

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

EXPLANATORY NOTES

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.
 - (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.