EXPLANATORY MEMORANDUM TO

THE EUROPEAN PARLIAMENTARY ELECTIONS (ANONYMOUS REGISTRATION) (NORTHERN IRELAND) REGULATIONS 2014

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations implement the system of anonymous registration in respect of European Parliamentary elections in Northern Ireland, for people for whom the publication of their name and address would pose a threat to their safety. They mirror provisions already introduced for parliamentary and local elections by the Anonymous Registration (Northern Ireland) Order 2014 (S.I. 2014/1116). The Regulations amend the European Parliamentary Elections (Northern Ireland) Regulations 2004 and the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 to extend provisions on anonymous registration made in primary legislation for Great Britain to Northern Ireland and to reflect changes made by the Electoral Registration and Administration Act 2013. They also amend the European Parliamentary Elections Regulations 2004 to ensure that Northern Ireland certificates of anonymous registration are recognised in Great Britain.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Anonymous registration was introduced in Great Britain by section 10 of, and Schedule 1 to, the Electoral Administration Act 2006, which made amendments to provisions of the Representation of the People Act 1983 and related Acts. Those provisions have since been amended by the Electoral Registration and Administration Act 2013. More detailed provision was made for Great Britain in secondary legislation by amendment of the Representation of the People (England and Wales) Regulations 2001 and the Representation of the People (Scotland) Regulations 2001.

4.2 Anonymous registration was not extended to Northern Ireland in 2006. Instead, section 1 of the Northern Ireland (Miscellaneous Provisions) Act 2006 gave the Secretary of State the power to make equivalent provision for Northern Ireland by Order in Council under section 84 of the Northern Ireland Act 1998.

4.3 In February 2008, the Northern Ireland Office undertook a public consultation on proposals to address concerns held by those whose personal safety might be compromised if their details were publicly accessible on the full electoral register (*Anonymous Registration: Protecting Voters at Risk in Northern Ireland*). A consultation response was issued in February 2009. In September 2013, the Government undertook a further public consultation (*Anonymous registration: Protecting Voters at Risk in Northern Ireland*), which included draft legislation. A consultation response was issued in February 2014.

4.4 The Secretary of State's power to make provision for anonymous registration in Northern Ireland was used for the first time to make the Anonymous Registration (Northern Ireland) Order 2014 (S.I. 2014/1116), which extended to Northern Ireland many of the anonymous registration provisions made in primary legislation for England, Wales and Scotland.

4.5 This instrument is linked to the Anonymous Registration (Northern Ireland) Order 2014 (S.I. 2014/1116), made on 28 April 2014, and the following other statutory instruments that were laid alongside these Regulations:

- The Representation of the People (Northern Ireland) (Amendment) Regulations 2014
- The Northern Ireland Assembly (Elections) (Amendment) Order 2014
- The Anonymous Registration (Northern Ireland) (No. 2) Order 2014
- The Donations to Candidates (Anonymous Registration) Regulations 2014

4.6 The Political Donations and Regulated Transactions (Anonymous Electors) Regulations 2014 are also linked but are subject to the negative resolution procedure. The Electoral Administration Act 2006 (Commencement No. 2) (Northern Ireland) Order 2014 is also linked but is not subject to parliamentary procedure. Together, these instruments implement the system of anonymous registration in Northern Ireland. Three of the linked instruments were published in draft, and others were described, in the Government consultation in September 2013.

4.7 The European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 give effect to Article 22.2 of the *Treaty on the Functioning of the European Union* and the requirements of *Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals*. The changes to that instrument are made to ensure that citizens of the Union have the same entitlement to register as UK nationals.

5. Territorial Extent and Application

5.1 This instrument extends to Northern Ireland only, with the exception of regulation 1, which extends to the UK and Gibraltar, regulations 2 to 8 which

extend throughout the UK, and regulation 53 which extends to England and Wales, Scotland and Gibraltar only.

6. European Convention on Human Rights

6.1 Andrew Robathan, Minister of State for the Northern Ireland Office, has made the following statement regarding Human Rights:

"In my view the provisions of The European Parliamentary Elections (Anonymous Registration) (Northern Ireland) Regulations 2014 are compatible with the Convention rights".

7. Policy background

7.1 The full electoral register lists the name and address of everyone who is entitled to vote. The main use of the full register is for elections and referendums, although it can be used for other purposes such as the prevention and detection of crime, eligibility for jury service, and for checking identity when applying for credit. It may also be seen, under supervision, by any member of the public (and partially copied by means of handwritten notes).

7.2 Anonymous registration allows a person who is at risk to register to vote without the risk of their name and address being available to someone who might be trying to trace their whereabouts. It does this by replacing their name and address on the register with a number. The number can then be cross-referenced against a list of voters held securely by the registration officer.

7.3 Anonymous registration was not extended to Northern Ireland when it was introduced in Great Britain because there were a number of differences in Northern Ireland which needed to be taken into account. These included differences in electoral law, for example the additional checks on identity used in Northern Ireland to prevent electoral fraud.

