

NORTHERN IRELAND ASSEMBLY MEMBERS (PAY) ACT 2018

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Northern Ireland Assembly Members (Pay) Act 2018 (c. 7) which received Royal Assent on 28 March 2018.

- These Explanatory Notes have been prepared by the Northern Ireland Office in order to assist the reader of the Act. 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 The Act empowers the Secretary of State to make a determination on the pay and allowances of Members of the Northern Ireland Assembly (MLAs) during the current period without a Northern Ireland Executive or sitting Assembly.

Policy background

- 2 There has been no Northern Ireland Executive since 9 January 2017, when the then deputy First Minister of Northern Ireland resigned, which also resulted in the First Minister ceasing to hold office. The period for the appointment of ministers to form an Executive after the extraordinary Assembly election in March 2017 was extended to 29 June (by the Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017), but no ministers were appointed. The Northern Ireland Assembly has not met since its first post-election meeting on 13 March 2017.
- 3 In the absence of a sitting Assembly the continued payment of full salaries for MLAs has been the subject of intensive public comment. There is, however, no body or person capable of making determinations on MLA pay and allowances: the term of office of the first Independent Financial Review Panel, which fulfils that function, expired in July 2016 and no successor panel has been appointed. In November 2017, the then Secretary of State for Northern Ireland asked Trevor Reaney, a former clerk and chief executive of the Assembly, to provide him with advice on salaries and allowances for MLAs in the current circumstances. This advice - which was published on 20 December 2017 on the Northern Ireland Office website (see Related Documents) - included a series of recommendations about the appropriate level of salary, allowances and other expenses for MLAs and officeholders.
- 4 This Act enables the Secretary of State to determine the salary and allowances payable to MLAs during the current period where there is no Executive. It also enables her to make a determination as to the allowances or gratuities that are payable to MLAs who cease to hold office (MLAs are, for example, entitled to a resettlement allowance based on their salary as at the date of dissolution). The Secretary of State may only exercise the power in the period after this Act is passed and before Ministerial offices are filled following the March 2017 election. Any determination may, however, also apply during similar periods where there is no Executive, unless revoked by a later panel determination. When there is an Executive in place, the 2016 determination will apply again as normal.

Legal background

- 5 By virtue of sections 47 and 48 of the Northern Ireland Act 1998 (the “1998 Act”), the pay, allowances and pensions for MLAs and persons who have ceased to be MLAs are devolved matters and provision for them is made, pursuant to the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (the “2011 Act”), by the Independent Financial Review Panel (“the panel”) established by that Act. The panel is required to make a determination once in respect of each Assembly and normally does so immediately prior to the election of that Assembly.
- 6 Members of the panel are appointed by the Assembly Commission. In July 2016 the terms of appointment of the then panel members came to an end, and since then no new members of the panel have been appointed. There are, therefore, at present, no members of the panel, and as such it cannot sit nor make any determinations. The determination that currently applies is therefore the determination issued by the panel in March 2016, immediately before the May 2016 Assembly election and there is no panel in place now to make any further determination. The Act empowers the Secretary of State to make determinations to set MLA pay and allowances.

Territorial extent and application

- 7 The Act extends to England and Wales, Scotland and Northern Ireland since it relates to sections 47 and 48 of the Northern Ireland Act 1998, which have UK-wide extent, but it applies only in Northern Ireland.
- 8 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Act

Section 1: Remuneration of Northern Ireland Assembly members

- 9 This Section allows the Secretary of State to make a determination on MLAs' pay, allowances, and gratuities. This determination may apply during the current period without Ministers and, unless replaced, it would also apply during any future period in which the deadline for appointing Ministers after an election or the resignation of the First Minister or deputy First Minister passes without those appointments having been made. Subsection (3) restricts the power to make a determination to the current period (from the passage of the Act until all the Ministerial offices are next filled), but allows any determination to apply again in any subsequent such period. Once Ministers are in office, the power to make a determination would return to being exercised solely by the Independent Financial Review Panel under the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (the "2011 Act").
- 10 Subsection (8) clarifies the position of determinations made by the Secretary of State and by the panel. Any determination made under this Act may amend a panel determination, and in turn the panel may revoke the Secretary of State's determination - for example to establish its own set of provisions for periods without Ministers. Subsection (7) ensures that MLAs' pensions are not affected by any change to their salaries under the Secretary of State's determination.
- 11 Subsections (4) and (5) echo section 14 of the 2011 Act, requiring any determination to be made in writing and to be provided to the Assembly Commission, who must publish it. Subsection (6) applies section 12 of the 2011 Act to any determination made by the Secretary of State in respect of salaries and allowances payable under section 47 of the Northern Ireland Act 1998. In particular it enables the Secretary of State to determine that members and office holders should be paid different amounts and requires her to ensure that a member who is also a member of the European Parliament does not also receive a salary as a member of the Assembly.

Commencement

- 12 The Act came into force on Royal Assent.

Related documents

- 13 The following document is relevant to the Act and can be read at the stated location:
 - Trevor Reaney's advice to the Secretary of State on MLA pay, published on the NIO website on 20 December 2017:
<https://www.gov.uk/government/news/mla-pay-advice-recommendations>

Annex A - Territorial extent and application in the United Kingdom

- 14 The Act extends to England and Wales, Scotland and Northern Ireland and applies only in Northern Ireland.¹

Provision	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?	Would corresponding provision be within the competence of the Northern Ireland Assembly?
Section 1	No	No	No	Yes	Yes
Section 2	No	No	No	Yes	Yes

Subject matter and legislative competence of devolved legislatures

- 15 This Act affects matters within the devolved (transferred) competence of the Northern Ireland Assembly. The Sewel Convention sets out that the UK Parliament will not normally legislate in an area of devolved competence without the agreement of the devolved legislatures. In the absence of the Executive and a sitting Assembly, there is neither the time available nor the practical ability for the Assembly to provide a Legislative Consent Motion. We are satisfied that the circumstances in which the Bill was introduced come within the terms of the Convention.

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Annex B – Hansard References

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	21 March 2018	Vol. 638 Col. 299
Second Reading	21 March 2018	Vol. 638 Col. 335
Committee of the whole House	21 March 2018	Vol. 638 Col. 354
Report and Third Reading	21 March 2018	Vol. 638 Col. 354
<i>House of Lords</i>		
Introduction	21 March 2018	Vol. 790 Vo. 420
Second Reading	27 March 2018	Vol. 790 Col. 761 Debate Vol. 790 Col. 729
Grand Committee	N/A	N/A
Report	N/A	N/A
Third Reading	27 March 2018	Vol. 790 Col. 761
Commons Consideration of Lords Amendments	N/A	N/A
Royal Assent	27 March 2018	House of Commons Vol. 638 Col. 737
		House of Lords Vol. 790 Col. 785

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