

EXPLANATORY MEMORANDUM TO
THE NORTHERN IRELAND (MINISTERIAL APPOINTMENT FUNCTIONS)
REGULATIONS 2023

2023 No. 776

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 In the absence of devolved government in Northern Ireland, the Northern Ireland (Executive Formation etc) Act 2022 (the “2022 Act”), amongst other necessary measures, addresses the urgent need for key appointments to be made in Northern Ireland that would normally require Northern Ireland Ministers to be in office. Section 6 of the 2022 Act enables the relevant UK Minister to make certain, specified appointments, exercising the appointments functions already conferred on Northern Ireland Ministers in respect of a list of specified offices.
- 2.2 This instrument specifies further offices that are either currently vacant or due to expire in the coming months for the purposes of section 6, thereby enabling the Secretary of State – as the relevant UK Minister - to exercise Northern Ireland Ministers’ appointment functions in relation to those offices.

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 the day after the day on which it is made. The instrument needs to come into force at the earliest opportunity to enable appointment functions to be exercised so that public bodies are legally constituted and can continue to function. For example, current vacancies in the Historic Buildings Council, General Consumer Council for Northern Ireland and the Northern Ireland Tourist Board mean that these boards are no longer quorate. The instrument does not, however diminish the legal rights of persons affected, impose new duties on such persons or require them to adopt different patterns of behaviour. On the contrary it will enable vital appointment functions to be exercised at the earliest opportunity.
- 3.2 This instrument enables public appointments to be made to specified Northern Ireland public bodies; it has no application elsewhere in the UK.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

- 5.1 The Minister of State for Northern Ireland, Steve Baker MP has made the following statement regarding Human Rights:

“In my view the provisions of the Northern Ireland (Ministerial Appointment Functions) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 6 of the 2022 Act enables a relevant Minister of the Crown to exercise the appointment functions of a Northern Ireland Minister in respect of specified offices. The 2022 Act as enacted included two specified offices (Member of the Northern Ireland Judicial Appointments Commission and Commissioner for Children and Young People for Northern Ireland).
- 6.2 This instrument adds twelve further offices in respect of which the appointment functions of a Northern Ireland Minister may be exercised by the relevant UK Minister. Further details of those offices are provided below in paragraph 7.

7. Policy background

What is being done and why?

- 7.1 This instrument applies to appointment functions relating to a number of devolved public offices. The UK Government remains committed to restoring devolution in Northern Ireland. However, as mentioned above, in the absence of devolved government in Northern Ireland it has been necessary for the UK Government to take strategic legislative interventions to ensure good governance is maintained in the interim.
- 7.2 The 2022 Act, amongst other key measures, addressed the need for urgent critical appointments to be made to the bodies listed above in paragraph 6.1. Alongside the powers conferred by the 2022 Act, the Secretary of State for Northern Ireland also gave a commitment to make further critical appointments that may arise within Northern Ireland in the absence of an Executive.
- 7.3 The Northern Ireland Office has engaged with the Northern Ireland Civil Service to assess outstanding appointments and identify those which are critical. This included a thorough assessment of what the impact would be on public services should appointments not be made to these offices. This instrument specifies those offices that have been deemed critical which are: Chair or Member of the Agricultural Wages Board for Northern Ireland; Chair or Member of the Livestock and Meat Commission, Chair or Member of the Northern Ireland Local Government Officers Superannuation Committee, Chair or Member of the Northern Ireland Fishery Harbour Authority Chair or Trustee of the board of Trustees of the National Museums and Galleries of Northern Ireland, Chair, deputy Chair or Member of the General Consumer Council for Northern Ireland, Chair or Member of the Historic Buildings Council, Chair or Member of the Labour Relations Agency, Chair, deputy Chair or Member of the Northern Ireland Tourist Board, Member of the Northern Ireland Policing Board, Member, Chair or deputy Chair of the Probation Board for Northern Ireland and Commissioner for Public Appointments for Northern Ireland.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

10.1 Since the passing of the 2022 Act, the Northern Ireland Office has engaged with the Northern Ireland Civil Service to identify the further critical appointments that are included in this instrument. In the absence of a devolved administration, there has been no direct consultation with the Northern Ireland political parties but as these appointments are needed to ensure that public bodies can continue to function we would not expect that they would raise any concerns with the bodies included in this instrument.

11. Guidance

11.1 No further guidance is being published alongside 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 A full Impact Assessment has not been prepared for this instrument because no impact on business is foreseen as the legislation only relates to appointments made to public bodies.

13. Regulating small business

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

14. Monitoring & review

14.1 UK Ministers may only exercise appointment functions of Northern Ireland Ministers in relation to specified offices during the period while there is no Northern Ireland Executive. That period will end on the next occasion that all Ministerial offices in Northern Ireland are filled. The Northern Ireland Office will continue to engage with the Northern Ireland Civil Service to identify further critical appointments that may arise until such a time that a Northern Ireland Executive is in place.

15. Contact

15.1 Richard Steven at the Northern Ireland Office. Telephone: 07810438366 or email: Richard.steven@nio.gov.uk can be contacted with any queries regarding the instrument.

15.2 Máire Cairns, Deputy Director for Strategy, at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.

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