EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (ELECTRONIC COMMUNICATIONS AND AMENDMENT) (NORTHERN IRELAND) 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 make provision to allow citizens in Northern Ireland to register online to vote in Northern Ireland. They make changes to the absent vote process to facilitate digital registration including the introduction of a digital registration number that will be used by those who register online to apply for an absent vote. The Regulations also enable the sharing of data to verify the identity of registration applicants, make changes to the requirements of registration for overseas and service electors and other technical changes.

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.

4. Legislative Context

4.1 The Electronic Communications Act 2000 allows the Minister to make changes to legislative provisions to facilitate or authorise the use of electronic communications or storage, including in cases where a signature is currently required, where the Minister is satisfied that this will be no less satisfactory than other cases.

4.2 To allow digital registration to take place and to implement the changes to the absent vote process related to digital registration, amendments are required to be made to the set of electoral law provisions relating to relevant elections including; the Representation of the People Act 1983, the Representation of the People Act 1985, the Electoral Law Act (Northern Ireland) 1962, the Local Elections Order 1985, the Elected Authorities (Northern Ireland) Act 1989, the Northern Ireland Assembly Elections Order 2001, the Representation of the People (Northern Ireland) Regulations 2008 and the Recall of MPs Act 2015 (Recall Petition) Regulations 2016.

4.3 The Digital Service provided by Cabinet Office is crucial to the facilitation of digital registration. These Regulations amend the Representation of the People (Northern Ireland) Regulations 2008 ("the 2008 Regulations") to allow for the data sharing that will take place through the Digital Service as part of digital registration and which may also be used to verify the identity of paper applicants. They also amend the 2008

Regulations to clarify and improve the requirements of applications for registration and to more closely align certain requirements with those in Great Britain.

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 Northern Ireland.

6. European Convention on Human Rights

6.1 Kris Hopkins, Parliamentary Under-Secretary of State for the Northern Ireland Office has made the following statement regarding Human Rights:

"In my view the provisions of the Representation of the People (Electronic Communications and Amendment) (Northern Ireland) Regulations 2016 are compatible with the Convention rights."

7. Policy background

Digital Registration

7.1 Digital Registration was introduced in Great Britain in 2014. Since its introduction it has been successfully taken up by citizens, with almost 90% of registrations in Great Britain now taking place online. These Regulations ensure that, in addition to the existing paper based process, citizens in Northern Ireland will have access to this valuable Digital Service which makes registration both quick and easy.

7.2 Digital Registration for overseas electors is not provided for in these Regulations and these electors will continue to be required to apply using the paper system. The technical work required to allow these electors to register online is ongoing.

Introduction of Electronic Signature

7.3 The Electoral Fraud (Northern Ireland) Act 2002 inserted into the Representation of the People Act 1983 the requirement that all applications to be included on the electoral register in Northern Ireland must contain the signature of the applicant. This requirement for a handwritten signature on NI applications is a fraud prevention measure. The signature obtained on the application form is not used to check the veracity of the registration application but is used in the scrutiny of absent vote applications. There is no such requirement in GB.

7.4 The introduction of digital registration to Northern Ireland will mean that applications made in this way can no longer include a handwritten signature. These Regulations use powers contained within the Electronic Communications Act 2000 to amend existing provisions and allow registration in a digital format. The Act requires that the digital replacement be 'no less satisfactory' so these Regulations make provision for a new declaration to be included as part of the electronic application which, when taken in conjunction with the electronic submission of the application, constitutes a simple electronic signature. This will provide protection against fraud that is at least as robust as existing checks. Paper applications will continue to require a signature.

New declaration

7.5 The wording of the new declaration at the end of the form is provided in these Regulations. Both digital and paper applicants will be required to declare that they are

the person named in the application and that the information they have provided is true. This wording supports the authenticity of the application. Providing false information in an application is an offence and the Regulations set out a requirement for information on this offence to appear on the application form. The aspect of the current declaration relating to citizenship will instead be captured by a requirement for the applicant to provide their nationality, coupled with the new declaration.

Assistance with digital applications

7.6 The Regulations also ensure that digital registration will be available to persons who are unable to complete an application due to disability. The application and declaration will be capable of being submitted on behalf of an applicant where they receive assistance with their application from a person aged 18 and over and where the application is made in their presence. This provides assurance as to the identity of the applicant.

