

FROM: DOF DALO

DATE: 13 September 2024

TO: PETER HALL
COMMITTEE CLERK

GM-1606-2024 FINANCIAL PROVISIONS BILL

Business Area: Supply Division, Public Spending Directorate (PSD)

Issue: To advise the Committee that the Executive has agreed that DoF bring forward a Financial Provisions Bill

Restrictions: None

Action Required: To note

Officials Attending: Patrick Neeson – Supply Division, PSD
Ian Fleming – Supply Division, PSD
Sarah Gibson – Supply Division, PSD

BACKGROUND

DoF periodically prepare a Financial Provisions Bill on behalf of Departments. The purpose of these Bills is to bring forward a number of legislative changes that Departments require for routine financial matters.

In January 2024 DoF wrote to Departments advising of the intention to compile a draft Financial Provisions Bill and to commission items for inclusion. Returns were received from 6 Departments, these being DAERA, DFC, DE, DfE and TEO. Later in this process DFI wrote to DoF advising that they had an item for inclusion in the Bill, which was also included.

KEY ISSUES

The proposed Bill will contain a diverse range of financial matters that Departments have requested be included. The table below provides a summary of the 16 provisions to be included. Further details on each provision are included at Annex A.

Item	Dept	Item
1	DAERA	Marine Licensing Fees
2	DFC	Tenancy Fraud Investigations on Behalf of Housing Associations
3	DFC	Data sharing provision between NIHE and Housing Associations
4	DFE	Financial Assistance
5	DFE	Apprenticeships
6	DFE	Company Formation
7	DFE	Tourism NI Powers
8	DFE	Mineral & Petroleum Accounts
9	DE	Doctorate in Educational, Child & Adolescent Psychology
10	DOF	Investment Fund
11	DOF	Appointment of the NIAO External Auditor
12	DOF	Increase Limit on Consolidated Fund Advances
13	DFI	SmartPass Fee
14	TEO	Refugee & Asylum Seekers Services
15	TEO	Victim & Survivor Support Services
16	TEO	Boardroom Member Training

FINANCIAL IMPLICATIONS

The Bill only provides enabling powers to incur expenditure or to raise fees, and therefore in itself does not have any financial implications. DoF therefore does not consider that the provisions will lead to any new area of government expenditure.

CONSULTATION

Given the generally routine nature of the provisions to be contained within the Bill, it was decided that public consultation on the Bill was not necessary. Individual Departments, who deemed consultation necessary on their own proposals, undertook their own consultation these Departments being DAERA, DFC, DFE.

NEXT STEPS

The Executive agreed at its meeting on 13 June 2024 that DoF brings forward a Financial Provisions Bill. DoF has been engaging with the Office of Legislative Counsel to draft the new legislative provisions. This draft legislation will be

completed within the coming months. During this time DOF and the other Departments will be seeking the views of their respective Committees.

It is then the intention that the DoF Minister will seek to introduce the Financial Provisions Bill into the Assembly.

DoF has engaged with counterparts in the other Departments and, where applicable, public consultation, regulatory impact assessments and equality impact assessments will be completed.

DoF officials will be meeting with the DoF Committee on 18th September to discuss the Bill.

The aim is that the Financial Provisions Bill be introduced to the Assembly during 2024 provided that the relevant Committees and the Executive are content.

