



CONSULTATION

**A proposal for primary
legislation to resolve
issues in regard to the
Department's financial
powers**

06 June 2024

ABOUT THIS CONSULTATION

This is a consultation in relation to the Department for the Economy's (DfE) proposal for primary legislation to resolve issues in regard to some of the Department's financial powers.

This document provides a summary of the proposed financial provisions, and it is on this summary that we are inviting feedback.

Duration of the consultation

This is an 8 week consultation. The deadline for responses is 17.00h on 1 August 2024.

How to respond

We would ask that you respond to the consultation using the online survey which can be accessed at the '*Consultation on a proposal for primary legislation to resolve issues in regard to the Department's financial powers*' page on the nidirect website.

If you are unable to respond using the online consultation facility, you can email your response using the response template provided at the DfE consultation page to the following email address: financialprovisions@economy-ni.gov.uk

Alternatively, you may post your response to DfE at: Economic Vision Directorate, Adelaide House 39-49 Adelaide Street Belfast BT2 8FD Tel: 028 9052 9317

If you require documents to be provided in an alternative format, please contact us by email: financialprovisions@economy-ni.gov.uk

Before you submit a response, please read the Privacy Notice published alongside the consultation documents on the DfE consultation page, which shows how we will use personal information as part of the processing of responses.

Following the end of the consultation, DfE may publish anonymised direct quotes from your consultation response. In addition, we may make responses available to the Northern Ireland Assembly.

Departmental response

A summary of responses to this consultation and details of the action that DfE has taken will be published on [Department for the Economy website](#) before the proposed legislation comes into force.

Equality

A draft section 75 Equality Screening document has been published along with this consultation. The proposal is currently screened out without mitigation, however DfE welcomes additional information or feedback on this proposal that would be relevant to the screening. We will update the draft section 75 Equality Screening following the consultation.

RNIA

A draft Rural Needs Impact Assessment has been published along with this consultation. The proposal does not currently identify any adverse rural impact. We will consider any response to the consultation that indicates a rural impact or evidence that is relevant to this proposal, and we will review the proposal in light of any new information. We will update the draft RNIA following the consultation.

Data Protection

A Data Protection Impact Assessment has been published alongside this document.

Privacy Notice

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Background

Financial Provisions Bills are brought forward from time to time in relation to routine financial matters and technical and non-controversial issues that would not routinely require primary legislation.

The Department for the Economy (DfE) came into being in 2016 when the Department of Enterprise, Trade and Investment was re-named, and when further policy areas were added in consequence of the dissolution of the Department for Employment and Learning. Currently, DfE covers a broad range of policy areas, from energy and minerals to tourism, skills and education and economic development.

The legal framework that underpins DfE's activities is, in part, old and fragmented. In some instances, the existing legislative provisions are rather oblique and the extent to which they apply to any given current situation may be a matter of judgement. A further difficulty is that powers have not only been "transferred in" to DfE, but they have also been "transferred out".

DfE has identified the following financial issues that it proposes to resolve via primary legislation:

- a.** DfE's power to provide financial assistance where it is likely to be in the interest of the economy;
- b.** DfE's power to exempt or remit certain fees in exceptional circumstances for Tourism Northern Ireland (TNI), for TNI to have the flexibility to introduce new fees where appropriate, and to extend TNI's existing ability to grade or classify certified tourist establishments to also include tourist amenities;
- c.** DfE's power to form companies;
- d.** Updating of section 1 of the Employment and Training Act (Northern Ireland) 1950¹; and
- e.** the handling of smaller Departmental accounts (i.e. possible absorption within the main Departmental accounts).

These issues in many cases flow from recommendations of the Northern Ireland Audit Office (NIAO). This legislation is expected to be included as DfE provisions within possible future legislation to be led by the Department of Finance (DoF). The detail of the wording of the legislation, and timing, remains to be finalised and approved by the Executive.

DfE is consulting at present as a preparatory step on the measures that are within our remit. We have outlined the issues and how they might be resolved below and welcome your views.

1 As amended by [The Employment and Training \(Amendment\) \(Northern Ireland\) Order 1988 \(legislation.gov.uk\)](#).

DfE's power to provide financial assistance

The lack of a power to provide financial assistance was most keenly felt during the COVID-19 pandemic when financial assistance needed to be delivered urgently. The NIAO reports on DfE's accounts in 20/21, 21/22 and 22/23² contained criticism of DfE, qualified DfE and Invest NI's accounts in this respect, and highlighted that *'the Department did not have legal powers in place to cover expenditure on certain COVID-19 schemes it administered'*. The NIAO has also emphasised the need to *'consider what powers may be available to facilitate urgent Executive business, how those powers can be used and how collaboration will work in a crisis'*.

The challenges are not confined to emergency scenarios. Where legislative powers are unclear there is a risk that officials, who are not fully aware of the legal constraints, will unintentionally incur illegal or irregular spend, and attract criticism.

