers. Senior officers in Departments will be obliged to then consider whether there is a public interest in taking a decision rather than deferring it.

The guidance does not, however, direct the NI Civil Service to take decisions on the wide range of pressing decisions raised by various members of the House in amendments today. The principle established in our interventions over the past year is that we will legislate where doing so is necessary to protect the delivery of public services and uphold public confidence. These measures do not set or change policy direction on devolved issues in Northern Ireland - that is rightly for Executive and Assembly and our overriding priority is to see them up and running again. The NICS need certainty about decision making powers and we should not be seeking to direct them on issues which clearly require Ministerial decisions.

The various principles are set out in guidance rather than on the face of the Bill, as Departments need a degree of flexibility and discretion to enable them to reach appropriate and necessary decisions and ensure the continued delivery of public services in Northern Ireland. This guidance, above all else, must be operable for NI Departments if we are to provide the clarity and assurance needed to ensure that public services can continue to be delivered in the absence of Ministers. We have engaged closely with the NICS in developing this guidance, and the factual information provided by the NICS strongly informed the approach we have taken in the guidance.

This Government also recognises that, in the absence of an Executive, there will be some decisions that we should take, such as setting out departmental budget allocations for approval by Parliament to ensure that public services continue to function. As I have told the House before, we remain committed to taking those decisions which are necessary to provide good governance and political stability for Northern Ireland. These are decisions and actions that cannot be undertaken without our intervention, particularly where legislation is needed - as for the Budgets and regional rates. Where it comes to those devolved decisions conferred on Northern Ireland departments, however, the UK Government and Parliament should not be intervening directly. Therefore, while there is clearly a need to intervene to provide clarity it is more appropriate for us to set out the framework for decisions to be taken by departments when it is in the public interest to do so - and that is what this Bill would do.

Public appointments

Finally, the Bill addresses the urgent need for key appointments to be made in Northern Ireland and in the UK where those appointments require the involvement of NI Ministers.

Clauses 4-6 ensure that key posts can be filled while minimising the extent of UK Government intervention in what are - rightly - devolved matters. Clause 4 would allow the relevant UK Minister to make certain, specified appointments - exercising the appointments functions already conferred on Northern Ireland Ministers. As I set out in my written statement on 18 July, these posts are the most pressing appointments and they are essential for good governance and public confidence in Northern Ireland, including the NI Policing Board, Probation Board, the Northern Ireland Judicial Appointments Commission and Police Ombudsman for Northern Ireland.

These offices are stated on the face of the Bill to address the most urgently-needed appointments, while minimising the role of UK Ministers in these decisions that should be taken by Northern Ireland Ministers. The Bill takes this narrow approach rather than a blanket power, a long list of all possible appointments, or transferring these appointments from being ministerial responsibilities to being the responsibility of civil servants. None of those alternatives would have been appropriate.

However, it is also important that we provide for other vital offices unexpectedly becoming vacant, or if the situation arises that filling other existing vacancies becomes more urgent. For this reason, the Bill includes the provision to add to the list of offices by means of a statutory instrument, to allow the relevant UK Minister to exercise Northern Ireland Ministers' appointment functions in relation to additional specified offices. This power would only be used if the appointments were urgent and necessary, and I would consult the main Northern Ireland political parties before bringing forward regulations - as I did before bringing forward this Bill.

A large proportion of appointment functions in Northern Ireland are conferred on Northern Ireland departments. The provisions that I have already outlined dealing with departments' decision making powers would provide clarity that Northern Ireland departments are able to exercise those appointment functions conferred on them during the period for Executive formation. It would not transfer to them any appointment functions currently conferred on Northern Ireland Ministers.

The lack of an Executive has also had an impact on appointments to UK-wide bodies as a small number require Northern Ireland Ministers to be consulted or to agree an appointment by the UK Minister. The most pressing example is the appointment by the Home Secretary of a new Chair of the Disclosure and Barring Service. Similarly there are appointments made jointly by UK and Northern Ireland Ministers. The Bill deals with such appointments by allowing them to be made without Northern Ireland Ministers but retaining the Northern Ireland input by requiring the UK Minister to consult the relevant Northern Ireland department.

The changes made by these provisions represent a minimal intervention and a careful balance to ensure that these bodies and offices are able to operate as normal but without UK Government intervention at a policy or operational level.

The powers given to UK Ministers under clauses 4 to 6 would expire at the point that Northern Ireland Ministers are appointed and an Executive is formed. Responsibility for the appointment functions affected by the Bill would then revert to the Northern Ireland Ministers.

Concluding remarks

Mr Speaker, the people of Northern Ireland deserve strong political leadership from a locally elected, accountable devolved Government. Achieving that remains my absolute priority.

And that is why the bill before us aims to restore the devolved power-sharing Executive and Assembly and sets out a fixed period in which I will work closely with NI parties to encourage them to form an

Executive. During this period, the UK Government will continue to deliver on its responsibilities for political stability and good governance.

Northern Ireland has made huge progress in recent years. But we can achieve even more with a devolved government that unlocks all the potential Northern Ireland has to offer. I am focused on achieving this outcome. It is the outcome we all want to see.

I commend this Bill to the House.

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