DALO

Annex A – Details of Provisions

DAERA: Marine Licensing Fees

1. DAERA wishes to develop a fairer and more efficient charging regime for marine licensing fees. To enable this DAERA wishes to amend its fee charging powers to charge fees for aspects of the marine licensing process which DAERA currently delivers but for which it is unable to recover the cost. In doing so DAERA wish to make amendments similar to those made in the Marine and Coastal Access Act 2009 at Part 6 of the Environment (Wales) Act 2018.
2. DAERA wishes to take an enabling power to charge fees for the following matters:
 - providing advice or other assistance to prospective applicants for marine licences before they make a formal application.
 - monitoring compliance with the conditions of a licence.
 - undertaking monitoring of an activity authorised by a marine licence.
 - assessing and interpreting the results of any monitoring of an activity authorised by a marine licence.
 - dealing with an application by the licensee for a variation, suspension, revocation and/or transfer of a marine licence under section 72 of the MCA Act.
 - carrying out any investigation, examination or test which in its opinion is necessary or expedient to enable it to determine an application by a licensee for a variation, suspension, revocation and/or transfer of a licence under section 72.
3. DAERA also wishes to take powers to require applicants to pay a deposit, to issue notices to deal with non-payment of fees and deposits and to introduce an appeals mechanism against such notices.

DfC: Tenancy Fraud Investigations on Behalf of Housing Associations

4. Following a Public Accounts Committee report a tenancy fraud team was established by the Housing Executive (NIHE). Under the current legislation, NIHE do not have the power to undertake fraud investigations on behalf of the Housing Association sector, nor does the NIHE have the legislative power to charge a fee for undertaking this service. It is therefore proposed that the NIHE are provided with these powers via the Financial Provisions Bill.

DfC: Data Sharing Provision between NIHE and Housing Associations

5. This is a data sharing provision to cover the information exchange between the Housing Association Sector and the Housing Executive and potentially provision of information by any other person to the Housing Executive for the purposes of investigating tenancy fraud.

DfE: Financial Assistance

6. During the Covid-19 Pandemic DfE found that their current legislative provisions were insufficient to provide financial assistance in an efficient and timely manner. DfE therefore want to use the Financial Provisions Bill to amend these deficiencies. In particular, DfE wishes to secure a provision that gives the Department a power to

provide financial assistance where it is likely to be in the interest of the economy (including grants, loans, guarantees or indemnities).

7. The power noted above would also resolve the outstanding issue regarding DfE's lack of powers in respect of Financial Transactions Capital (FTC). Currently FTC can only be deployed by the public sector as a loan to, or equity investment in, a private sector entity. The entity will then use the funding to invest in related infrastructure. DfE does not have the legal vires to enter into such transactions and it is proposed to use the Financial Provision Bill to provide DfE this power.

DfE: Apprenticeships

8. Funding initiatives in the further/higher education field necessitate reliance on older legislation, including section 1 of the Employment and Training Act (Northern Ireland) 1950. That section allows DfE to make arrangements in respect of the selection of, and training for, employment, including apprenticeships.
9. As the legislation is currently worded, this requires approval from DoF in advance. DfE seeks to remove this section, aligning with normal Departmental delegations and DoF approvals.

DfE: Company Formation

10. In the past, DfE (or its predecessor) had the power to form companies. This was transferred over on the formation of Invest NI. There have been occasions where DfE has had to request that Invest NI forms a company as it no longer had the power to do so. The absence of this power (previously held) has limited the delivery options available to DfE in some cases. DfE is now seeking the power to form a company where this would benefit the economy. DfE considers that this would be a relatively little used power, but it may aid the delivery of policy objectives in the future.

DfE: Tourism NI Powers

11. Whilst Tourism NI (TNI) can charge fees for certain activities, it has no legal power to exempt or remit (reduce) them, even in exceptional circumstances, such as the compulsory closure of parts of the sector, as experienced in the recent pandemic. DfE proposes an amendment to the Tourism (Northern Ireland) Order 1992 (the Order) to give DfE powers to exempt or reduce fees in the future, via Regulations.
12. In addition, as it has been identified that the Order's current provisions do not give TNI the vires to operate its Visitor Experience Grading Scheme, DfE is considering a proposal to extend TNI's existing ability to grade or classify certified tourist establishments to also include tourist amenities, e.g. museums, tours, art venues, wildlife experiences, gardens, and visitor attractions/activities.
13. DfE is also considering a proposal for TNI to have the flexibility to introduce new fees where appropriate. In recent years, TNI has identified cases where its powers under the Order have not reflected the changing scope of its services in development of the tourism sector and we would wish to seek powers that would permit it to raise fees for services/events which encourage and improve tourism, and to raise, via Regulations,

fees for non-statutory inspections or Schemes, e.g. its Visitor Experience Grading Scheme.