7.4 These Regulations mirror provisions of the Anonymous Registration (Northern Ireland) Order 2014, and apply many of the now UK-wide provisions in the Representation of the People Act 1983 to European Parliamentary elections in Northern Ireland without amendment.

7.5 The Regulations make amendments to procedures at European Parliamentary elections in Northern Ireland to take account of anonymous registration. These provisions make amendments to the UK-wide provisions on registration of European citizens on the register of relevant citizens of the Union to implement the system of anonymous registration. These amendments take account of recent changes made by the Electoral Registration and Administration Act 2013.

7.6 These provisions also apply provisions in the Representation of the People (Northern Ireland) Regulations 2008 (inserted by the Representation of the People (Northern Ireland) (Amendment) Regulations 2014, laid together

with these Regulations) to European Parliamentary elections in Northern Ireland. Those applied provisions set out how applications for anonymous registration should be made and determined, the relevant court orders and injunctions that can be used to support an application and the individuals who are able to provide attestations in support of applications for anonymous registration. They set out the duties of the Chief Electoral Officer and his staff in relation to records of anonymous entries and prescribe a certificate of anonymous registration, which can be used by a person to show that they have been registered anonymously, for example when donating to a political party or applying for credit.

7.7 The amendments made for European Parliamentary elections in these Regulations ensure there is consistency of application of the anonymous registration scheme across all elections in Northern Ireland and the majority are consistent with those made for anonymous registration in Great Britain. The changes which differ from those in Great Britain are as follows:

a. The duration of registration will be longer than it is in Great Britain, with attestations covering a maximum of five years and registration covering the period of a particular order (up to a maximum of five years). This is intended to help the Police Service of Northern Ireland (PSNI) and other bodies manage the greater volume of applications for attestation that are expected in Northern Ireland. It will also facilitate the work of the Chief Electoral Officer: as there is no requirement for an annual canvass in Northern Ireland, it is common for entries to remain on the electoral register for a period of several years. In contrast to the position in Great Britain, the Chief Electoral Officer will be able to review entitlement to an anonymous entry if the person is no longer at risk.

b. It will be possible to review entitlement to an anonymous entry. The power of review, which is not available in Great Britain, is intended to ensure that persons in Northern Ireland will not retain an anonymous entry if the safety test is no longer satisfied.

c. Those with an anonymous entry will be automatically eligible to apply for a postal vote and will not be able to vote in person. This is to avoid persons with an anonymous entry being questioned about their personal details at the polling station. All voters at polling stations in Northern Ireland are required to show photographic identification before receiving their ballot paper.

d. A person anonymously registered will be able to apply for a tendered postal ballot paper for European Parliamentary elections if they have lost or not received their postal ballot paper. This is necessary in Northern Ireland because anonymous electors will be required to vote by post. In Great Britain electors with an anonymous entry on the electoral register are able to submit a tendered ballot paper at polling stations. The Regulations also set out the procedures for the issue and receipt of tendered postal ballot papers at European Parliamentary elections.

e. In relation to donations, these Regulations also ensure that a candidate in a European Parliamentary election anywhere in the UK can accept an anonymous registration certificate issued in Northern Ireland, or elsewhere in the UK or in Gibraltar, as evidence that the donor is on an electoral register as required.

7.8 The Regulations also introduce an official postal poll card and proxy postal poll card for use in Northern Ireland for European Parliamentary elections. The new forms are consistent with those introduced for Parliamentary and local elections in the Anonymous Registration (Northern Ireland) Order 2014.

8. Consultation outcome

8.1 Changes made to policy on anonymous registration following the public consultation in 2008-9 include:

a. In response to concerns raised by PSNI about the additional workload that might be faced by the police, the level of seniority of police officers able to attest applications was reduced (a police officer of or above the rank of superintendent may now attest applications). This is the same as the current position in Great Britain.

b. The length of entitlement to anonymous registration was extended from one year to a maximum of five years, in response to concerns raised by a number of organisations about the compatibility of the one year entitlement with the continuous registration system.

8.2 No changes have been made in response to comments following the publication of draft legislation in September 2013. However, changes will be made to guidance in response to concerns raised by the Electoral Commission about the status of Irish court orders.

9. Guidance

9.1 The Northern Ireland Office is working with the Chief Electoral Officer for Northern Ireland and other agencies directly affected to prepare guidance for persons who may be eligible to apply for an anonymous entry.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies. An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Northern Ireland Office will keep the system of anonymous registration in Northern Ireland under review. The Electoral Commission and the Chief Electoral Officer for Northern Ireland also have a statutory duty to report on electoral registration.

13. Contact

13.1 Karen McNeill, Senior Elections Policy Officer at the Northern Ireland Office Tel: 020 7210 6545 or email: karen.mcneill@nio.x.gsi.gov.uk can answer any queries regarding the instrument.

Northern Ireland Office
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