EXPLANATORY MEMORANDUM TO

THE NORTHERN IRELAND (STORMONT AGREEMENT AND IMPLEMENTATION PLAN) ACT 2016 (INDEPENDENT REPORTING COMMISSION) REGULATIONS 2016

2016 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.

2. Purpose of the instrument

2.1 These Regulations give full effect to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing the Independent Reporting Commission ("the Agreement") which was signed on 13 September 2016. The Agreement is being laid before Parliament and will be available to view at https://www.gov.uk/uk-treaties during the week commencing 19 September 2016.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Northern Ireland and is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

4. Legislative Context

4.1 Sections 1 to 5 of the Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016 (c. 13) ("the 2016 Act") make provision about the Independent Reporting Commission ("the Commission") which will be established by the Agreement. The purpose of the Regulations is to give full effect to the Agreement. These Regulations are the first regulations under section 4(2) of the 2016 Act.

4.2 Shortly, the Northern Ireland Office is also intending to lay regulations, subject to the negative procedure, which will make provision about immunities and privileges in respect of members of the Commission and members of staff of the Commission.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Secretary of State for Northern Ireland, James Brokenshire, has made the following statement regarding Human Rights:

"In my view the provisions of the Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016 (Independent Reporting Commission) Regulations 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Fresh Start Agreement[1] was reached on 17 November 2015 after 10 weeks of cross party talks between the UK Government, the five largest parties of the Northern Ireland Assembly and the Government of Ireland on matters for which they have responsibility, in accordance with the three-stranded approach reflected in the 1998 Belfast Agreement. The aim of the cross-party talks was to secure the implementation of the December 2014 Stormont House Agreement[2] and deal with the impact of continued paramilitary activity connected with Northern Ireland. The Fresh Start Agreement seeks to make progress towards fulfilling these objectives. The Fresh Start Agreement strongly reaffirms support for the rule of law, places fresh obligations on Northern Ireland's elected representatives to work together on their shared objective of ridding society of all forms of paramilitary activity and groups, and commits to a concerted and enhanced effort to combat organised crime and cross border crime.

7.2 The Fresh Start Agreement includes a series of measures to end paramilitarism and tackle organised crime, including the establishment of the Commission. The Commission will report on progress towards ending continuing paramilitary activity connected with Northern Ireland, report on the implementation of the relevant measures of the three administrations; and consult with a wide range of statutory agencies, communities and civic society organisations. It is intended that reports of the Commission will inform future Northern Ireland Executive Programme for Government priorities and commitments through to 2021. It is intended that the Commission will be established by the end of December 2016.

7.3 A number of aspects of the Fresh Start Agreement required UK legislation, including the matters contained in the 2016 Act. Provision about the Commission was made in sections 1 to 5 of the 2016 Act. Since the 2016 Act obtained Royal Assent, the Agreement (between the Government of the United Kingdom and the Government of Ireland to establish the Commission) has been signed. The Regulations make provision about four matters in order to give full effect to the Agreement.

7.4 First, regulation 2(1) provides that the Commission must exercise its functions in the way it considers is most appropriate with a view to supporting long term peace and stability in society and stable and inclusive devolved Government in Northern Ireland. Regulation 2(1) is in addition to the provisions of section 2 of the 2016 Act.

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[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf

[2] https://www.gov.uk/government/publications/the-stormont-house-agreement

Regulation 2(1), taken together with section 2(1) and 2(2) of the 2016 Act, gives full effect to Article 3 of the Agreement[3].

7.5 Second, regulation 2(2) provides that the Commission must not act in a way which might prejudice the prosecution of crime. Article 9(3)(c) of the Agreement requires the Commission not to act in a way which might have a prejudicial effect on any proceedings which have, or are likely to be, commenced in a court of law. Article 9(3)(d) of the Agreement requires the Commission not to act in a way which might have a prejudicial effect on the prevention, investigation, detection or prosecution of crime. These requirements are reflected in section 2(3)(c) and (d) of the 2016 Act, save that section 2(3)(c) of the Act does not expressly require the Commission to not act in a way which might prejudice the prosecution of crime. The "prosecution of crime" could include criminal proceedings which are at too early a stage to say with certainty whether or not proceedings are likely to be commenced. It may also cover matters related to prosecution which are not specifically focussed on criminal proceedings, for example the gathering of evidence. The purpose of regulation 2(2) is to ensure that this aspect of the Agreement is given full effect in the UK. Regulation 2(2) is in addition to the other requirements of section 2 of the 2016 Act.

7.6 Third, Article 4(2) of the Agreement requires the Government of the United Kingdom (and the Government of Ireland) to publish the reports of the Commission. Regulation 3(1) gives full effect to the Agreement by requiring the Secretary of State to lay the reports of the Commission before Parliament and to arrange for them to be published.

7.7 Fourth, Article 10 of the Agreement requires the Commission to keep accounts and to submit them to the Government of the United Kingdom and to the Government of Ireland. Regulation 3(2) gives full effect to the Agreement by requiring the Secretary of State to lay the Commission's accounts (and auditor's reports), before Parliament and to arrange for them to published.

Consolidation

7.8 There is no consolidation necessary as these Regulations are the first regulations, subject to approval of each House of Parliament, to be made under section 4(2) of the 2016 Act.

8. Consultation outcome

8.1 Drafts of these Regulations have been discussed by the Northern Ireland Office on behalf of the UK Government, with the Department of Justice and Equality and the Department of Foreign Affairs and Trade in Ireland. The Northern Ireland Office also liaised with other relevant UK Government Departments in negotiating the Agreement. The views of those with whom the Regulations have been discussed have been taken on board.

9. Guidance

9.1 No guidance is intended to be issued directly on these Regulations. However, under section 2(5) of the 2016 Act, the Secretary of State must issue guidance about the

[3] Article 3 provides: "The objective of the Commission is to carry out the functions as described in Article 4 of this Agreement with a view to promoting progress towards ending paramilitary activity connected with Northern Ireland, and supporting long term peace and stability in society and stable and inclusive devolved Government in Northern Ireland."

exercise of the Commission's functions in relation to information the disclosure of which might (a) prejudice the national security interests of the United Kingdom, or (b) put at risk the life or safety of any person. The Northern Ireland Office is discussing this with stakeholders and will issue the guidance to the Commission, in time for the Commission starting its work, and has committed to placing a copy of the guidance in the Library of each House of Parliament.

10. Impact

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

10.2 The impact on the public sector is the monetary costs of the Commission, to the UK Government, which are up to £3m over four years to establish and fund the new body. Indirect monetary savings may be realised in future years if the work of the Commission, together with other Fresh Start Agreement measures, results in ending paramilitarism and organised crime connected with Northern Ireland.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

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

12. Monitoring & review

12.1 The UK Government is providing funding over four years to establish and fund the Commission and there will be a natural review point when the Commission has been operational for that period of time. The Regulations will be reviewed at this time. The 2016 Act confers power on the Secretary of State to make provision for winding up the Commission but before doing so the Secretary of State must consult the First Minister and deputy First Minister in Northern Ireland, the relevant Minister in the Government of Ireland and any other person the Secretary of State considers appropriate.

13. Contact

13.1 Clare Sloan, at the Northern Ireland Office - telephone: 028 9052 7013 or email: clare.sloan@nio.gov.uk can answer any queries regarding the instrument.