Data Exchange

7.7 Under existing provisions in the 2008 regulations, personal identifiers supplied at application for registration are verified manually against a quarterly download from the Department for Work and Pensions database (DWP). In the same way as is available in Great Britain, the introduction of digital registration will allow the personal identifiers of both paper and digital applicants in Northern Ireland to be electronically matched against records held by the DWP. In contrast to Great Britain the Chief Electoral Officer will not be required to send all applications through the Digital Service as there may be circumstances in which the Chief Electoral Officer does not find this necessary

7.8 The electronic matching of records will be quicker and more accurate than the current manual system. The match results will be communicated to the Chief Electoral Officer and may be taken into account in establishing that the applicant is who they say they are alongside establishing their eligibility in age and nationality and their residence. The Regulations make provision to allow this sharing of data between the Electoral Office for Northern Ireland (EONI), Cabinet Office (as owners of the Digital Service) and DWP. The existing provisions that allow DWP to share data with EONI will also continue.

7.9 This instrument also sets out provision around retention of the information received in applications to ensure it is retained for as long as it is needed (but not longer).The existing criminal offence for unlawful disclosure of information will apply to information received through the Digital Service.

7.10 Provision is also made to allow the Chief Electoral Officer to notify other Registration Officers through the Digital Service where an applicant is no longer resident at an address in their area.

Provision of Digital Registration Number

7.11 A unique digital registration number (DRN) will be issued to all those successfully registering via the digital system. This number, once allocated, will last for the lifetime of the registrant, be unique to the individual and will remain unaltered no matter how many times the individual re-registers. The DRN will be issued, by post, to the address given on the registration application. Issuing the DRN in the first

instance by post is an anti-fraud measure that ties the applicant to the address given on their application.

7.12 The DRN will be used in the scrutiny of absent vote applications. It will allow the same level of scrutiny to be applied to absent vote applications from digital registrants as exists for paper registrants where the signature is checked. For digital registrants their DRN will be included on the certificate of registration which is posted to them, which will explain that if the individual wishes to apply for an absent vote at any point in the future they will need their DRN in order to complete the form. They will not be able to apply without their number which will replace the signature check.

Re-issue of DRN

7.13 For those individuals that lose their DRN, or who claim never to have received it, these Regulations make provision for the re-issue of their DRN. A request for a DRN to be reissued must contain the applicant's name, date of birth, National Insurance number (or a reason why they do not have one) and the address at which they are registered.

7.14 The Regulations also provide that the number may be reissued by giving a notification to the individual or sending one by post to the address given on the registration application or by email to the email address given at registration. In the case of service electors where the re-issue of the DRN is sent by post it must go to the present address as given on the application form. However if the service elector has moved to another address, and the Chief Electoral Officer is so satisfied, the DRN may be sent to that address. This is consistent with the service declarant system designed to take into account the fact service voters are often required to change their address with little notice. This will ensure service electors are able to receive the re-issue of DRN when their address has changed and there is no email address available.

Absent vote application

7.15 The Electoral Fraud (Northern Ireland) Act 2002 inserted into the Representation of the People Act 1985 the requirement that the Chief Electoral Officer must be satisfied that the signature on the absent vote application corresponds to the signature supplied at registration. For digital registrants it will not be possible to meet this requirement. These Regulations make provision for digital registrants' DRN to be checked against that issued at registration. All applications will also contain a handwritten signature.

Waiver

7.16 For those individuals who cannot sign in a consistent and recognisable way it is necessary to provide a signature waiver to allow them to apply for an absent vote and to pass the signature scrutiny at the Declaration of Identity stage of the absent vote procedure. Existing legislation only allows for the granting of a signature waiver for absent vote applications if it was applied for at registration. This position will remain for those still wishing to register on paper. For those wishing to register digitally it is not possible to grant a signature waiver at registration so these Regulations make provision for digital applicants to apply for a determination that they cannot sign in a consistent and recognisable way in place of the waiver as part of the absent vote application.

Declaration of Identity for Postal Votes

7.17 Individuals who have successfully applied for a postal vote will be on the postal vote list. All individuals on the list will, in advance of an election, be issued with a postal ballot paper and a Declaration of Identity (DOI), both of which must be returned before the close of poll in order for the vote to be counted. Previously, for the ballot paper to be valid the signature on the DOI must match that obtained at registration. As there will be no signature obtained at registration for digital registrants these Regulations provide that all DOIs will be checked against the signature on the absent vote applications rather than the register, even if the individual registered on paper, except where a waiver or determination (as discussed above) has been obtained. Administering two separate checking regimes for DOI checking, one for paper registrants and one for digital registrants would prove onerous for the Electoral Office so as a consequence of the changes being implemented for digital registration the regime will apply to all postal vote applications regardless of the method of registration.

