EXPLANATORY MEMORANDUM TO

THE NORTHERN IRELAND ACT 1998 (SECTION 75 – DESIGNATION OF PUBLIC AUTHORITY) ORDER 2020

2020 No. 797

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument is being made under section 75(3)(a) of the Northern Ireland Act 1998.

2.2 It makes provision designating the Independent Monitoring Authority for the Citizens' Rights Agreements for the purposes of section 75 of the Northern Ireland Act 1998.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see the Northern Ireland Act 1998, which extends to the United Kingdom) and the territorial application of this instrument is not limited either by the Act or by the instrument.

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 the United Kingdom.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Justice, Alex Chalk MP has made the following statement regarding Human Rights:

"In my view the provisions of the Northern Ireland Act 1998 (Section 75 - Designation of Public Authority) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The Independent Monitoring Authority for the Citizens' Rights Agreements (IMA) is established under section 15 of and Schedule 2 to the EU (Withdrawal Agreement) Act 2020 (EUWAA).

6.2 Section 75 of the Northern Ireland Act 1998 requires public authorities to comply with two statutory duties. The first duty (subsection (1)) requires public authorities in carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity between the nine equality categories of persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability and persons without; and persons with dependants and persons without. The second duty (subsection (2)) requires that public authorities in carrying out their functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group.

6.3 The definition of 'public authority' in Section 75 of the Northern Ireland Act 1998 includes "any department, corporation or body listed in Schedule 2 to the Parliamentary Commissioner Act 1967 (departments, corporations and bodies subject to investigation) and designated for the purposes of this section by order made by the Secretary of State" (section 75(3)(a)).

6.4 The IMA, as a whole-UK body, will exercise functions relating to Northern Ireland.

6.5 Paragraph 17 of Schedule 2 to the EUWAA adds the IMA to Schedule 2 to the Parliamentary Commissioner Act 1967.

6.6 This instrument designates the IMA for the purposes of section 75 of the Northern Ireland Act 1998.

7. Policy background

What is being done and why?

7.1 The UK has made agreements with both the EU and the EEA EFTA states to guarantee the rights of their citizens living in the UK and Gibraltar after the UK has left the EU. The role of the IMA is to assist in protecting those rights by monitoring the UK's implementation and application of those agreements it has made with the EU, and the EEA EFTA states.

7.2 The Withdrawal Agreement and the EEA EFTA Separation Agreement require the UK to establish the IMA to monitor the UK's implementation and application of the citizens' rights parts of these Agreements. The IMA will be a UK-wide non-departmental public body and will be fully operational from the end of the transition period (31 December 2020).

7.3 The IMA's role will include carrying out functions relating to Northern Ireland. This instrument therefore ensures that the IMA is covered by the statutory equality duties applicable to a public authority carrying out functions in Northern Ireland, as set out in Section 75 of the Northern Ireland Act 1998.

7.4 Section 75 of the 1998 Act requires that public authorities carrying out their functions relating to Northern Ireland should observe certain duties. The definition of 'public authority' in Section 75 includes "any department, corporation or body listed in Schedule 2 to the PCA 1967 and designated for the purposes of this section by order made by the Secretary of State" (section 753(a)). This instrument designates the IMA (being a body listed in the PCA 1967) for those purposes. The effect of designation will be to make the IMA subject to the s. 75 duties, described in paragraph 6.2 above.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union. Article 159 of the Withdrawal Agreement and Article 64 of the EEA EFTA Separation Agreement set out that, in the UK, an independent authority will monitor the UK's implementation and application of the Citizens' Rights Parts of those agreements. Broadly, these parts cover residency; social security; reciprocal healthcare; mutual recognition of professional qualifications and other economic rights.

9. Consolidation

9.1 Not applicable: this instrument does not amend another instrument.

10. Consultation outcome

10.1 A formal consultation has not been carried out.

11. Guidance

11.1 There are no plans to publish guidance with this instrument

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 because there are no financial or business implications.

13. Regulating small business

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

14. Monitoring & review

14.1 There are no plans for the monitoring or review of this instrument.

15. Contact

15.1 Joy Kabugu at the Ministry of Justice, telephone: 07889403452 or email: Joy.Kabugu@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 James Dowler, Deputy Director for the Independent Monitoring Authority Project Team at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Alex Chalk MP, Parliamentary Under Secretary of State at the Ministry of Justice at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.