EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (ELECTRONIC COMMUNICATIONS AND AMENDMENT) (NORTHERN IRELAND) REGULATIONS 2020

2020 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 These Regulations make provision to allow citizens in Northern Ireland to digitally respond to the electoral registration canvass in Northern Ireland. They make changes to the steps the Chief Electoral Officer for Northern Ireland (the "CEO") is required to take as part of canvass and provide for the issue of digital registration numbers (DRNs) to any person who digitally submits an application for registration (to vote) or canvass form. They also provide for the CEO to allow access to marked registers and lists relating to Northern Ireland recall petitions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The free issue procedure has been applied in relation to this instrument for recipients of the draft statutory instrument of the same title which was laid before Parliament and published on 20 January 2020 (which this instrument supersedes). Regulation 3(2)(b) of draft has been changed in order to accommodate changes to section 9A(2)(a) of the 1983 Act made by other recent instruments (see paragraph 7.9 of this memorandum).

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 only concerns elections in Northern Ireland and it has no application elsewhere in the UK.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

5.1 Robin Walker, Minister of State at 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 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The Electronic Communications Act 2000 (the "2000 Act") 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. The powers in the 2000 Act were used in the Representation of the People (Electronic Communications and Amendment) (Northern Ireland) Regulations 2018 (the "2018 Regulations") to amend Northern Ireland electoral law to enable citizens in Northern Ireland to register online to vote in Northern Ireland.

6.2 These Regulations make similar amendments to the 2018 Regulations to enable persons to respond to canvass digitally and make use of many of the provisions introduced by the 2018 Regulations.

7. Policy background

What is being done and why?

Introduction of digital Canvass

7.1 In Northern Ireland the electoral registers are maintained through a process of continuous registration and a periodic canvass that must be held at least every ten years (this differs from Great Britain where the canvass is conducted annually). A full national canvass is due in Northern Ireland in 2020.

7.2 At present individuals can only respond to the canvass by submitting a paper canvass form in a prescribed format. This is in contrast to voter registration more generally where, since 2018, Northern Ireland voters have been able to digitally register to vote (as well as submitted paper application forms). This instrument brings the canvass system in line with voter registration by giving eligible individuals the option to digitally submit their canvass forms.

7.3 People have an expectation that they should be able to engage with public services electronically if they wish to do so and this instrument will fulfil that expectation by allowing people to register for the purpose of canvass using the digital electoral registration system that was extended to Northern Ireland in 2018. The digital registration system has been exceptionally well received with approximately 80% of all applications to register being received via the online system since it went live. Allowing digital responses to canvass should provide a more convenient service for people in Northern Ireland and enable the CEO to move away from processing such high volumes of paper forms should help to streamline the administrative system.

Changes to the necessary steps for canvass

7.4 At present the CEO is required, during the canvass, to send paper copies of the prescribed canvass form to any address in Northern Ireland. This instrument replaces that duty with a requirement for the CEO to send to any address in Northern Ireland a notice providing details of the canvass, an invitation to respond to canvass via the UK

Digital Service and instructions on how to do that. The CEO will only be required to issue paper forms to individuals who have not responded to the canvass.

7.5 Previous canvass exercises in Northern Ireland have been conducted by sending paper canvass forms to all individuals on the register. The process of sending a form to each registered individual served to make people aware of the canvass process and the need to register. The introduction of the digital registration option for canvass will make it unnecessary to follow the previous practice of sending paper forms to all individuals on the register, nevertheless it will still be important to contact people to advise them that a canvass is in progress, of the necessity of registering and make them aware of the option to register using the digital service. The notice to all households inviting individuals to register online will advise people that if they fail to do so a paper form will be sent to them in the usual way.

7.6 Paper forms will not be issued to those that have already registered, either digitally or using a paper form following the issue of the invitation notice. In the case of individuals that fail to respond to the invitation notice and the paper form the CEO will conduct follow up exercises which as in previous canvass exercises including sending canvassers to knock on the individual's door and reminders sent by post.

7.7 This approach will avoid duplication of effort and will remove the potential for confusion for those who have already registered and who, as a consequence, do not need to take any further action.

7.8 These Regulations omit section 9A(2)(a) of the 1983 Act. Section 9A sets out the steps which registration officers are required to take as part of the canvass process and paragraph (2)(a) provides that they include sending paper canvass forms to home addresses. Paragraph (2)(a) will no longer be appropriate in Northern Ireland given the new digital canvass process outlined above.

7.9 Paragraph (2)(a) previously applied across the United Kingdom but its application was recently limited to the canvass in Northern Ireland and canvass for Scottish local elections by the Representation of the People (Annual Canvass) (Amendment) Regulations 2019 and the Representation of the People (Annual Canvass) (Amendment) (Wales) Regulations 2020. The Representation of the People (Annual Canvass) Amendment (Scotland) Order 2020, which comes into force on 3 March 2020, will disapply paragraph (2)(a) in relation to Scottish local elections. It is intended that these Regulations will only be made after that instrument has come into force. These Regulations therefore remove paragraph (2)(a) in its entirety, rather than just in relation to the Northern Ireland canvass, as once paragraph (2)(a) is disapplied in relation to the Northern Ireland canvass it will have no application to any elections (and it would therefore be misleading if the paragraph remained on the statute book).

