

# **Financial Reporting (Departments and Public Bodies) Bill (NI) 2021**

## **Delegated Powers Memorandum**

### **INTRODUCTION**

This memorandum identifies provisions in the Financial Reporting (Departments and Public Bodies) Bill (NI) for delegated powers to the Department to make subordinate legislation. Linking it to the relevant clause in the Financial Reporting (Departments and Public Bodies) Bill (NI) it explains:

- the purpose of the delegated powers taken;
- why the matter is to be left to delegated legislation; and
- the choice of Assembly control for each power.

This memorandum should be read in conjunction with the Explanatory and Financial Memorandum (EFM) accompanying the Bill.

### **Overview of the Financial Reporting (Departments and Public Bodies) Bill**

The Bill is technical in nature and amends the Government Resources and Accounts Act (Northern Ireland) 2001 to provide a power for the Department of Finance to direct how departments prepare supply estimates. The Bill allows the Department of Finance to direct that a department's estimate includes the spending of designated non-departmental public bodies for which a department has responsibility, which would then mean that the relevant departmental accounts would be required to include the spending of such bodies.

In this Bill, the only power to make subordinate legislation is the power of the Department of Finance to designate bodies by order, which is contained within Clause 1.

### **Delegated Powers**

#### **Clause 1 – Section 8A: Departmental estimates: inclusion of resources used by designated bodies.**

Clause 1, subsection 2 inserts new sections 8A and 8B into the GRAA(NI) 2001 after section 8. New section 8A(3) will empower the Department of Finance to make an order designating a body in relation to a department (or a body which has estimates approved by the Assembly). Such an order is subject to the Assembly control of “negative resolution”. A body may be designated in relation to a department for a particular financial year, or generally. When making a Designation Order, the Department of Finance will consult with Treasury to prevent the designation of a body funded solely from a Consolidated Fund other than the Consolidated Fund of Northern Ireland, avoiding a scenario where bodies are potentially double counted in more than one Estimate process.

The choice of delegated power is based on:

- the primary purpose of subordinate legislation is to reflect detail which would not be appropriate for the face of a Bill;
- the need to permit flexibility in relation to the bodies to be designated in relation to each department, which may be subject to change over a period of time;

- precedent in England and Wales, for example, delegated power was the choice used in England and Wales under Sections 43 and 44 of the Constitutional Reform and Governance Act 2010 (which makes similar amendments to the Government Resources and Accounts Act 2000).

Assembly control of negative resolution was selected using:

- the generality that affirmative procedure is reserved for either matters with direct financial import or which bring about radical substantive change;
- that it provides both flexibility and speed to allow for updates where necessary, for example to add newly established bodies or to remove bodies which no longer exist, rather than require Assembly involvement in matters of this nature.

Power Conferred on: The Department of Finance

Power Exercisable by: Statutory Rule

Assembly Procedure: Negative Resolution