EXPLANATORY MEMORANDUM TO

THE NORTHERN IRELAND (MINISTERIAL APPOINTMENT FUNCTIONS) (NO. 2) REGULATIONS 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 In the absence of devolved government in Northern Ireland, the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 (the "2018 Act"), amongst other key measures, addresses the urgent need for key appointments to be made in Northern Ireland that would normally require Northern Ireland Ministers to be in office. Section 5 of the 2018 Act enables the relevant UK Minister to make certain, specified appointments, exercising the appointments functions already conferred on Northern Ireland Ministers in respect of a list of specified offices. This instrument specifies further offices for the purposes of section 5, thereby enabling the Secretary of State and Lord Chancellor – as the relevant UK Ministers - to exercise Northern Ireland Ministers' appointment functions in relation to those offices.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument will come into force on the day after the day on which it is made. The instrument needs to come into force at the earliest opportunity to enable appointment functions to be exercised. The instrument does not, however diminish the legal rights of persons affected, impose new duties on such persons or require them to adopt different patterns of behaviour[1]. On the contrary it will enable vital appointment functions to be exercised at the earliest opportunity.

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 enables public appointments to be made to specified Northern Ireland public bodies; it has no application elsewhere in the UK.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

[1] Committee's first report of session 2014/15

5. European Convention on Human Rights

5.1 The Minister of State for Northern Ireland, John Penrose MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Northern Ireland (Ministerial Appointment Functions) (No. 2) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 5 of the 2018 Act enables a relevant Minister of the Crown to exercise the appointment functions (a term that is defined in section 8(1)) of a Northern Ireland Minister in respect of specified offices. The 2018 Act as enacted included five specified offices all of which were in the policing and justice field (Member of the Northern Ireland Judicial Appointments Commission; Member of the Northern Ireland Policing Board; Member of the Police Service of Northern Ireland above the rank of chief superintendent; Member, chair or deputy chair of the Probation Board for Northern Ireland; and Police Ombudsman for Northern Ireland).

6.2 The Northern Ireland (Ministerial Appointment Functions) Regulations 2019 came into effect on 20 February 2019. This secondary legislation amended the table in section 5(2) of the 2018 Act, adding six further specified offices. The offices added by this regulation were: The Attorney General for Northern Ireland; Commissioner for Children and Young People for Northern Ireland; Member of the Commission for Victims and Survivors for Northern Ireland; Member, chair or vice-chair of the Northern Ireland Housing Executive; Member or chair of the Livestock and Meat Commission; and Member or chair of the Northern Ireland Local Government Officers' Superannuation Committee.

6.3 This instrument adds nine further offices in respect of which the appointment functions of a Northern Ireland Minister may be exercised by the relevant UK Minister. Further details of those offices are provided below in paragraph 7.

7. Policy background

What is being done and why?

7.1 This instrument applies to appointment functions relating to a number of devolved public offices. The UK Government remains committed to restoring devolution in Northern Ireland. However, as mentioned above, in the absence of devolved government in Northern Ireland it has been necessary for the UK Government to take strategic legislative interventions to ensure good governance is maintained in the interim.

7.2 The 2018 Act, amongst other key measures, addressed the need for urgent critical appointments to be made to the bodies listed above in paragraphs 6.1 and 6.2. Under the powers conferred by the 2018 Act, the Secretary of State for Northern Ireland also gave a commitment to make further critical appointments that may arise within Northern Ireland in the absence of an Executive.

7.3 The Northern Ireland Office has engaged with the Northern Ireland Civil Service to assess outstanding appointments and identify those which are critical. This included a thorough assessment of what the impact would be on public services should appointments not be made to these offices. This instrument specifies those offices that have been deemed critical which are: Member or chair of the Agricultural Wages

Board for Northern Ireland; Member, Chair or Vice-Chair of the Arts Council of Northern Ireland; Member, chair or deputy-chair of General Consumer Council for Northern Ireland; Trustee or Chair of the Board of Trustees of the National Museums and Galleries of Northern Ireland; Member, Chair or chief executive of the Northern Ireland Council for the Curriculum, Examinations and Assessment; Member of The Drainage Council for Northern Ireland; Member or Chair of the Historic Buildings Council; director or Chair of The Northern Ireland Transport Holding Company; and Queen's Counsel appointments.

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.

9. Consolidation

9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

10.1 Since the passing of the 2018 Act, the Northern Ireland Office has engaged with the Northern Ireland Civil Service to identify the further critical appointments that are included in this instrument. The main Northern Ireland Political Parties have also been consulted and have not raised any concerns with the bodies included in this instrument.

11. Guidance

11.1 No further guidance is being published alongside this instrument.

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 impact on business is foreseen as the legislation only relates to public bodies. Although there will be an impact on the six public bodies listed in the instrument, this will enable appointments to be made to them that could not be made previously.

13. Regulating small business

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

14. Monitoring & review

14.1 UK Ministers may only exercise appointment functions of Northern Ireland Ministers in relation to specified offices during the period while there is no Northern Ireland Executive. That period will end on the next occasion that all Ministerial offices in Northern Ireland are filled (see section 8(1) of the 2018 Act). The Northern Ireland Office will continue to engage with the Northern Ireland Civil Service to identify further critical appointments that may arise until such a time that a Northern Ireland Executive is in place.

15. Contact

15.1 Stephen Torney at the Northern Ireland Office. Telephone: 02890765424 or email: stephen.torney@nio.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 John Penrose MP, Minister of State at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.