

*These Notes refer to the Financial Assistance Act (Northern Ireland) 2009 (c.2)
which received Royal Assent on 4 February 2009*

FINANCIAL ASSISTANCE ACT (NORTHERN IRELAND) 2009

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Financial Assistance Act (Northern Ireland) 2009 which received Royal Assent on 4 February 2009. They have been prepared by the Office of the First Minister and deputy First Minister in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. During the Assembly debate on the impact of global economic downturn on 15 December 2008, the First Minister and deputy First Minister announced that they intended to bring forward a Bill to create new permissive powers to take remedial action in response to any circumstances that the Executive agrees warrants rapid and effective financial intervention. The First Minister and deputy First Minister indicated that they would seek to accelerate the Bill through its Assembly stages with the aim of having the legislation in place by the end of January 2009.
4. The Act provides a firm statutory basis for the Executive to respond to exceptional circumstances by enabling it to provide financial assistance to prevent, control or mitigate an aspect or affect of those circumstances. It also provides a statutory basis for the Executive to make available financial assistance to tackle poverty, social exclusion or deprivation when existing funding arrangements are considered ineffective, inadequate or unsatisfactory. The Act will ensure that all elements of Government can co-ordinate to provide financial assistance in response to any emergency or hardship situation.
5. Subject to the agreement of the Assembly, an amendment will be made to the Ministerial Code (established under section 28A of the Northern Ireland Act 1998) to require that any proposal by the First Minister and deputy First Minister to make a determination, designation or scheme under the Financial Assistance Act, must be brought to the Executive for consideration and approval.

CONSULTATION

6. Because of the urgency of the need to acquire the necessary enabling powers, it was not been possible for the Office of the First Minister and deputy First Minister to undertake pre-legislative consultation on the policy proposals underpinning the Act.

OPTIONS CONSIDERED

7. The options considered were either to do nothing or to seek to take new statutory powers to provide the First Minister and deputy First Minister with a legislative mechanism for providing financial assistance to help to alleviate the effects of exceptional circumstances as, and when, they arise.
8. Lessons learnt from previous crisis situations, was that the Executive needed to be prepared, both financially and legislatively, to deal with exceptional, extreme and unanticipated circumstances. The do nothing option was considered to be an inappropriate response for dealing with such situations. The preferred option was to introduce urgently, legislation to provide the First Minister and deputy First Minister with the necessary powers to act in certain circumstances and situations. The legislation will ensure that the Executive is able to act immediately to provide financial assistance in response to an emergency situation.

OVERVIEW

9. The Act has 6 sections. Sections 1 and 2 give the First Minister and deputy First Minister the power to determine that certain circumstances exist which requires the provision of financial assistance. They also enable the First Minister and deputy First Minister to designate a Northern Ireland department to make a scheme to provide the financial assistance. Section 3 sets out what may be included in a scheme. Section 4 provides for the form in which the financial assistance may be given. Sections 5 and 6 are technical dealing with matters of interpretation and commencement respectively.

COMMENTARY ON SECTIONS

Section 1 – Exceptional circumstances: power to provide financial assistance

Section 1 gives the First Minister and deputy First Minister, acting jointly, the power to determine that exceptional circumstances exist and that financial assistance should be provided to prevent, control or mitigate any aspect or effect of those circumstances. It also enables the First Minister and deputy First Minister to designate a Northern Ireland department for the purposes of making regulations to establish a scheme to provide the financial assistance.

Subsection (1) gives the First Minister and deputy First Minister, acting jointly, the power to determine whether exceptional circumstances exist, whether it is desirable to provide financial assistance to prevent, control or mitigate any aspect or effect of those circumstances

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and whether financial assistance should be provided in accordance with a scheme or schemes established under this section.

Subsection (2) enables the “relevant department” to make regulations to establish a scheme for the purposes of providing financial assistance to prevent, control or mitigate any aspect or effect of the exceptional circumstances. Any regulations made under this section must be made within 3 months of the making of the determination under subsection (1).

Subsection (3) provides a definition of the expression “relevant department” used subsection (2). It means either the Northern Ireland department designated by the First Minister and deputy First Minister for the purposes of making regulations under this section or (if no department is designated) the Office of the First Minister and deputy First Minister.

Subsection (4) provides that any regulations made by a Northern Ireland department following designation under subsection (3), must be approved by the Office of the First Minister and deputy First Minister.

Subsection (5) provides that any regulations made under this section will be subject to “negative resolution procedure”. This means that the regulations will be laid before the Assembly as soon as possible after they are made.

Subsection (6) provides for statutory consultation if a scheme, established under regulations made under this section, imposes functions on a public body other than the department making those regulations. It requires the department with responsibility for making the regulations to consult with the particular public body concerned before making the regulations.

Subsection (7) provides that the determination under subsection (1) and the designation under subsection (3)(a) must be in writing and may both be contained in the same document.

Section 2 – Unsatisfactory funding arrangements: power to provide financial assistance

Section 2 gives the First Minister and deputy First Minister, acting jointly, the power to determine that a situation exists which requires financial assistance to be provided to tackle poverty, social exclusion or patterns of deprivation. They must also determine that existing funding arrangements are ineffective, inadequate or unsatisfactory to address the situation. It also enables the First Minister and deputy First Minister to designate a Northern Ireland department for the purposes of making regulations to establish a scheme to provide the financial assistance.

Subsection (1) gives the First Minister and deputy First Minister, acting jointly, the power to act where they determine that a situation exists which requires financial assistance to be provided to tackle poverty, social exclusion or patterns of deprivation based on objective need but there are no arrangements in place for providing that assistance, or where such arrangements are in place, they are, or are likely to be, ineffective, inadequate or unsatisfactory.

