EXPLANATORY MEMORANDUM TO

THE NORTHERN IRELAND ACT 1998 (MINISTERIAL OFFICES) ORDER 2009

2009 No. 723

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 increases the maximum number of Ministerial offices that may be established to eleven.

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

3.1 None.

4. Legislative Context

4.1 Section 17(3) of the Northern Ireland Act 1998 ("the 1998 Act") states that functions exercisable by those in charge of each Northern Ireland department must be exercised by the holder of a different Ministerial office. In effect this means that each department must be headed by the holder of a different Ministerial office. Section 17(4) of the 1998 Act limits the number of Ministerial offices to ten. However, it also provides a power for the Secretary of State to increase the maximum number by Order.

4.2 Section 96(1) of the 1998 Act provides that such an Order shall be a statutory instrument which is subject to negative resolution.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy objective of HMG is to devolve responsibility for policing and justice to the devolved administration in Northern Ireland. On 18 November 2008, the First and deputy First Ministers announced an agreed process, the completion of which would see policing and justice responsibilities devolved to the Northern Ireland Assembly. As part of that process the Northern Ireland Assembly and Executive Review Committee was tasked with reporting on the modalities of devolution.

7.2 The report of that Committee, which was debated and approved in the Assembly on 20 January 2009, contained a number of recommendations. Recommendation 1 stated that "the Committee recommends that the department which will exercise powers in relation to policing and justice matters should be created as an additional department to the existing eleven departments which go to make up the Northern Ireland Executive".

7.3 Although there are already eleven departments, the joint office of First and deputy First Minister does not count as a Ministerial office. To provide for an additional department, which must be in the charge of an additional Minister, we need to increase the maximum number of Ministerial offices (laid down in the 1998 Act) to eleven.

8. Consultation outcome

8.1 This Order gives effect to a recommendation of an Assembly Committee and consequently has not been subject to a formal consultation process.

9. Guidance

9.1 This Order is not accompanied by any guidance.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector, from this Order alone, is non existent as this Order only gives the power to create a further Ministerial office if the Assembly wish to do so. Should the Assembly wish to use this power, and pass a Bill to this effect, there will be a transfer of approximately 1100 staff from the core Northern Ireland Office to the created department with policing and justice responsibilities. This figure does not include the staff in agencies of the Northern Ireland Office which will become agencies of the new department.

10.3 An Impact Assessment has not been prepared for this instrument as there is no impact on the private or voluntary sectors and any public sector impact is below the threshold of £5 million.

11. Regulating small business

11.1 The legislation has no impact on small businesses.

12. Monitoring & review

12.1 It will be the responsibility of the Northern Ireland Assembly to monitor and review the number of Northern Ireland Ministerial offices.

13. Contact

13.1 David Withey at the Northern Ireland Office (tel: 0207 210 0255 or email: david.withey@nio.x.gsi.gov.uk) can answer any queries regarding the instrument.