EXPLANATORY MEMORANDUM TO

THE LOCAL ELECTIONS (NORTHERN IRELAND) (ELECTION EXPENSES) ORDER 2019

2019 No. [XXXX]

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument will amend the Electoral Law Act (Northern Ireland) 1962 ('the 1962 Act') to provide for two new exclusions relating to election expenses incurred by candidates in local government elections in Northern Ireland. The first, excludes candidates' personal expenses from the overall limit placed on election expenses that may be incurred by them or on their behalf during an election campaign, and the instrument further provides for amendments to the requirements for election expense returns to accommodate this change. The second, will exclude disability-related expenses, to the extent that they are reasonably incurred, from the statutory definition of "election expenses".

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 **Commencement:** It is envisaged that the instrument will come into force by 26th March 2019, the start of the regulated period for local government elections in Northern Ireland. This will ensure that any disability-related expenses are exempted from being treated as election expenses and personal expenses are exempted from election expense limits. Article 1(1) therefore provides that the statutory instrument will come into force on the day after the day on which it is made.

3.2 The Northern Ireland Office notes the Joint Committee on Statutory Instruments' views expressed in the First Report of Session 2014-15 and the 26th report of the current session, namely that there should be a period of at least 21 days between the making of an instrument and its commencement. The Northern Ireland Office considers that the commencement provision in article 1(1) is justified in the present case, for the four reasons below.

3.3 Firstly, stakeholders who will be affected by the statutory instrument will have had an opportunity to take note of its effect during its passage through Parliament.

3.4 Secondly, commencing the statutory instrument as soon as possible will ensure that it is in force before the start of the regulated period for the 2019 local elections thus enabling candidates to take advantage of these new exemptions during those elections. If the provisions were to come into force after the regulated period had commenced then the exemptions would apply to personal or disability related expenses differently at the start of the campaign than at the end, which could be confusing for candidates.

3.5 Thirdly, the instrument imposes minimal new duties on candidates. Of the instrument's three substantive provisions two impose no new duties at all, simply exempting disability related expenses from the requirements imposed on "election expenses" and exempting "personal expenses" from spending limits imposed on election expenses. Whilst one of the substantive provisions requires candidates to disclose details of their personal expenses in their returns, it is expected this requirement will create minimal disturbance. Candidates are, under s.46(1) of the 1962 Act, already required to provide their returns within 35 days of the result of the election being declared so the requirement will, in reality, only arise well outside of the conventional 21 day period for commencement. Furthermore, candidates are already, under s.46 of the 1962 Act, required to disclose itemised details of individual election expenses (including personal expenses) in their election returns so will already hold records of the information that underlies the statement.

3.6 Finally, the Chief Electoral Officer for Northern Ireland and the Electoral Commission have been consulted and been made aware of the proposed changes so that there is little or no disturbance upon their operations when they come into force. Further efforts are intended to publicise the changes to candidates and the Chief Electoral Officer for Northern Ireland (who is the returning officer for Northern Ireland) will communicate the change to their staff prior to the start of the regulated period. The Electoral Commission has also indicated that it intends to update its guidance to reflect the amendments once they have been made.

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)

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

3.8 This instrument concerns candidates to Northern Ireland local government elections only and it has no application elsewhere in the UK.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Northern Ireland only.

4.2 The territorial application of this instrument is Northern Ireland only.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Northern Ireland has made the following statement regarding Human Rights:

"In my view the provisions of The Local Elections (Northern Ireland) (Election Expenses) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The 1962 Act places a limit, at s.42, on the amount of election expenses (which is defined in s.52A) that can be incurred by or on behalf of a candidate at a Northern Ireland local election. This limit presently includes the candidate's "personal expenses", which are defined at s.130 of the 1962 Act, and include matters such as reasonable travelling and hotel expenses. In UK Parliamentary elections, Northern Ireland Assembly elections and Great Britain local elections "personal expenses" are already excluded from the equivalent limit on election expenses by s.76(5) and (5A) of the Representation of the People Act 1983. Article 2 of this instrument amends s.42

of the 1962 Act to provide that the limit on election expenses for Northern Ireland local elections does not include personal expenses, bringing the position in line with other Northern Ireland and Great Britain elections.

6.2 Candidates in Northern Ireland local elections are presently required to send a return setting out details of their election expenses to the returning officer within 35 days of the election result being declared. The returns are required, by s.46 of the 1962 Act, to include details of the candidate's total election expenses but not their personal expenses. Article 3 of this instrument amends s.46 to require that a statement of personal expenses is included in election expense returns. This change is made to accommodate the changes made by article 2 as the returning officer would otherwise not be able to check if the limit on total election expenses (which, by virtue of article 2, excludes personal expenses) has been complied with without details of the candidate's personal expenses.