Access to Financial Transactions Capital (FTC) is a further consideration. FTC was introduced in 2012-13 as an additional type of capital funding, which can be used to stimulate private sector investment in infrastructure projects that benefit the region, over and above the level of investment made by the Executive from its normal Capital DEL budget. At present DfE does not have the requisite loan-making power, and, consequently, existing oversight of these loans in respect of bodies for which DfE is the responsible Department is managed through the Executive Office (TEO) and the Strategic Investment Board. TEO has made it clear that resolving this issue is an urgent priority. The lack of a wholly owned Departmental power to grant financial assistance through use of FTC reduces the opportunities available to make use of such funding in the future.

DfE is therefore proposing to take a power to provide financial assistance, where it is likely to be in the interest of the economy. We propose that the exercise of such a power would be underpinned by a 'statement of general approach' or 'guiding statement' which would ensure a degree of consistency and predictability. This guiding statement would be published and subject to scrutiny.

Guidance such as this has been used for example, alongside the UK Internal Market Act 2020³, alongside the Northern Ireland (Executive Formation etc) Act 2022 and other guidelines / guidance issued by Departments and in respect of legislation from the Assembly⁴.

2 [Report by the Comptroller & Auditor General on the Department for the Economy and Invest Northern Ireland Annual Report and Accounts for the Year Ended 31 March 2021](#) and [Department for the Economy - Report of the Comptroller and Auditor General to the Northern Ireland Assembly 2021 - 2022](#) and [2022-23 Annual Report and Accounts](#)

3 [United Kingdom Internal Market Act 2020 \(legislation.gov.uk\)](#) ss 50-51

4 For example: Northern Ireland Office [Guidance on decision-making for Northern Ireland Departments 2022](#) and Department for Communities [Social law | Department for Communities](#)

DfE recognises that other bodies (whether other Departments or Partner Bodies) already have powers to intervene and are more suitable to provide financial assistance. We do not seek to duplicate existing powers, rather the aim is to provide a safety net to allow DfE to provide access to financial assistance in the interest of the economy, where others cannot, or cannot sufficiently quickly.

The guiding statement would seek to identify the circumstances where this power would or would not be used.

DfE proposes that financial assistance under this power may be provided in a number of ways, including:

- grants, loans, guarantees or indemnities;
- a contract;
- an investment fund for onward investment, or administrative costs relating to same.

There would also be an ancillary power to impose conditions, if desired.

Apprenticeships and Higher Education

Funding initiatives in the further/higher education field necessitate reliance on older legislation, including section 1 of the Employment and Training Act (Northern Ireland) 1950⁵. That section allows DfE to make arrangements in respect of the selection of, and training for, employment, including apprenticeships. However, this requires approval from DoF in advance.

DfE's accounts in 20/21 were also qualified by the NIAO for the failure to correctly apply this requirement, and the expenditure was deemed irregular.

Currently, DoF sets out the need for Departments to seek approval both in terms of funding that meets certain criteria, and in setting delegated limits for each Department, which it publishes from time to time. Therefore, in a business as usual situation, only cases that exceed the delegated authority, or meet the criteria for DoF approval are issued to DoF for their consideration and approval. Making an amendment to the Employment and Training Act noted above to remove the requirement for DoF approval of every use of this power would bring this section into line with the standard approach to DoF approval. DoF approval would still be required when proposals meet the general conditions which DoF has set out.

5 As amended by [The Employment and Training \(Amendment\) \(Northern Ireland\) Order 1988 \(legislation.gov.uk\)](#).

Company formation

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 we no longer have the power to do so. The absence of this power (previously held) has limited the delivery options available to DfE in some cases. The Department is now seeking the power to form a company where this would benefit the economy. We consider that this would be a relatively little used power, but it may aid the delivery of policy objectives in the future.

Tourism - DfE's power to exempt or remit certain fees in exceptional circumstances, to charge new fees and to grade / classify tourism amenities

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. We propose 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. This follows an NIAO recommendation that set out that the Department did not have the power to exempt relevant tourism businesses from fees during the period when they were shut during the pandemic.

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, we are 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.

We are 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.

Final proposals have yet to be made on these matters, however, they may be addressed in the proposed legislation.

Accounts

The NIAO has suggested that certain smaller Departmental accounts, which must be prepared in accordance with particular statutory frameworks, should be absorbed within the main Departmental accounts. This will offset the need for separate certification and the laying of separate reports. Final proposals have yet to be made, however again, this is an issue that could be addressed in the proposed legislation, if appropriate.

Responding to the consultation

DfE welcomes your views on the above proposals, which we will consider, and which will inform our proposal for legislation.

A virtual information session will be held on 25 June from 10:00am to 11:00am and will include an opportunity for you to ask questions.

If you wish to take part in the event, please email us at financialprovisions@economy-ni.gov.uk.

If you have any questions in relation to this consultation, or wish to engage with us directly, please also email us at the address above.

Next Steps

Following the consultation period, the Minister will consider the responses and decide on a way forward, for potential inclusion in future DoF-led legislation. These matters will be considered as part of the Minister and the Executive's wider legislative programme.