EXPLANATORY MEMORANDUM TO

THE POSTPONEMENT OF LOCAL ELECTIONS (NORTHERN IRELAND) ORDER 2009

2009 No.

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 This Order postpones the local elections in Northern Ireland, currently due to take place in 2009, until 2011. This postponement is necessary because local government boundaries in Northern Ireland are currently being redrawn following the decision by the Northern Ireland Executive to reduce the number of district councils from 26 to 11.

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

3.1 None

4. Legislative Context

4.1 The timing and frequency of local general elections in Northern Ireland is determined by section 11 of the Electoral Law Act (Northern Ireland) 1962 ("the 1962 Act"). This Order is needed to postpone the elections due to be held on the first Thursday in May in 2009 and to amend section 11 of the 1962 Act so that the four year cycle for elections which commenced in 1973 (and thus requires an election to be held in 2009) is changed to recommence in 2011.

4.2 Because it is unclear at this stage when in 2011 the elections will be held, section 11(1A) which provides for local general elections in an election year to be on the first Thursday in May, will not apply in 2011 and a further Order in Council under section 84 of the Northern Ireland Act 1998 will be necessary to set the date on which the elections will take place.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

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

In my view the provisions of the Postponement of Local Elections (Northern Ireland) Order 2009 are compatible with the Convention rights.

7. Policy background

7.1 This Order postpones the local elections in Northern Ireland currently due to take place in 2009, until 2011. It also amends section 11 of the 1962 Act so that the four year cycle of local election years will recommence from 2011. These changes are needed because local government boundaries are currently being redrawn following the decision by the Northern Ireland Executive to reduce the number of district councils in Northern Ireland from 26 to 11 as part of the Review of Public Administration.

7.2 Under section 11(1A) of the 1962 Act local general elections in an election year take place on the first Thursday in May. Because it is not clear at this stage when in 2011 the elections will take place, this provision will not apply in 2011. Once the Government has a clearer idea of when the current local government boundaries review and the forthcoming review of district electoral areas will be completed it can consider further precisely when the election should take place and a further order setting the date will be brought forward.

7.3 Article 3 of the Order includes various transitional provisions that are required because of the postponement of the elections. In particular it: (i) extends the term of office of existing district councillors until four days after the election in 2011; (ii) provides that the term of office of any councillors elected after this Order comes into force will also expire at that time; (iii) provides that vacancies arising on or after 1 January 2009 and which would normally remain unfilled until the local general election later that year, may be filled; and (iv) ensures that district councillors continue to qualify as such, by virtue of being local electors, until 2011.

7.4 Article 4 makes consequential amendments to the Drainage (Northern Ireland) Order 1973. Appointments to the Drainage Council, which is constituted under that Order, are made by reference to the timetable for local elections. The tenure of existing councillors and any appointed to fill casual vacancies is therefore extended until the next round of substantive appointments after the local general election in 2011.

8. Consultation outcome

8.1 Following a request from the Minister for the Environment in the Northern Ireland Assembly, in April 2008 the Secretary of State for Northern Ireland announced publicly that he would seek to bring forward legislation to postpone the local elections in Northern Ireland because of the exceptional circumstances surrounding the restructuring of local government there. The announcement was widely welcomed at the time and the Northern Ireland Office has not received any representations objecting to the planned postponement since then. For this reason, the Northern Ireland Office did not consider a full twelve week public consultation on this single issue necessary.

8.2 The Electoral Commission was sent a draft of the Order in October 2008. In response the Commission stated that, given the exceptional circumstances, the local government elections in Northern Ireland should indeed be postponed to a date no later than the end of 2011.

8.3 The Northern Ireland Office also consulted with the Northern Ireland Departments to ensure that postponing the date would not result in adverse implications for transferred areas of policy. As noted above, the Department for Agriculture and Rural Development requested amendments to the Drainage (Northern Ireland) Order 1973 and these have been included in the Order.

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.

10.2 This legislation will assist the public sector in Northern Ireland by minimising the disruption that local elections in 2009 might cause to the implementation of the Review of Public Administration

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The purpose of the Order is simply to postpone the local elections that are due to take place in Northern Ireland in 2009 until 2011. No further review will be required.

13. Contact

13.1 **Lee Hegarty,** Head of Elections Unit at the Northern Ireland Office Tel: 020 7210 6569 or email: lee.hegarty@nio.x.gsi.gov.uk can answer any queries regarding the instrument.

Northern Ireland Office
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