EXPLANATORY MEMORANDUM TO

THE NORTHERN IRELAND (STORMONT AGREEMENT AND IMPLEMENTATION PLAN) ACT 2016 (IMMUNITIES AND PRIVILEGES) REGULATIONS 2016

2016 No. 1121

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 confer certain immunities and privileges on members, and members of staff of the Independent Reporting Commission ("the Commission"), including agents of, or other persons carrying out work for the Commission.

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 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Sections 1 to 5 of the Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016 (c. 13) ("the 2016 Act") make provision about the Commission which will be established by the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing the Independent Reporting Commission Agreement ("the Agreement")[1]. The purpose of the Regulations is to confer immunities and privileges on members of the Commission and members of staff of the Commission. These Regulations are the first regulations under section 3 of the 2016 Act.

4.2 On 15 September 2016, the Northern Ireland Office has also laid the Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016 (Independent Reporting Commission) Regulations 2016 which are subject to the affirmative procedure and which make provision to give full effect to the Agreement.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

[1] A copy of the agreement can be found at https://www.gov.uk/uk-treaties during week commencing 19 September 2016.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

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

7. Policy Background

What is being done and why

7.1 The Fresh Start Agreement[2] was reached on 17 November 2015 after 10 weeks of cross party talks between the UK Government, the five largest parties of the Northern Ireland Assembly and the Government of Ireland on matters for which they have responsibility, in accordance with the three-stranded approach reflected in the 1998 Belfast Agreement. The aim of the cross-party talks was to secure the implementation of the December 2014 Stormont House Agreement[3] and deal with the impact of continued paramilitary activity connected with Northern Ireland. The Fresh Start Agreement seeks to make progress towards fulfilling these objectives. The Fresh Start Agreement strongly reaffirms support for the rule of law, places fresh obligations on Northern Ireland's elected representatives to work together on their shared objective of ridding society of all forms of paramilitary activity and groups, and commits to a concerted and enhanced effort to combat organised crime and cross border crime.

7.2 The Fresh Start Agreement includes a series of measures to end paramilitarism and tackle organised crime, including the establishment of the Commission. The Commission will report on progress towards ending continuing paramilitary activity connected with Northern Ireland, report on the implementation of the relevant measures of the three administrations; and consult with a wide range of statutory agencies, communities and civic society organisations. It is intended that reports of the Commission will inform future Northern Ireland Executive Programme for Government priorities and commitments through to 2021. It is intended that the Commission will be established by early January 2017.

7.3 Section 3(1) and (2) of 2016 Act confers immunity from suit and legal process, and inviolability of its official archive, on the Commission itself, subject to the Commission having the ability to waive these. In summary, this was due to reasons related to the ability of the Commission to fulfil its functions successfully, including the following. First, to help protect the Commission's independence from either Government. Second, to protect it from challenge from others who may be the subject of its reports (e.g. the paramilitary groups whose activities the Commission will monitor progress to tackle). Third, absent these immunities, there would be a risk that the Commission would become bogged down in litigation and be unable fully to discharge its functions which are intended to be carried out, at least initially, over a limited period of time. Fourth, the immunities from suit and legal process also serve to make sure that the Commission is able to receive the information it needs to

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[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf

[3] https://www.gov.uk/government/publications/the-stormont-house-agreement

accurately assess progress towards ending paramilitary activity connected with Northern Ireland, and therefore are central to the fulfilment of its functions. A body such as the Commission cannot operate if contributors perceive a risk of the information they contribute, or the identity of its source, being disclosed and if contributors decline to engage with the body, this would have a detrimental effect on the ability of the Commission to perform its functions successfully.
For similar reasons, in order to enable the Commission to fulfil its functions successfully, the effect of these Regulations is to confer on members of the Commission and members of staff of the Commission, including agents of, and persons carrying out work for, or giving advice to, the Commission, immunity from suit and legal process in respect of things done or omitted to be done by them in the course of the performance of their official duties. (This was also the case, for example, with members and members of staff of, and agents and other persons carrying out work for or giving advice to, the Independent Monitoring Commission, see the Northern Ireland (Monitoring Commission etc.) Act 2003 (Immunities and Privileges) Order 2003). It is possible for the Commission itself to expressly waive the immunity from suit or legal process given to a person under these Regulations, for example, in the event of an employment or health and safety dispute. We do not expect it to do so in respect of its official functions.

7.4 In addition, these Regulations provide that unless they are (a) a British citizen, British overseas territories citizen, British Overseas citizen or a British National (Overseas), or (b) a permanent resident of the United Kingdom at the time of becoming a member of the Commission of member of staff of the Commission, members of the Commission and members of staff of the Commission (other than agents and other persons carrying out work for, or giving advice to, the Commission) will also be exempt from income tax and will not make social security related contributions whilst employed by the Commission. This is consistent with provision made in relation to other international organisations, and is consistent with the position in relation to the Independent Monitoring Commission (see the Northern Ireland (Monitoring Commission etc.) Act 2003 (Immunities and Privileges) Order 2003).

Consolidation

7.5 There is no consolidation necessary as these Regulations are the first regulations made under section 3 of the 2016 Act.

8. Consultative outcome

8.1 Drafts of these Regulations have been discussed by the Northern Ireland Office on behalf of the UK Government, with the Department of Justice and Equality and the Department of Foreign Affairs and Trade in Ireland. The Northern Ireland Office also liaised with other relevant UK Government Departments in negotiating the Agreement and shared the terms of the Agreement with the five largest parties of the Northern Ireland Assembly. The views of those with whom the regulations have been discussed have been taken on board.

9. Guidance

9.1 No guidance is intended to be issued directly on these Regulations. However, under section 2(5) of the 2016, the Secretary of State must issue guidance about the exercise of the Commission's functions in relation to information the disclosure of which might (a) prejudice the national security interests of the United Kingdom, or (b) put at

risk the life or safety of any person. The Northern Ireland Office is discussing this with stakeholders and will issue the guidance to the Commission, in time for the Commission starting its work, and has committed to placing a copy of the guidance in the Library of each House of Parliament.

10. Impact

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

10.2 The impact on the public sector is the monetary costs of the Commission, to the UK Government, which are up to £3m over four years to establish and fund the new body. Indirect monetary savings may be realised in future years if the work of the Commission, together with other Fresh Start Agreement measures, results in ending paramilitarism and organised crime connected with Northern Ireland.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

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

12. Monitoring and review

12.1 The UK Government is providing funding over four years to establish and fund the Commission and there will be a natural review point when the Commission has been operational for that period of time. The regulations will be reviewed at this time. The 2016 Act confers power on the Secretary of State to make provision for winding up the Commission but before doing so the Secretary of State must consult the First Minister and deputy First Minister in Northern Ireland, the relevant Minister in the Government of Ireland and any other person the Secretary of State considers appropriate.

13. Contact

13.1 Clare Sloan, at the Northern Ireland Office telephone: 0289 0527 013 or email: clare.sloan@nio.gov.uk can answer any queries regarding the instrument.