

EXECUTIVE COMMITTEE (FUNCTIONS) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Executive Office in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It does not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The purpose of the Bill 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 Bill 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.

CONSULTATION

11. The Bill would not fundamentally alter the functions of the Executive Committee but would clarify for the purposes of Executive referral, the interrelationship between the Programme for Government and significant or controversial matters; and the definition of cross-cutting matters. It would also not change DfI's process for making planning decisions, but clarify the administrative route through which final decisions would be made. A public consultation exercise is not required.

OPTIONS CONSIDERED

12. It is not considered that a durable administrative solution to this issue is possible, and that therefore amendment of the relevant legislative provisions is required.

OVERVIEW

13. The Executive Committee (Functions) Bill 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.

14. It will also clarify 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.

COMMENTARY ON CLAUSES

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

Clause 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.

Clause 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.

Clause 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.

Clause 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.

FINANCIAL EFFECTS OF THE BILL

15. The Bill will be delivered within existing resources and will not incur additional expenditure.

HUMAN RIGHTS ISSUES

16. The provisions of the Bill are compatible with the provisions of the Human Rights Act 1998.

EQUALITY IMPACT ASSESSMENT

17. The provisions of the Bill would not act unlawfully, unfairly or unjustifiably discriminate, directly or indirectly, against any section of the community specified in section 75 of the Northern Ireland Act 1988.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

18. No direct or substantial regulatory implications arise from the policy proposals.

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

19. The Bill has no implications for data protection.

RURAL NEEDS IMPACT ASSESSMENT

20. There are no negative impacts for the rural community resulting from the proposals contained within this Bill.

LEGISLATIVE COMPETENCE

21. The First Minister and deputy First Minister had made the following statement under section 9 of the Northern Ireland Act 1998:

“In our view, the Executive Committee (Functions) Bill would be within the legislative competence of the Northern Ireland Assembly.”

SECRETARY OF STATE CONSENT

22. The Secretary of State has consented under section 8 of the Northern Ireland Act 1998 to the Assembly considering this Bill.