DfE: Mineral & Petroleum Accounts

14. The Mineral Development Act (Northern Ireland) and the Petroleum (Production) Act (Northern Ireland) 1964 provide for separate accounts to be prepared showing the receipts and expenditure under those Acts in any given financial year.
15. The accounts are forwarded to the Comptroller and Auditor General (C&AG) for examination and certification and are laid before the Assembly with the C&AG's report. The NIAO has suggested that departments may wish to provide for that financial information to be set out in the core departmental Annual Report and Accounts, as that would remove the need for separate audit reports.
16. DfE believes that is a sensible proposition and it would, therefore, wish to effect the required amendments to the aforementioned Acts.

DE: Doctorate In Educational, Child & Adolescent Psychology (DECAP)

17. DE fund costs associated with the delivery of the Doctorate in Educational, Child & Adolescent Psychology (DECAP) course to a set number of Post Graduate Students. This course is considered to be the only realistic source of the Educational Psychologists that are required by the Education Authority in order to meet their statutory duties in relation to Special Educational Needs (SEN).
18. DE received legal advice that the relevant specific power, which covers the making of awards to persons and costs in respect of post graduate courses, was transferred to DFE in 1999. As such DE does not have the legal vires to provide this funding.
19. DE therefore wish to avail of the Financial Provisions Bill to include an appropriate clause which would give DE the legal authority to continue to fund the course and make associated payments in respect of Post graduate students undertaking the course.

DOF: Investment Fund

20. The Executive introduced the NI Investment Fund in 2017 to provide a funding source for the purposes of stimulating the economy and delivering economic growth. DoF has been overseeing this fund. The funding has been made available to the Investment Fund via the Strategic Investment Board (SIB) who are an ALB of TEO.
21. This has been done as SIB have the legal vires to make loans, a power which DoF does not have. While these arrangements have been successful to date, in delivering the objectives of the Fund, the intention when the Fund was initiated was that this would be a temporary arrangement until such times as DoF obtained the necessary powers.
22. It is felt that the Financial Provisions Bill would be a suitable opportunity to provide DoF with the statutory power to issue loans to the Investment Fund. This would improve accountability, regularity and propriety in the use of FTC funding. TEO are in agreement that this power should be provided to DoF.

DoF: Appointment of the NIAO External Auditor

23. The appointment and duties of the Auditor of the Northern Ireland Audit Office are governed by the Audit (Northern Ireland) Order 1987 (the Order), which provides that DoF appoint an external auditor for the NIAO.
24. In essence this requirement means that DoF are required to run procurement exercises to appoint a suitable firm to act as external auditor for the NIAO. However, under an extra statutory provision this appointment is made by DoF on the endorsement of the Audit Committee of the NI Assembly. With the exception of administratively running the auditor procurement competition after appointing the successful firm and advising the Audit Committee accordingly, DoF plays no further role in managing the audit process. NIAO liaise on an operational basis with the appointed firm to ensure that their accounts are audited, while the NI Assembly Audit Committee may require the firm to attend one of their meetings to discuss the NIAO's annual audited accounts.
25. DoF wishes to amend the Audit (Northern Ireland) Order 1987 to transfer the responsibility for the appointment of the external auditor of the NI Audit Office (NIAO) from DoF to the NI Assembly Audit Committee.
26. All parties (DoF, NIAO and the Assembly Audit Committee) have agreed in the past that responsibility for the appointment of the external auditor to the NIAO should be transferred to the Assembly Audit Committee and that the Financial Provisions Bill would be a suitable vehicle to do this through.

