

From: Leo O'Reilly
Permanent Secretary

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To: Paul Givan MLA
Minister for Communities

1. Further to your letter to the Finance Minister this morning, I have now obtained legal advice on the provisions of the Budget Act 2016 and Section 59 of the Northern Ireland Act 1998, alluded to by the Finance Minister in his letter to you are sufficient to enable this Department to introduce a statutory mitigation scheme in relation to the "bedroom tax" as provided for in the Fresh Start Agreement.
2. The legal advice confirms that the Budget Act 2016 and Section 59 of the NI Act provide no legal basis for the kind of scheme that is contained in the present draft Regulations. It also states that to use the general powers provided under the Budget Act to put in place a statutory scheme is inconsistent with the primary legislative powers in the Welfare Reform and Work Order (Northern Ireland) (2016) to make regulations to mitigate the bedroom tax.
3. The provisions of the Budget Act (NI) 2016 provide a legal basis for expenditure for the purposes of Schedule 1 to that Act. Nothing in the Budget Act sets out the terms and conditions of the payment of any particular amount of money to any particular person or household under a statutory mitigation scheme. To do that requires that Regulations be made specifying the entitlements of individuals and households to mitigation payments.
4. This is entirely consistent with the approach we have adopted for all other mitigation schemes already introduced following the Fresh Start Agreement. It ensures that those entitled to receive such payments and those advising them have certainty as to their entitlements. It also reflects the long established approach to social welfare arrangements where legislation and regulations specify the terms and conditions on which social welfare payments are made and administered. It would be unprecedented to introduce a new welfare scheme estimated to cost around £25 million per year solely on the basis of administrative action.
5. In light of the above, our legal advice therefore confirms that the only way for you and the Department to introduce a statutory "bedroom tax" mitigation scheme is through the present draft regulation and that the laying of these Regulations is the safest legal route in the present circumstances.

[signed]

LEO O'REILLY