Digital registration numbers

7.10 These Regulations will ensure that all individuals responding to the canvass digitally will be allocated a unique DRN if they have not previously been issued with one.

7.11 The DRN is a digital replacement for a wet ink signature which is obtained on paper registration forms as part of the registration process. All digital applicants registering via the digital system will receive notification of their DRN, irrespective of whether they have already been provided with it as a result of a previous registration. It is important that individuals keep a record of their DRN, which does not change throughout their lifetime, as digitally registered voters must supply a copy of it when

applying for an absent vote. As part of the move towards digitalisation this instrument also makes it possible for the Chief Electoral Officer to inform an individual of their DRN by email.

Implications for absent vote applications

7.12 At present digitally registered voters who subsequently apply for an absent vote are required to provide their DRN as part of the application process, whereas those whose last registration was made on a paper form are required to provide a signature for the purpose of matching it against that held on record. This instrument amends the Representation of the People Act 1985, the Local Elections (Northern Ireland) Order 1985 and Recall of MPs Act 2015 (Recall Regulations) 2016 to provide that individuals who are registered pursuant to submission of a digital canvass form are considered to be digitally registered and required to provide their DRN on the application form for an absent vote.

Retention of information in a submitted canvass form

7.13 This instrument amends the Representation of the People (Northern Ireland) Regulations 2008 so that the CEO must retain the canvass form or the information contained in a digital canvass form submission as well as supporting documentation until registration alteration day. It also provides that the CEO can continue to retain that information until it is no longer required for or in connection with the exercise of their functions. As with a registration application submitted outside of the canvass period it is necessary that the CEO retain information contained on the canvass application form, such as National Insurance number and, in the case of paper forms the wet ink signature, in order to check absent vote applications.

Retention of entries on the register following a canvass

7.14 The Representation of the People (Northern Ireland) Regulations 2008 contain a provision enabling retention of electoral register entries individuals who failed to respond to the canvass. The provision enables the CEO to retain those entries for three years provided that, amongst other things, the CEO is content that there is no reason to believe their eligibility to be registered at that address has changed. The provision to retain non-registrants was introduced in the Representation of People (Northern Ireland) (Amendment) Regulations 2013 following consultation with the Electoral Commission and was designed to ensure that otherwise correctly registered individuals were not removed from the register because they had failed to respond to canvass. The original provision was for a retention period of two years which was subsequently extended to three years to cover the May 2016 Assembly election. This instrument returns the retention period back to two years.

Provision of marked register following a recall petition

7.15 During the recall petition held in Northern Ireland in 2018 it became clear that there was an inconsistency in provisions concerning the marked register and how it could be accessed. The Electoral Commission called for the Government to review the purpose and workings of the provision to access the marked register ahead of any future recall petition in order to ensure the appropriate balance is struck between maintaining secrecy and challenging fraud.

7.16 The Recall of MPs Act 2015 (Recall Regulations) 2016 provides for the retention of documents following a recall petition and that the Clerk of the Crown Northern

Ireland makes available for supply or inspection the documents forwarded to them. The documents made available do not include the marked register which is retained by the Petition Officer (who is in the case of Northern Ireland the Chief Electoral Officer). These Regulations will enable the Chief Electoral Officer to allow access to the marked register, which is retained by them, where certain conditions have been met.

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 / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not consolidate any current legislation.

10. Consultation outcome

10.1 The Northern Ireland Office consulted the Electoral Commission, the Information Commissioner and the CEO. The engagement included consultation on the policy proposals, handling of candidates' personal information and a subsequent consultation on the draft statutory instrument.

10.2 None of the bodies with whom we consulted raised any concerns about the policy. Both the Electoral Commission and the CEO, respectively the regulator and returning officer for local elections in Northern Ireland, welcomed the provisions of the instrument.

11. Guidance

11.1 Both the Electoral Commission and the Electoral Office for Northern Ireland provide guidance and publicity in advance of canvass. The notice issued under the new Section 9A (2)(zb)(i) of the 1983 Act will provide information about the requirement to respond to canvass and how to use the digital service to all addresses in Northern Ireland.

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 as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

13. Regulating small business

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

14. Monitoring & review

14.1 The Electoral Office for Northern Ireland will monitor the impact of the measures. The CEO is required to report annually to the Secretary of State for Northern Ireland and that report will highlight any issues arising from the implementation of the measures in this instrument.

14.2 The Electoral Commission will assess and report on the outcomes of the revised canvass procedures and make recommendations where they consider it appropriate.

15. Contact

15.1 Katherine Herrick at the Northern Ireland Office (Telephone 02072106483 or Katherine.herrick@nio.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Holly Clark, Deputy Director for Elections Policy at the Northern Ireland Office, can confirm that this Explanatory Memorandum meets the required standard.

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