DoF: Increase limit on Consolidated Fund Advances

27. The power to make such advances from the Consolidated Fund is contained in Section 6 of the Financial Provision (Northern Ireland) Order 1998 (the 1998 Order). When the 1998 Order was drafted it was intended to deal with situations whereby departments might have sudden unexpected additional expenditure in the event of major events, e.g. foot and mouth disease, or COVID, etc.
28. This is to allow additional expenditure to take place quickly, without there being a delay due the time it will take for a Budget Bill to be taken through the Assembly. Currently the limit to such an advance is 2% of the authorised supply expenditure from the previous financial year.
29. The proposal is that the Financial Provisions Bill is used to increase the limit to 4%. Increasing the limit is viewed as a sensible and prudent measure to provide further security and flexibility to deal with unexpected demands that may arise.

Dfl: SmartPass Fees

29. The purpose of the provision is to provide powers to Dfl to charge a fee for the SmartPass. This fee will allow the Department to recover some of the costs of administering the Concessionary Fares Scheme, thus helping to manage the overall Scheme costs and ensure its long-term sustainability.

TEO: Refugee & Asylum Seekers

30. Although immigration policy is an excepted matter and remains the responsibility of the Home Office, The Executive Office (TEO) has responsibility for co-ordinating its effective implementation, including resettlement/visa schemes and asylum seeker support, locally. This includes local implementation of resettlement/visa schemes, such as those for Syria, Afghanistan and Ukraine.
31. Allied to this, TEO also has responsibility for co-ordinating refugee integration under the auspice of a draft Refugee Integration Strategy, the development of which was a commitment in the Racial Equality Strategy 2015-2025; both are Executive strategies, the draft RIS expected to be tabled for its consideration in late 2024.
32. TEO's role is to co-ordinate and, in some cases, seek to deliver local support on issues devolved such as welcome arrangements, advice and signposting, immigration advice and orientation etc. This is likely to include funding of third parties including the Voluntary & Community sector.
33. In the absence of underpinning legislative authority, TEO has relied to date on the Sole Authority of the Budget Act to make payments for expenditure incurred. TEO are seeking to avail of the Financial Provisions Bill to make provision whereby the Department (TEO) has the legal authority for the function of making grants to, or contracting, persons to provide support and integration services for those seeking refuge here (both currently and in the future), including (i) refugees (ii) those seeking asylum and (iii) those arriving under a scheme or policy established by Westminster.

TEO: Victim & Survivor Support Services

34. TEO provides an oversight, co-ordination and management role to secure the delivery of services, advice and payments designed to support a wide range of victims and survivors, including those impacted by the Troubles, Historical Institutional Abuse, and Mother and Baby Institutions, Magdalene Laundries and Workhouses.
35. The Victims and Survivors Service (VSS) was initially established to provide services to victims and survivors of the Troubles/Conflict. In recent years, VSS have also started to provide services to victims and survivors of Historical Institutional Abuse and Mother and Baby Institutions, Magdalene Laundries and Workhouses.
36. To provide these services TEO has relied on the Sole Authority of the Budget Act, however this cannot be relied upon indefinitely. TEO therefore wishes to introduce legislation that gives it the authority to fund victims support services directly for:
 - victims and survivors of Historical Institutional Abuse, and
 - victims and survivors of Mother and Baby Institutions, Magdalene Laundries and Workhouses.
37. It also needs the powers to amend such legislation, so that it can make provision for relevant services for new groups of victims and survivors for which the Department may be given responsibility.

38. TEO therefore wish to avail of the Financial Provisions Bill to make provision whereby the TEO can authorise grants to bodies or persons to provide relevant support services for victims and survivors.

TEO: Boardroom Member Training

39. The Executive Office is responsible for public appointments policy across NICS, with individual appointment responsibility resting with the respective Minister. The Executive is committed to improving diversity in public appointments.
40. TEO wishes to avail of the Financial Provisions Bill to provide the Department the legislative cover to fund a competitively procured board training and placement programme. The overarching aim of which is to encourage diversity in public appointments and consequently more effective public sector boards, representative of the communities they serve.