Attestation for Overseas declarations

7.18 These Regulations remove the requirement for Northern Ireland citizens registering overseas to provide an attestation as part of the overseas declaration. The requirement for an attestation was also removed in Great Britain in 2014 as part of changes made to facilitate digital registration. The retention of the attestation requirement would have the potential to act as a barrier to registration for Northern Ireland citizens and risks persons being disenfranchised if they cannot find a relevant person to attest. There is no justification for continuing to maintain a higher threshold for NI. This will also ensure equivalence with Great Britain.

7.19 The current attestation in itself is ineffective as a check against fraud – there is no mechanism to check the person attesting is a genuine UK national living overseas and it is only required for first time declarations not subsequent ones which undermines any value it holds. The applicant will be required to have their ID verified in the same way as ordinary applicants which provides the required level of certainty that the rest of their application is true. Removing the attestation will also ease the future transition to digital registration for overseas citizens.

Transmission of service application for Crown and Service applicants

7.20 Crown and Service applicants are currently required to send their service declarations to the Chief Electoral Officer via their employer (Government department or British Council). In practice this does not lend any additional weight to the anti-fraud measures. The Chief Electoral Officer has no way of knowing whether the declaration has indeed gone via the department in question. This requirement will be removed, but service declarations will have to include staff number, payroll number or other similar identifying numbers.

Inspection of Applications

7.21 These Regulations will bring Northern Ireland provisions into line with those in operation in GB and provide that individuals who wish to query an application to register may only have access to the information on the list of applications relating to the application in question, rather than the applications themselves. These Regulations will also add nationality to the information that appears on the list of applications in addition to name and address.

Correspondence by email

7.22 The Regulations make changes to give the Chief Electoral Officer the option to send certain documents by email. Both paper and digital applications for registration will make a request for applicants to give their email address or telephone number if they wish to be contacted in that way. This will help to reduce postage costs and provide a quicker method of corresponding in certain circumstances.

Minor Amendments

7.23 These Regulations make other minor and technical amendments to the registration process. These include:

- allowing the applicant to provide a reason why they do not have a National Insurance number,
- the option to provide previous names on an application for registration,
- confirming that where the applicant has moved their previous address should be given in all cases, including where they were registered in pursuance of an overseas elector's declaration, a service declaration or a declaration of local connection
- other technical amendments.

Consolidation

7.24 At this time consolidation is not considered appropriate.

8. Consultation outcome

8.1 The Electoral Commission and the Information Commissioner have been consulted on these draft Regulations as required by section 53(5) of the Representation of the People Act 1983 and section 7(1) of the Political Parties, Elections and Referendums Act 2000 (c. 41). The Chief Electoral Officer for Northern Ireland and his office have also been consulted.

8.2 The Chief Electoral Officer for Northern Ireland and the Information Commissioner were content with the Regulations as drafted. The Electoral Commission were broadly content but had some practical concerns around the potential for electors to lose their DRN and electors forgetting how they registered and the impact this would have on giving the correct information on the absent vote application form.

8.3 In relation to the Electoral Commission concerns there is provision for an application process that will allow electors to have their DRN re-issued to them and further consideration has been given to administrative procedures that will be used by the Electoral Office to ensure DRNs will be reissued as quickly as possible particularly in the period immediately preceding an election. The absent vote forms will be redesigned to make it clearer to voters what information they will be required to provide. Electors will also be able to call the EONI helpline to check how they registered. The operation of absent vote process and DRN will be kept under review.

8.4 In addition the Department of Justice and the Justice Minister in Northern Ireland have been advised of the incidental impact of the extension of the criminal offence of disclosure of information to information received through the Digital Service.

9. Guidance

9.1 There is no guidance accompanying these Regulations.

10. Impact

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

10.2 There is no adverse impact on the Government. The digital service will handle approximately 100,000 additional online applications per year; this will not result in a significant impact to the service. Digital registration will enable EONI to process applications for registration more efficiently. How EONI delivers its services following the introduction of digital registration is currently the subject of a public consultation at https://www.gov.uk/government/consultations/future-delivery-of-electoral-services-in-northern-ireland

10.3 An Impact Assessment has not been prepared for this instrument.

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 Northern Ireland Office will keep these Regulations under review in consultation with the Electoral Commission, the Chief Electoral Officer for Northern Ireland, Cabinet Office, Department for Work & Pensions and other stakeholders.

13. Contact

13.1 Katherine Herrick, Senior Elections Policy Officer at the Northern Ireland Office Telephone: 020 7210 6483 or email: katherine.herrick@nio.gov.uk can answer any queries regarding the instrument.