EXPLANATORY MEMORANDUM TO

THE LOCAL ELECTIONS (NORTHERN IRELAND) ORDER 2010

2010 No.

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

2. Purpose of the instrument

2.1 This Order amends the *Electoral Law Act (Northern Ireland) 1962* ("1962 Act") and the *Local Elections (Northern Ireland) Order 1985* ("1985 Order") and makes provision for access to marked registers and other election documents after a local election. It applies changes made in respect of UK Parliamentary elections to local elections in Northern Ireland. This ensures that where appropriate there is consistency between electoral procedures at local, Parliamentary, Assembly and European Parliamentary elections in Northern Ireland and is beneficial for electors, electoral administrators and party representatives. The Order also sets the date of the next local elections as 5 May 2011.

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

3.1 None.

4. Legislative Context

4.1 The 1962 Act governs the conduct of local elections in Northern Ireland with provision for absent voting made in the 1985 Order. Many of the provisions are equivalent to those in the *Representation of the People Acts 1983* and *1985* ("1983 Act" and "1985 Act") which provide for the conduct of UK Parliamentary elections. The *Political Parties, Elections and Referendums Act 2000* ("PPERA") and the *Electoral Administration Act 2006* ("EAA") made various changes to the 1983 Act. The provisions of this Order replicate those amendments where appropriate to maximise consistency between electoral procedures at all elections in Northern Ireland. This Order also reflects changes made to absent voting legislation for UK Parliamentary elections by, for example, the *Representation of the People (Northern Ireland) (Amendment) Regulations 2010* ("2010 Regulations"). This means that the same absent voting requirements are in place for the purpose of local, Parliamentary, European Parliamentary and Assembly elections in Northern Ireland.

4.2 The *Postponement of Local Elections (Northern Ireland) Order 2009* ("2009 Order") postponed the local elections due to be held in 2009

until 2011, but did not specify the date on which the elections would be held. Article 3 of this Order accordingly sets the date of the 2011 local elections.

5. Territorial Extent and Application

5.1 This instrument extends to Northern Ireland only.

6. European Convention on Human Rights

6.1 The Minister of State for Northern Ireland, Hugo Swire, has made the following statement regarding Human Rights:

'In my view the provisions of the *Local Elections (Northern Ireland) Order 2010* are compatible with the Convention rights.'

7. Policy background

Changes made to legislation governing UK Parliamentary elections

7.1 The amendments made by this Order principally reflect changes to the legislation governing the conduct of UK Parliamentary elections. The amendments in Part 1 of Schedule 1 to the Order largely relate to donations and candidates' expenditure further to changes made by PPERA (which did not apply to local elections in Northern Ireland). New Schedules 3A and 3B, for example, provide for the control of donations to candidates at a local election and detail what should and should not be counted as an election expense. Changes in Parts 2 and 3 of Schedule 1 relate to electoral law more generally and apply amendments made by the EAA. These include enabling returning officers to correct procedural errors; providing that documents issued or displayed for the purpose of the election must be provided in other languages or formats as appropriate and making provision for offences committed in relation to applications for postal and proxy votes.

7.2 Schedule 2 to the Order makes changes to absent voting procedures at local elections to ensure consistency with those at Parliamentary, Assembly and European Parliamentary elections in Northern Ireland. These include providing that an individual may apply for an absent vote if they or their spouse or partner are attending a course provided by an educational institution. In addition, changes made by the 2010 Regulations have been reflected to provide, for example, that individuals may attest up to two absent vote applications (instead of just one, as previously) at an election and add registered social workers to the list of those who may attest absent vote applications made on the grounds of blindness or other disability.

7.3 Part 7 of the *Representation of the People (Northern Ireland) Regulations 2008* introduced controls relating to access to marked registers and other documents open to public inspection after an

election. Schedule 3 to this Order applies these provisions to the access to and inspection of documents after a local election.

The Local Elections Rules

7.4 The Local Elections Rules contained in Schedule 5 to the 1962 Act have also been amended to ensure consistency with the rules in place at other elections in Northern Ireland. The counterfoils on ballot papers have been replaced by Corresponding Number Lists and the electoral timetable has been amended so that it is the same as at an election to the Northern Ireland Assembly. Amendments to rule 34 provide that the forms of acceptable photographic identification for the purpose of voting are the same as at a Parliamentary and Assembly election. The procedure on death of a candidate has also been amended to provide consistency with Parliamentary, Assembly and European Parliamentary elections and minimise disruption to the poll in the event of an independent candidate's death. The forms for use at local elections have also been amended where necessary to provide consistency with those used at other elections in Northern Ireland and make them as clear as possible for the elector.

Additional amendments

7.5 Article 3 of the Order provides that the 2011 local elections in Northern Ireland will be held on 5 May. A number of changes have also been made to facilitate the running of local elections in Northern Ireland, one of which is to provide the Chief Electoral Officer with a power of direction in relation to the discharge of functions delegated to Deputy Returning Officers. This follows a recommendation made by the Electoral Commission in their report on the 2005 combined UK Parliamentary and local elections in Northern Ireland[1] that this position should be clarified in the legislation.

8. Consultation outcome

8.1 The Electoral Commission and the Chief Electoral Officer were consulted during the preparation of this Order. Both supported the proposed changes on the basis that the amendments would provide consistency with electoral procedures at other elections in Northern Ireland. The Department of Justice (Northern Ireland) were consulted on, and were supportive of, changes relating to electoral misdemeanours.

8.2 There was specific consultation between the Electoral Commission, the Chief Electoral Officer and the Northern Ireland political parties on the date of the 2011 local elections.

[1] *Election 2005: Northern Ireland (The combined UK Parliamentary and local government elections)*, The Electoral Commission, December 2005

9. Guidance

9.1 This Order is not accompanied by any guidance.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This Order will be kept under review and updated as required in the light of consultation and discussion with stakeholders such as the Chief Electoral Officer and Electoral Commission.

13. Contact

Joanna Fitch, Elections Unit, Northern Ireland Office Tel: 020 7210 0263 or email: Joanna.Fitch@nio.x.gsi.gov.uk can answer any queries regarding the instrument.

Northern Ireland Office
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