

THE NORTHERN IRELAND FISCAL COUNCIL BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department of Finance (the “Department”) in order to assist the reader of the Northern Ireland Fiscal Council Bill and to help inform debate on it. It does not form part of the Northern Ireland Fiscal Council Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Northern Ireland Fiscal Council Bill. It is not, and neither is it meant to be, a comprehensive description of the Northern Ireland Fiscal Council Bill. So, where a clause, part of a clause or a schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Northern Ireland Fiscal Council was established on a non-statutory basis in March 2021 following a commitment made in the New Decade New Approach¹ (NDNA) document.
4. The Northern Ireland Executive agreed to the formation of the Northern Ireland Fiscal Council on 11 March 2021, including the chair, membership and Terms of Reference². The Minister of Finance announced the formation to the Northern Ireland Assembly on 12 March 2021.
5. The Northern Ireland Fiscal Council is set up to bring greater transparency and independent scrutiny to the current and future state of Northern Ireland’s public finances. The Council was established based on the nine broad principles recommended by the Organisation for Economic Co-operation and Development (OECD) for Independent Fiscal Organisations³.
6. In accordance with these principles and in line with international best practice, the Northern Ireland Fiscal Council Bill (the “Bill”) now establishes the Council on a statutory basis and provides a legislative framework to underpin its work. The Bill sets out the functions of the Council, safeguards its independence and ensures its access to information. In addition,

¹ [2020-01-08 a new decade a new approach.pdf](#)

² <https://www.nifiscalcouncil.org/publications/initial-terms-reference>

³ <https://read.oecd-ilibrary.org/governance/principles-for-independent-fiscal-institutions>

the Bill deals with operational matters regarding annual reports, membership, finance and staffing.

7. The Council currently costs £511k per year (2024/25), funded from the Department of Finance. The secretariat, included in this funding, currently has 6.3 FTE staff to support the work of the Council.

CONSULTATION

8. Upon its establishment in 2021, the chair and members of the Northern Ireland Fiscal Council developed a communications and engagement plan⁴ to clearly articulate the remit of the Fiscal Council and engage with relevant stakeholders. This included a range of consultations with the Minister of Finance, the Committee for Finance, other Members of the Legislative Assembly, Government officials, economic commentators including the media, and business and their representative bodies.

9. To inform the plan the Fiscal Council carried out an extensive consultation covering six topics below:

- i. What do you see as the main strengths and weaknesses of current reporting and scrutiny of Northern Ireland’s public finances? How might we expand or improve the public finances data that are currently available?
- ii. How should we assess “the Executive’s revenue streams and spending proposals and how these allow the Executive to balance their budget”? When in the year (or during the budget process) would this be most useful?
- iii. How best can we assess “the sustainability of the Executive’s public finances”? How would you interpret sustainability in this context? When would publication of this analysis be most useful?
- iv. Given the requirement placed on us to assess “the effectiveness of long-term efficiency measures”, what sorts of measures should we aim to look at and should we try to quantify their effectiveness?
- v. Are there any other ways in which you think we could increase public awareness and understanding of the public finances?
- vi. Do you have any suggestions regarding the long-term structure and role of the Fiscal Council that the Executive and Assembly should take into account when the time comes to prepare its underpinning legislation?

A number of points were raised regarding legislation to put the Council on a statutory footing, which have been taken account of in the Bill. As the policy consultation carried out by the Northern Ireland Fiscal Council was extensive and with all relevant stakeholders, no further consultation was carried out. As such, whilst the consultation took place some time ago, the conclusions and findings from the stakeholder engagements are still relevant and have been

⁴ <https://www.nifiscalcouncil.org/news/stakeholder-engagement-and-forward-work-plan>

utilised in the consideration and development of the new legislation to ensure it reflects these views.

10. The policy also took cognition of other jurisdictions legislation including the Scottish Fiscal Commission (Scotland), Office of Budget Responsibility (England and Wales) and the Irish Fiscal Advisory Council (Republic of Ireland).

11. In addition, the non-statutory Fiscal Council has operated since 2021 and so their reports have been considered as part of the legislative process.

OPTIONS CONSIDERED

12. The options considered were:

- a. Option 1 – Do nothing: retain the existing non-statutory body.
- b. Option 2 – Take forward primary legislation for a statutory body to bring the NI Fiscal Council in line with other devolved administrations and international best practice; to underpin the work; safeguard its independence and protect its scrutiny role.

