EXPLANATORY MEMORANDUM TO

THE FLAGS (NORTHERN IRELAND) (AMENDMENT) (NO. 2) REGULATIONS 2020

2020 No.

1. Introduction

1.1 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 The purpose of these regulations is to amend the Flags Regulations (Northern Ireland) 2000 (S.R. 2000/347) ("the 2000 Regulations"), which make provision for when flags may be flown from Government buildings in Northern Ireland. In particular the 2000 Regulations list the days on which the Union flag may be flown (designated days), and list certain Government buildings at which the flag must be flown on these days (specified buildings). These Regulations amend the 2000 Regulations by adding a further three designated days, and by removing one building and adding two buildings to the list of specified buildings, and are to take effect 21 days after the day they are made.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument is limited to Northern Ireland.

3.3 This instrument only concerns flag flying in Northern Ireland and has no application elsewhere in the UK.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

5.1 Robin Walker, Minister of State at the Northern Ireland Office, has made the following statement regarding Human Rights:

"In my view the provisions of the Flags Regulations (Northern Ireland) (Amendment) 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The Flags (Northern Ireland) Order 2000 ("the 2000 Order") gives the Secretary of State for Northern Ireland the power to make and amend regulations regulating the

flying of flags at Northern Ireland Government buildings. Article 3(2) of the 2000 Order defines a Government building as a 'building wholly or mainly occupied by members of the Northern Ireland Civil Service'. Where the Secretary of State proposes to make regulations under the 2000 Order, in accordance with Article 4 of the 2000 Order, a draft of the proposed regulations was referred to the Northern Ireland Assembly on 1st September 2020 and the Assembly reported its views on the proposed regulations to the Secretary of State on 14th September. The Secretary of State and the Minister of State have then considered the Assembly's report and has had regard to the Belfast Agreement, before laying the regulations for affirmative approval by both Houses of Parliament. A copy of the Assembly's report has also been made available with the regulations and this explanatory memorandum.

6.2 The Flags Regulations (Northern Ireland) 2000 ("the 2000 Regulations") regulate the flying of flags at Northern Ireland Government buildings: these Regulations designate the days on which the Union flag, and in certain circumstances, other flags, should be flown, and also specify certain buildings at which the Union flag must fly on the designated days listed in the Regulations. These specified buildings were chosen as they were the headquarter buildings of Northern Ireland Government departments.

6.3 The 2000 Regulations were updated by the Flags Regulations (Northern Ireland) (Amendment) 2002 (S.R. 2003/553) - to remove the birthdays of Her Majesty Queen Elizabeth the Queen Mother and Princess Margaret - and by section 67 of the Justice (Northern Ireland) Act 2002, which applied the flag flying requirements to court buildings in Northern Ireland. The 2000 Regulations were also amended by the Flags (Northern Ireland) (Amendment) (EU Exit) Regulations 2020, which removed Europe Day (9th May) as a designated flag flying day.

6.4 Flag flying from Government buildings in the rest of the United Kingdom is not regulated by legislation: instead, the Department for Culture, Media and Sport issue, on an annual basis, a list of designated flag flying days. This list contains three days not included in the 2000 Regulations - the birthdays of the Duchess of Cambridge (9 January); the Duke of Cambridge (21 June); and the Duchess of Cornwall (17 July).

6.5 These Regulations will amend the 2000 Regulations by updating the list of designated days so that it includes the birthdays of the Duchess of Cambridge (9 January); Duke of Cambridge (21 June); and the Duchess of Cornwall (17 July). The Regulations will also update the list of specified buildings listed in the 2000 Regulations. The Regulations will be made under the 2000 Order.

7. Policy background

What is being done and why?

7.1 The *New Decade, New Approach* document[1], published on 9 January 2020, set out a deal to restore devolved government in Northern Ireland. It contained the following commitment for implementation by the UK Government:

'Update the Flags Regulations (Northern Ireland) 2000 to bring the list of designated flag flying days from Northern Ireland government buildings and court-houses into line with the DCMS designated days, meaning the same designated days will be

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade__a_new_approach.pdf

observed in Northern Ireland as in the rest of the UK going forward. This will involve the addition of three designated days.'

7.2 These Regulations fulfil this commitment. The three designated days mentioned are those referred to in paragraph 6.4 above - the birthdays of the Duchess of Cambridge (9 January); Duke of Cambridge (21 June); and the Duchess of Cornwall (17 July). Making this change will mean Northern Ireland government buildings and court-houses will observe the same designated days as are observed in the rest of the United Kingdom.

7.3 The Regulations will also amend the list of specified buildings contained in the 2000 Regulations. These specified buildings were included in the 2000 Regulations as they were headquarters of Northern Ireland Government departments. This list has not been updated since the 2000 Regulations were made, and contains one building (Churchill House) that has subsequently been demolished; and does not include two buildings that have subsequently become the headquarters of two Government departments: Clare House (headquarters of the Department of Finance); and Causeway Exchange (headquarters of the Department for Communities), both in Belfast. These regulations will therefore remove Churchill House, Belfast from the list of specified buildings, and will add Clare House, Belfast and Causeway Exchange, Belfast.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not consolidate any current legislation.

10. Consultation outcome

10.1 The Secretary of State for Northern Ireland referred the draft Regulations to the Northern Ireland Assembly, as required by Article 4 of the 2000 Order (see paragraph 6.1 above). The Northern Ireland Assembly has reported its views on the draft Regulations, and a copy of this report is attached to this explanatory memorandum.

11. Guidance

11.1 Not relevant.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it has no impact on business or charities.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 Monitoring of this legislation is not considered necessary.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Raphaela Thynne at the Northern Ireland 07342064749 or Raphaela.thynne@nio.gov.uk can be contacted with any queries regarding the instrument.

15.2 Holly Clark, Deputy Director for Constitution, Rights and Healthcare Policy Group at the Northern Ireland Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robin Walker, Minister of State for Northern Ireland, can confirm that this Explanatory Memorandum meets the required standard.