6.3 Disability-related expenses are not currently excluded from the definition of "election expenses" in section 52A of the 1962 Act. As a result, they count towards a disabled candidate's spending limit. The matters which are excluded from the definition of "election expenses" are listed in Part 2 of Schedule 3B to the 1962 Act. Article 4 amends Schedule 3B so that reasonable expenditure by or on behalf of a disabled candidate that is reasonably attributable to the candidate's disability is excluded from the definition of "election expenses".

6.4 The Representation of the People (Election Expenses Exclusion) (Amendment) Order 2019, which was laid before Parliament in draft on 17 December 2018, applies substantially the same exclusion for disability-related expenses as article 4 to UK Parliamentary elections, Northern Ireland Assembly elections and various elections in England (including local government elections). An exclusion for disability-related expenses for disabled candidates from candidate spending limits currently exists in Scotland for local council elections (including by-elections), made under the Scottish Local Government Elections Amendment (No. 2) Order 2016 (S.S.I. 2016/354) and Scottish Parliament elections, made under the Scottish Parliament (Elections etc.) Order 2015 (S.S.I. 2015/425).

7. Policy background

What is being done and why?

7.1 This instrument refines existing local election rules for Northern Ireland which impose a limit on the amount of election expenses that can be incurred by or on behalf of a candidate at a local election.

7.2 The provisions will bring local election rules into line with those for other elections in Northern Ireland by removing the requirement to include the personal expenses of a candidate within the expenditure limits set on election expenses. This will mean that candidates in geographically larger district electoral areas will not be hindered from campaigning due to the cost of personal travel counting towards their spending limit. Personal expenses whilst being excluded from the total election expenses cap will still be reportable to the Chief Electoral Officer for Northern Ireland for transparency purposes. The instrument further provides that candidates must provide a statement of their personal expenses within their expenses return, this will enable the Electoral Commission to establish which expenses should be excluded when determining if the total expenses cap has been exceeded.

7.3 This instrument also exempts disability related expenses, to the extent that they are reasonably incurred, from the statutory definition of "election expenses". This will prevent people with a disability from being disadvantaged by having to include additional expenditure incurred as a result of their disability in their election expenditure returns. Disability-related expenses include, but are not limited to, the cost of providing transport support for mobility impaired candidates, British Sign Language (BSL) interpretation for hearing impaired candidates during election campaigns and the transcription of campaign material into braille for visually impaired candidates.

7.4 Matters of expenditure that would be common to both disabled and non-disabled candidates, such as the normal printing of campaign leaflets for distribution to the public, would not fall within the scope of this exemption. However, where a disabled candidate requires specially adapted measures to participate in campaigning on a level basis with a non-disabled candidate, then such an additional expense is likely to fall within the scope of the instrument. The Order will help 'close the gap' between disabled candidates and non-disabled candidates, enhancing the equality of opportunity mirroring for local elections in Northern Ireland the expenses rules being implemented for UK Parliamentary and Northern Ireland Assembly elections.

7.5 The Electoral Commission have pressed for the rules relating to personal expenses and disability expenses at Northern Ireland local elections to be brought into line with other elections in Northern Ireland. The Chief Electoral Officer for Northern Ireland supports the provisions.

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 / 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 Northern Ireland Office consulted the Electoral Commission and the Chief Electoral Officer for Northern Ireland. The engagement included consultation on both the policy proposals and a subsequent consultation on the draft statutory instrument.

10.2 The Electoral Commission welcomed both the proposal to exclude personal expenses from the spending limit and to exclude disability-related expenses from election expenses. The Commission agreed with the proposal to require that a candidate's expense return include a statement of the amount of election expenses incurred that cover the candidate's personal expenses. They noted that this provision will ensure there is transparency about the total amount of personal expenses incurred.

10.3 the Chief Electoral Officer for Northern Ireland raised no concerns about the policy and welcomed the provisions of the instrument

11. Guidance

11.1 The Electoral Commission have confirmed they will provide guidance on what constitutes an electoral expense in line with their statutory obligations.

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 no, or no significant, impact on the business, charities, voluntary bodies or public sectors is foreseen.

13. Regulating small business

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

14. Monitoring & review

14.1 Following the May 2019 local elections the Northern Ireland Office will engage with the Electoral Commission and the Chief Electoral Officer for Northern Ireland in relation to provisions to exclude candidates' personal expenses from the overall election expenses limit in order to identify any issues with the implementation and application of changes to personal expense returns for candidates.

14.2 There are no plans to monitor or review the provisions in relation to disability related expenses. Under the instrument, disabled candidates are not required to report disability-related expenses within their spending returns and as a result, monitoring or reviewing of the statutory instrument is difficult to implement and unnecessary. This approach upholds the privacy of disabled candidates and does not put them in a position in which they feel obliged to disclose their disability.

15. Contact

15.1 Katherine Herrick at the Northern Ireland Office. Telephone: 02072106483 or email: Katherine.herrick@nio.gov.uk can be contacted with any queries regarding the instrument.

15.2 Bilal Zahid, Deputy Director for Constitutional Policy, at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Duncan of Springbank, Parliamentary Under Secretary of State at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.