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Subsection (2) enables the “relevant department” to make regulations to establish a scheme to provide financial assistance to tackle poverty, social exclusion or patterns of deprivation based on objective need. Any regulations made under this section must be made within 6 months of the making of the determination under subsection (1).

Subsection (3) provides a definition of the expression “relevant department” used in subsection (2). It means either the Northern Ireland department designated by the First Minister and deputy First Minister for the purposes of making regulations under this section or (if no department is designated) the Office of the First Minister and deputy First Minister.

Subsection (4) provides that any regulations made by a Northern Ireland department following designation under subsection (3), must be approved by the Office of the First Minister and deputy First Minister.

Subsection (5) provides that any regulations made under this section must be laid before the Assembly in draft and subsequently approved by a resolution of the Assembly. This means that the regulations must be approved by the Assembly before they can be made and brought into operation.

Subsection (6) provides for statutory consultation if a scheme, established under regulations made under this section, imposes functions on a public body other than the department making those regulations. It requires the department making the regulations to consult with the public body concerned before making the regulations.

Subsection (7) provides that the determination under subsection (1) and the designation under subsection (3)(a) must be in writing and may both be contained in the same document.

Section 3 – Schemes for financial assistance

Section 3 specifies the types of matters which may be included in a scheme contained in regulations made under either section 1 or section 2 of the Act.

Subsection (1) provides that a scheme may:-

- (a) determine eligibility for the financial assistance;
- (b) determine the form and extent of the financial assistance to be provided;
- (c) determine which Northern Ireland department is to provide the financial assistance;
- (d) make provision for applications to be made for financial assistance and for the applications to be made in a specified manner, to a specified person, by a specified time and contain specified information;
- (e) impose conditions or restrictions in relation to its operation;
- (f) impose functions on public bodies in relation to its implementation;

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- (g) make provision for ensuring that the scheme is brought to the attention of those persons who are likely to be eligible for financial assistance under it;
- (h) make provision for its general administration, including provision for reviewing decisions taken under the scheme and for dealing with disputes about eligibility or entitlement arising under the scheme; and
- (i) make provision for any other matter which appears to the department making the scheme to be necessary or appropriate for its efficient and effective administration.

Subsection (2) enables the “relevant department” to place a time limit on the duration of a scheme contained within regulations made under section 1 or section 2 of the Act. It also enables the “relevant department” to include within a scheme any saving provisions which it considers necessary to deal with any matters or proceedings that are outstanding at the time the scheme ceases to have effect.

Section 4 –Financial assistance

Section 4 provides that financial assistance provided under a scheme may be given in any form. The financial assistance may be provided directly, or indirectly, to those entitled to receive it. Such assistance may be repayable in specified circumstances.

Subsection (1) allows financial assistance provided under a scheme established under either section 1 or section 2 of the Act to be given in any form, including by way of a grant, a loan or a guarantee.

Subsection (2) provides that financial assistance given under a scheme may be subject to such conditions as may be specified in, or determined in accordance with, the scheme.

Subsection (3) permits those conditions to include conditions for the repayment of grants in specified circumstances.

Subsection (4) specifies that financial assistance provided under a scheme may be provided directly to those entitled to receive it, or indirectly. If the financial assistance is provided indirectly, it can, for example, be given to a public body to provide financial assistance to those who are entitled to the assistance.

Subsection (5) enables financial assistance to be provided under the Act even though other statutory powers may exist for giving that assistance.

Section 5 – Interpretation

Section 5 sets out the definitions of various terms used in the Act. It defines the following terms –

“the relevant department” – in relation to establishing a scheme for providing financial assistance, means the Northern Ireland department designated by the First Minister and deputy First Minister, or (if no such designation is made) the Office of the First Minister and deputy First Minister;

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“OFMDFM” – this is an abbreviation of the Office of the First Minister and deputy First Minister;

“public body” – means:

- a Northern Ireland department;
- a body established by or under a statutory provision. This means any provision of an Act or a statutory instrument made under an Act;
- a statutory undertaker within the meaning of the Planning (Northern Ireland) Order 1991. Article 2 of the 1991 Order defines a “statutory undertaker” as meaning persons authorised by any statutory provision to carry on any railway, road transport, water transport, inland navigation dock or harbour undertaking or a gas undertaker, or an electricity undertaker or a universal service provider (within the meaning of the Postal Services Act 2000) in connection with the provision of a universal postal service (within the meaning of that Act) or the airport operator (within the meaning of the Airports (Northern Ireland) Order 1994) of any airport to which Article 25 of that Order applies; or
- any body which exercises functions wholly or mainly of a public nature and which are prescribed in regulations made for this purpose by the Office of the First Minister and deputy First Minister. These regulations will be subject to negative resolution procedure in the Assembly.

“scheme” – means a scheme contained within regulations made under section 1 or section 2 of the Act; and

“specified” – in relation to a scheme, means specified in the scheme.

Section 6 – Short title and commencement

Section 6 covers the title and commencement of the Act.

Subsection (1) sets out the title of the Act.

Subsection (2) brings the Act into operation on the day after it receives Royal Assent.

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HANSARD REPORTS

10. The following table sets out the dates of the Hansard Reports for each stage of the Act's passage through the Assembly.

STAGE	DATE
Introduction to the Assembly	12 January 2009
Accelerated Passage Motion	13 January 2009
Second Stage	13 January 2009
Consideration Stage	20 January 2009
Further Consideration Stage	26 January 2009
Final Stage	27 January 2009
Royal Assent	4 February 2009

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