

*These notes refer to the Executive Committee (Functions) Act (Northern Ireland) 2020 (c.4) which received Royal Assent on 25 August 2020*

# Executive Committee (Functions) Act (Northern Ireland) 2020

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Executive Committee (Functions) Act (Northern Ireland) 2020 which received Royal Assent on 25 August 2020 and have been prepared by the Executive Office in order to assist the reader of the Act in order to assist the reader in understanding the Act. They do not form part of the Act and has not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They are 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. The purpose of the Act is to address the implications for the decision making function of Ministers of the judgments of the High Court and the Court of Appeal in the judicial review of a decision by the Department for Infrastructure, in the person of the Permanent Secretary, to grant planning permission to build a waste treatment facility and energy from waste plant.
4. The Department for Infrastructure (DfI) under the Planning Act (Northern Ireland) 2011 has responsibility for determining regionally significant planning applications. Additionally the Department has power under this act to “call in” any planning applications and for determining other matters that require its consent or approval.
5. In March 2014 an application for planning permission was made to the former Department of the Environment by the ARC 21 group of councils. This application sought permission to build a waste treatment facility and energy from waste plant at Hightown Quarry, Boghill Road, Mallusk. The application was treated as an application for regionally significant development under section 26 of the Planning Act (Northern Ireland) 2011 when that Act commenced on 1 April 2015.
6. Planning permission was granted in September 2017 by the Permanent Secretary of DfI during the period when the Assembly was not sitting and there was no Executive. Judicial review proceedings (known as the *Buick* case) were

taken in the High Court. The Court quashed the decision to grant planning permission on the basis that by virtue of Article 4 of the Departments (Northern Ireland) Order 1999 the Department did not have the power to take the decision in the absence of the Minister.

7. The Department appealed to the Court of Appeal which upheld the judge's decision. The Court of Appeal considered that this was a matter which ought to have been referred to the Executive Committee under section 20 of the Northern Ireland Act 1998 on two grounds: first, because the decision on the planning application involved the interests of DAERA in the matter of environmental and waste policies and the Executive Office [in respect of] it was cross-cutting for the purposes of section 20(3) of the Northern Ireland Act 1998; and secondly, the matter was both significant and controversial for the purposes of section 20(4)(a) of the Northern Ireland Act 1998.
8. Section 20 of the Northern Ireland Act 1998 states that the Executive Committee shall have the functions set out in paragraphs 19 and 20 of Strand One of the Belfast Agreement. This includes providing "a forum for the discussion of an agreement on, issues which cut across the responsibilities of two or more Ministers ..."
9. Prior to this judgment it was not considered that an issue was cross-cutting solely by virtue of another Minister having an interest in it as opposed to his or her statutory responsibilities being directly engaged or affected. Specifically, decisions on planning applications were not considered to require referral to the Executive Committee. The judgment therefore had considerable implications for decision making by Ministers and their authority relative to that of the Executive Committee. The referral of planning applications for regionally significant development to the Executive Committee to discuss and agree would be in line with the *Buick* judgements and allow applications to progress. However, it would make the Executive Committee a de-facto planning authority, leaving the Minister for Infrastructure unable to make decisions in relation to functions which in terms of planning legislation are the responsibility of DfI.
10. The policy objective of this Act is therefore to clarify that :
  - (i) referral to the Executive Committee must take place where a matter is significant and controversial and (i) outside the scope of the Programme for Government approved by the Assembly and in force; and (ii) where no such Programme has been approved by the Assembly and in force.
  - (ii) decision-making functions of DfI and its Minister under the Planning Act (Northern Ireland) 2011 (and regulations made under that Act), are the responsibility of that department and do not require Executive referral, whilst maintaining the position that planning policy formulated under section 1 of the Act must be referred to the Executive Committee for discussion and agreement.

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- (iii) a Minister is not required to have recourse to the Executive Committee in relation to any matter unless the matter affects the statutory responsibilities of one or more than one Ministers more than incidentally.
- (iv) a statutory responsibility to consult a Minister does not affect the statutory responsibility of that Minister more than incidentally.

## **OVERVIEW**

11. The Executive Committee (Functions) Act contains provisions to amend section 20 of the Northern Ireland Act 1998 to clarify requirements in relation to the referral of matters by Ministers to the Executive Committee.
12. It also clarifies that the decision-making functions of the Department for Infrastructure and its Minister under the Planning Act (NI) 2011 and regulations made under that Act are the responsibility of that Department and Minister and (with the exception of planning policy formulated under section 1 of the Act) are to be excluded from the requirement under section 20 of the Northern Ireland Act 1998 for referral to the Executive Committee.

## **NOTES ON SECTIONS**

Section 1(1) provides for the amendment of section 20 of the Northern Ireland Act 1998 (NIA).

Section 1(2) inserts new provisions to replace section 20 (4) (a) NIA. These clarify that the Executive Committee will have the function of discussing and agreeing on any significant or controversial matters which are outside the scope of the Programme for Government; and also where no such Programme has been approved by the Assembly and in force.

Section 1(4) inserts a new provision as section 20 (7) NIA. This permits the Department for Infrastructure or the Minister in charge of that department to take certain decisions under the Planning Act without recourse to the Executive Committee.

Section 1(8) qualifies section 20(3) NIA in respect of cross-cutting matters to provide that a Minister is not required to have recourse to the Executive Committee unless a matter affects the exercise of one or more other Ministers more than incidentally.

Section 1 (9) specifies that a matter does not affect the exercise of the statutory responsibilities of a Minister more than incidentally only because there is a statutory requirement to consult that Minister.

## **SHORT TITLE**

13. This cites the new law as the Executive Committee (Functions) Act (Northern Ireland) 2020.

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## **HANSARD REPORTS**

14. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly and the date Royal Assent was received.

|                             |                |
|-----------------------------|----------------|
| First Stage                 | 6 July 2020    |
| Second Stage                | 6 July 2020    |
| Committee Stage             | <b>N/A</b>     |
| Consideration Stage         | 21 July 2020   |
| Further Consideration Stage | 27 July 2020   |
| Final Stage                 | 28 July 2020   |
| Royal Assent                | 25 August 2020 |