OVERVIEW

13. This Bill establishes the Northern Ireland Fiscal Council on a permanent, statutory basis, bringing it in line with international best practice, to underpin the work and safeguard its independence and protect its scrutiny role as a result of the commitment made in the NDNA document¹. The Bill comprises of 9 Clauses and 2 Schedules.

COMMENCEMENT

14. The legislation will come into operation on Royal Assent.

COMMENTARY ON CLAUSES

Clause 1: Northern Ireland Fiscal Council

Clause 1 establishes a body corporate known as the Northern Ireland Fiscal Council (the Council).

Clauses 2, 3 and 4: Main functions, Budget assessment reports and Fiscal sustainability reports

Clauses 2, 3 and 4 set out the duties of the Council to examine and report on the public finances in Northern Ireland. Under these provisions, the Council is under a statutory duty to examine and publish a budget assessment report for each financial year and a fiscal sustainability report yearly. The Council can also publish such other reports as it considers appropriate. All reports

published by the Council will be laid before the Northern Ireland Assembly and sent to the Department, and the Committee for Finance.

The budget assessment report will include an assessment of the proposed budget and provide consideration of the extent to which public revenue in Northern Ireland is enough to meet planned expenditure.

The Bill provides for there to be two kinds of fiscal sustainability report: “overall” reports and “thematic” reports. An overall fiscal sustainability report will consider, and provide commentary on, public revenue, public borrowing and accumulated debt, expenditure and other matters as the Council considers appropriate generally. In a thematic report, the Council will choose to report on a particular topic and the thematic reports will consider the same matters as an overall report but limited as appropriate depending on the topic being assessed. Given that the overall budget sustainability position may not change significantly year to year, the Council is required to deliver an overall report at least once every 5 years. A thematic report must be completed in the years when an overall one is not completed.

The fiscal sustainability reports will also include views on public services delivery regarding past and future delivery in Northern Ireland, delivery comparisons in other jurisdictions and other matters as the Council considers appropriate.

Clause 5: Power to confer additional functions

Clause 5 enables the Department to confer additional functions on the Council, or to alter or remove any of those additional functions by regulations. Any regulations will be made after consultation with the Council, the Committee for Finance and other persons as the Department considers appropriate and laid before the Northern Ireland Assembly for approval.

Clause 6: How the Council is to perform its functions

Clause 6 provides that the Council has complete discretion in carrying out the functions relating to its duty to deliver an annual budget assessment and a fiscal sustainability report under Clause 2. In carrying out these main functions, it is not subject to the direction or control of various named parties. This clause restates what the position would be in any case: as a statutory body its duty is to carry out the functions conferred on it by the Assembly; and general principles of administrative law require that statutory bodies are not subject to the direction or control of any other person. But given the importance of the matters dealt with, and the principles recommended by the OECD, it is thought appropriate to spell this out. This safeguards the operational independence of the Council, which is free to determine how it fulfils its main functions in the production of the assessments under Clause 2.

When performing its functions under Clause 2, the Council may consider the likely effect of any published policy or proposed policy of a Northern Ireland department on the public finances, but they will not make any recommendations on that policy or any alternative policy.

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The Council must carry out its functions objectively, transparently and impartially, free from any political perspective.

Clause 7: Consequential amendments

This clause introduces Schedule 2, which makes consequential amendments.

Clause 8: Interpretation

Clause 8 provides definitions of the “Department”, “a Minister” and “statutory provision” as used in the Bill.

Clause 9: Commencement and short title

Clause 9 provides for commencement of the Northern Ireland Fiscal Council Act (Northern Ireland) 2025 immediately after Royal Assent.

COMMENTARY ON SCHEDULES

Schedule 1 sets out details about the structure and operation of the Northern Ireland Fiscal Council. The Schedule has 7 Parts as follows:

Part 1: General

Part 1 details the status of the Council as an independent body, with the general power to do all things it needs to do in order to carry out its functions; and that its functions should be carried out in an efficient and cost-effective manner.

Part 2: Membership and staff of the Council

The membership consists of a chairperson and no less than 2 and no more than 5 other members. Appointments are made by the Department of Finance. This will be done in line with the Code of Practice of the Commission for Public Appointments of Northern Ireland. The chair and members of the Council shall hold office for a maximum period of 5 years but shall be eligible for one re-appointment period.

