EXPLANATORY NOTE

(This note is not part of the Regulations)

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Executive Office to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under part V section 50 of the Climate Change Act (Northern Ireland) 2022**a** (and is subject to the draft affirmative resolution procedure.

2. Purpose

2.1. The Statutory Rule is in line with what is allowed for within Section 50 of the Act, i.e.it will allow for TEO to establish an independent office to be known as the 'Northern Ireland Climate Commissioner' (NICC) and to allow the NICC to have the following functions to:

- oversee and report on the exercise of functions of Northern Ireland departments under the Act.
- In particular -

  (a) provide advice and make recommendations;

  (b) undertake or commission research;

  (c) publish—

  (i) reports,

  (ii) advice and recommendations,

  (iii) other relevant information.

3. Background

3.1. Climate change has become a global issue, and policies and actions are urgently needed to mitigate the impact of climate change on future generations.

3.2. The Climate Change Act (Northern Ireland) 2022 ('the Act') was passed by the NI Assembly in March 2022 and received Royal Assent in June of that year. The headline requirement of the Act is that it has placed a general duty on all Departments here to ensure that Net Zero is achieved by 2050.

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a Climate Change Act (Northern Ireland) 2022

3.3. The Act has also placed further specific duties on a small number of named Departments. **Specifically, Section 50 of the Act has placed a duty on TEO to establish an independent office to be known as the 'Northern Ireland Climate Commissioner' ('NICC')**

3.4. Implementing Section 50 of the Act is an important first step in establishing a NICC. Once established, we will be the first region in the UK to have their own Climate Commissioner.

3.5. The Executive has identified climate change as one of its most significant challenges and has included the '**Planet'** as one of the three missions in the draft Programme for Government as follows –

'Planet: Harnessing the potential of a green growth economy while ensuring we provide an equitable transition to a sustainable and affordable society as we take responsibility for decarbonising our economy and society.'

3.6. The placement of the NICC with TEO is significant for a number of reasons. Firstly, it is our understanding that this was a deliberate action to ensure there was independence between the Departments responsible for delivering the key actions of the Act (primarily DAERA, DfE and DfI) and the body which would be overseeing implementation (the NICC). Secondly, it was seen as important that there would be a level of strategic leadership for overseeing our response to Climate Change from the First Minister and deputy First Minister.

3.7. In summary –

- Section 50 (1) of the Act places a duty on TEO to establish, by regulations (which, when read in conjunction with the requirements of section 53, Clause 3, must be made under the draft affirmative procedure), an independent office to be known as the "*Northern Ireland Climate Commissioner"* ("NI Climate Commissioner").

- Section 50 (2) states that the functions of the Commissioner are to "*oversee and report on the operations of this Act*".

- Section 50 (3) lists a number of provisions which must or may be included within the regulations. Only one of these is compulsory, that is that the regulations must make provision for the appointment of a Commissioner. All other issues, which primarily relate to administrative provisions regarding the establishment of the Commissioner's office, "*may*" be included within the Regulations.

- Section 50 (4) states that regulations "*may"* also make provision about the functions of the Commissioner, including how their oversight and reporting functions are to be performed.

- Section 50 (5) states that the first set of Regulations "*must be laid in draft before the Assembly within a period of 2 years beginning with the day on which the Act receives Royal Assent*." The Act received Royal Assent on 6 June 2022 such that the date by which the first set of draft regulations required to be laid was 6 June 2024.

3.9. Establishing a body such as this by Regulations is unique and without precedent, however it is feasible to do so.

3.10. Therefore, these regulations have been drafted in line with what is allowed for within Section 50 of The Climate Change Act (NI) 2022.

4. Consultation

4.1. TEO has had ongoing engagement with key stakeholder groups regarding the development of these Regulations.

4.2. It would normally be considered standard practice though to take forward a public consultation when setting up a new public body such as this, the value of which being to establish its primary functions, duties and responsibilities for inclusion in primary legislation. The primary legislation was debated extensively in the Assembly and has already passed in this case, however. There is therefore no opportunity for a public consultation on the NICC to influence the primary legislation.

4.3. Furthermore, there is no opportunity within these regulations (a form of subordinate legislation) to introduce matters which are not already allowed for within the primary legislation – doing so would likely be considered ultra vires. The primary in this case sets out the core functions of the NICC.

4.4. Moreover, there is no legal requirement in the Act to carry out a public consultation on the draft regulations to establish a NICC.

4.5. It is therefore not considered necessary or appropriate for the NICC Regulations to be subject to a public consultation exercise as it would not be capable of significantly altering what has already been allowed for in the Act.

4.6. Section 56 of the Act however states that before making regulations under the Act the Department must request advice from the Committee on Climate Change (CCC) about the proposal to make the regulations and take the CCC's advice into account. The CCC formally provided a response to the draft regulations on 27 November 2024.

5. Equality Impact

5.1. I can confirm that consideration has been given to compliance with section 75 of the NI Act 1998. An Equality Screening was carried out when drafting the regulations.

6. Regulatory Impact

6.1. The proposed draft regulations will have no negative impact on business or the voluntary sector.

7. Financial Implications

7.1. None at this stage, though the eventual establishment of the NICC will have significant and recurring costs which will be subject to separate business case approval. It is estimated that NICC established in line with the draft Regulations would require c. £1m p/a.

8. Article 2 Windsor Framework

8.1. The Department is satisfied that this legislation does not engage Article 2 of the Windsor Framework.

9. Section 24 of the Northern Ireland Act 1998

9.1. The Department is satisfied that this legislation is compliant with section 24 of the Northern Ireland Act 1998

10. EU Implications

Not applicable

11. Parity or Replicatory Measure

Not applicable

12. Additional Information

Not applicable