**EXPLANATORY MEMORANDUM TO**

**THE NORTHERN IRELAND (EXTENSION OF PERIOD FOR EXECUTIVE FORMATION) (NO. 2) REGULATIONS 2019**

**2019 No. 1364**

## 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 The purpose of this instrument is to extend the period set out in the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 ("the 2018 Act") in which Northern Ireland Ministers can be appointed following the Northern Ireland Assembly election on 2 March 2017 ("the period for Executive formation") from 21 October 2019 to 13 January 2020.

2.2 Once the period for Executive formation ends, the Secretary of State will be required to propose a date for an Assembly election. The effect of extending this period, therefore, is that the Secretary of State will not fall under that duty until after 13 January 2020. Northern Ireland departments will also continue to exercise their functions in accordance with section 3 of the 2018 Act until then.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 This instrument will come into force on 21 October 2019 which will be less than 21 days after it is made. The powers to extend the period for Executive formation can only be exercised before that period expires, therefore the instrument must be made and come into force on or before 21 October 2019. However, the instrument does not diminish the legal rights of persons affected, impose new duties on such persons or require them to adopt different patterns of behaviour.

3.2 The Secretary of State has not made the Regulations before now as he has been engaging with the Northern Ireland political parties and the Irish Government in talks to enable an Executive to form. He considered that pre-emptively making Regulations to extend the period for Executive formation could compromise that process and be prejudicial to the discussions.

***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)***

3.3 The territorial application of this instrument is limited to Northern Ireland.

3.4 This instrument enables an Executive to be formed in Northern Ireland until 13 January 2020; it has no application elsewhere in the United Kingdom.

## 4. Extent and Territorial Application

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

4.2 The territorial application of this instrument is Northern Ireland.

## 5. European Convention on Human Rights

5.1 The Secretary of State for Northern Ireland, Julian Smith MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Northern Ireland (Extension of Period for Executive Formation) (No. 2) Regulations 2019 are compatible with the Convention rights."

## 6. Legislative Context

6.1 Section 1 of the 2018 Act, as amended by the Northern Ireland (Executive Formation etc) Act 2019 ("the 2019 Act"), retrospectively extended the period for Executive formation following the Assembly election on 2 March 2017 so as to expire on 21 October 2019. It had previously been extended so as to expire on 25 August 2019 by the Northern Ireland (Extension of Period for Executive Formation) Regulations 2019. Section 2(1) of the 2018 Act, as amended by the 2019 Act, enables the Secretary of State, by regulations, to extend the period for Executive formation until 13 January 2020. That power may only be exercised on or before 21 October 2019 (see section 2(2) of the 2018 Act).

## 7. Policy background

***What is being done and why?***

7.1 There has been no functioning Northern Ireland Executive since 9 January 2017, when the then deputy First Minister of Northern Ireland resigned, which also resulted in the First Minister ceasing to hold office. All other Northern Ireland Ministers ceased to hold office when an extraordinary Assembly election was held on 2 March 2017. The period for Executive formation was extended to 29 June 2017 by the Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017, but no Ministers were appointed.

7.2 The 2018 Act retrospectively extended the period for Executive formation until 26 March 2019. This was to facilitate the appointment of Ministers without the need for further legislation and to enable talks to take place. The period was further extended by statutory instrument to 25 August 2019, and again by the Northern Ireland (Executive Formation etc) Act 2019 to 21 October 2019.

7.3 Ministers have not yet been appointed and the Secretary of State for Northern Ireland has taken the view that further time is necessary for this, such that the period for Executive formation should be extended.

7.4 As described in paragraph 2.2 above, extending the period for Executive formation until 13 January 2020 also means that the Secretary of State will not fall under a duty to propose a date for an Assembly election until after that date. It also means that, during this extended period, senior officers in Northern Ireland departments will continue to exercise departmental functions in the absence of Northern Ireland Ministers in accordance with section 3 of the 2018 Act.

## 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.

## 9. Consolidation

9.1 This instrument does not consolidate previous instruments.

## 10. Consultation outcome

10.1 The Government has not held a consultation on this instrument.

## 11. Guidance

11.1 The Northern Ireland Office does not consider it necessary to issue any guidance specifically in relation to 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 is no, or no significant, impact on business, charities, voluntary bodies or the public sector.

## 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 Secretary of State for Northern Ireland will continue to monitor the political situation in Northern Ireland and will continue to act where necessary for the good governance of Northern Ireland in the absence of an Executive and sitting Assembly. The period for Executive formation as extended by this instrument is time limited and will end on 13 January 2020.

## 15. Contact

15.1 Luke Montague at the Northern Ireland Office (telephone: 0207 210 0262 or email: luke.montague@nio.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Chris Flatt (Director, Strategy, Legacy and Rights) at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State for Northern Ireland can confirm that this Explanatory Memorandum meets the required standard.