The period of appointment and other terms of appointment, including remuneration and expenses are all to be detailed within terms and conditions of the position within the Council as laid out in the appointments process. The terms of appointment will cover the areas of declarations of interests, political activity and public controversy which would compromise the work of the Council.

Provision 8 outlines the criteria on disqualification from appointment.

Regarding Provision 8(1)(d) which defines that a person is disqualified from appointment if within the last 10 years has been made bankrupt within the meaning of Article 9 of the

Insolvency (Northern Ireland) Order 1989, this includes being, or having been, the subject of an analogous arrangement anywhere in the world.

Regarding Provision 8(3) and reference to ‘disqualified from being a member of the Assembly under the Northern Ireland Assembly Disqualification Act 1975 as applied by section 36(1) of the Northern Ireland Act 1998’, specifically, this means a person is disqualified for membership of the Northern Ireland Assembly if they are a member of the House of Commons; holds any of the judicial offices; is employed in the civil service of the Crown; is a member of any of the regular armed forces of the Crown; is a member of any police force; is a member of the Dáil Éireann; or is a member of the legislature of any country or territory outside the Commonwealth.

Paragraphs 9 10, and 11 detail the criteria on automatic termination of appointment, termination of appointment by the Department and resignation.

The Council will put in place a secretariat and support staff headed by a Chief of Staff. Terms and conditions of employment are to be determined by the Council. It is expected that these will be in line with the Northern Ireland Civil Service arrangements.

The Department will ensure that the Committee for Finance receives timely notification of any changes to Council membership.

Part 3: Committees, procedure and delegation

Part 3 specifies that the Council has authority to form committees if required. It also provides the Council with the flexibility to delegate functions to the chair, to other members, to committees or to members of staff. This does not include the primary functions in Clause 2.

Part 4: Information and disclosure

Part 4 provides details of the Council’s right of access to Northern Ireland government information required for the purpose of the performance of the Council’s functions. The Council will publish all the documents it produces and clearly set out the methodology and assumptions used.

The Council will publish at least once in each year a data statement around the quality of information and of any gaps in the data, information or explanations which shall be laid before the Northern Ireland Assembly and sent to the Department and the Committee for Finance.

Part 5: Reporting and review of performance

Part 5 sets out the reporting and review of performance duties for the Council. The Council must prepare and publish a report on the exercise of the Council’s functions after each financial year and share with the Department and the Committee for Finance.

It must also arrange for a suitable person or body to a review and report on the Council's performance in each review period, publish the report and share with the Department and the Committee for Finance.

Part 6: Finance and funding arrangements

Part 6 details that the Council must keep proper accounts and submit them to the Department, copied to the Committee for Finance. The Council's running costs are to be included in the Department's overall estimate presented to the Northern Ireland Assembly, as is the case with the existing non-statutory Council.

Part 7: Initial membership of the Council

Part 7 sets out that as the Council already exists on a non-statutory basis, the current chair and members will immediately become the first members of the statutory Council. The terms and conditions, including length of term, of appointment are carried over.

Schedule 2 Consequential Amendments

This Schedule is self-explanatory.

FINANCIAL EFFECTS OF THE BILL

15. The Bill will legislate for the Northern Ireland Fiscal Council to bring greater transparency and independent scrutiny to the current and future state of Northern Ireland's public finances.

16. The Northern Ireland Fiscal Council cost approximately £511k to run in 2024/25.

17. There is an ongoing commitment to fund the Council and whilst these are being done in a financially sustainable manner there may be additional funding requirements for the operations of the Council once placed on a statutory footing.

HUMAN RIGHTS ISSUES

18. The Bill is considered to be compliant with the European Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

19. There is no effect on this area.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

20. There is no effect on this area.

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DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

21. There is no effect on this area.

RURAL NEEDS IMPACT ASSESSMENT

22. There is no effect on this area.

LEGISLATIVE COMPETENCE

23. At introduction, the Minister of Finance had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my opinion, the Northern Ireland Fiscal Council Bill would be within the legislative competence of the Northern Ireland Assembly.”

SECRETARY OF STATE’S CONSENT

24. The Secretary of State’s consent is required by section 8 of the Northern Ireland Act 1998 and a statement of such consent is required for the purpose of section 10(3)(b) of that Act:
“The Secretary of State has consented to the Assembly considering this Bill.”