EXPLANATORY MEMORANDUM TO

THE CITY OF BIRMINGHAM (SCHEME OF ELECTIONS) ORDER 2015

2015 No. 43

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Birmingham City Council currently operates a scheme of partial council elections by thirds (i.e. with one third of its councillors being elected each year in three years out of four). The purpose of this instrument is to specify a scheme of elections for the ordinary elections of councillors of the City from 2017 onwards consisting of whole council elections every four years. The instrument provides for elections in 2017, and every four years thereafter. The instrument also changes the years of elections to the parish of New Frankley within the City of Birmingham.

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

3.1 None.

4. Legislative Context

4.1 Section 85 of the Local Government Act 2000 ("the 2000 Act") prescribes three options for the scheme for the ordinary elections of councillors of a principal council. For all three options the term of office of councillors is four years. The essential characteristics of the three schemes can be summarised as:

(a) a scheme under which elections are held in a given year and every fourth year afterwards, and all councillors are elected and retire together ("whole council elections"),

(b) a scheme under which elections are held in a given year and every second year after it, and one half of the councillors are elected in each year in which elections are held ("election by halves"), or

(c) a scheme under which elections are held in a given year and every year after it other than every third year after it, and one third of the councillors are elected in each year in which the elections are held ("elections by thirds").

4.2 The City of Birmingham currently operates elections by thirds.

4.3 Section 86(A1) of the 2000 Act provides that the Secretary of State may by order make provision to secure that the scheme for the ordinary election of councillors of a principal council in England is a scheme of whole council elections. "Principal council" means a county council, a district council or a London Borough Council (see section 84).

4.4 Section 87 of the 2000 Act provides a power to the Secretary of State to change the years in which the ordinary elections of councillors of any specified local authority are to be held, but which does not change the scheme which prevails for the ordinary elections of those councillors. "Local authority" means a principal council or a parish council (see section 84).

4.5 "Ordinary day of election" means the first Thursday in May (see section 37 of the Representation of the People Act 1983) subject to the power of the Secretary of State by order to specify a different date in certain circumstances.

4.6 Sections 86(7) and 87(3) of the 2000 Act provide that any order which changes the scheme or year of ordinary elections of councillors may also make provision for members to retire at different times than that which they would otherwise have retired.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 In July 2014, to address the wider weaknesses that were highlighted in Birmingham's governance culture by the report into the allegations concerning Birmingham's schools, the leader of Birmingham City Council Sir Albert Bore and the Secretary of State for Communities and Local Government Eric Pickles asked Sir Bob Kerslake to lead a review of the governance and organisational capabilities of the city council to report by December 2014 (HC Deb, 22 July 2014, c109WS). The aim of the review was to make recommendations for improving the efficiency and effectiveness of the City Council.

7.2 The review found a series of deep rooted and serious problems that are stopping both the city and the council from fulfilling their potential. Amongst other thing it found that the council's size acts as both a badge and a barrier, that the sheer number of councillors (120) means the council is difficult to run and that the large size of the multi-member wards has meant councillors have

found it hard to represent their communities effectively. In view of this the report recommended that a combination of predominantly single member wards, a smaller number of members and all-out elections would make the council stronger and much more directly accountable to the people it serves whilst also saving taxpayers' money.

7.3 On 9 December 2014 the Secretary of State Eric Pickles announced that he therefore intended to change the electoral cycle of the council to all-out elections and ask the Local Government Boundary Committee for England to conduct an electoral review with a view to completing its work to enable elections by May 2017.

7.4 The Local Government Boundary Commission for England has agreed to undertake a review and has already started work on the consideration of council size. They agree that a combination of review of council size, a change to warding patterns and to the electoral cycle can have a significant impact on a council's ability to change and adapt, particularly if linked to other measures in problem councils. The Department understands that the Commission aims to put in place revised electoral arrangements at the whole council election in 2017.

7.5 There is presently only one parish in Birmingham – the parish of New Frankley. The parish elections are due in 2016. It is more convenient, both for the electors and for electoral administration, and more cost efficient for the parish, to be on the same cycle as the City council elections. To keep disruption to a minimum it was felt to be preferable for the term of office of the parish councillors to be extended by one year and the parish election deferred until 2017 so that the cycles coincide as soon as possible.

- Consolidation

7.7 No consolidation is necessary.

8. Consultation outcome

8.1 The methodology adopted for the review undertaken by Sir Bob Kerslake was based on the principles of the Local Government Association's (LGA) peer challenge model which states that there are five factors critical to council performance and improvement. The Review considered these are the essential components of a successful and effective council, and are:

(a) effective political and managerial leadership, working as a constructive partnership;

(b) a good understanding of the local context which informs a shared long-term vision and a clear set of priorities understood by the workforce and other partners;

(c) effective governance and decision-making arrangements that respond to challenges and manage performance, change, transformation and disinvestment;

(d) capacity and resources focused in the right areas in order to deliver the agreed priorities, supported by relevant organisational and workforce development; and,

(e) a financial plan in place to ensure its long term viability and evidence it is being implemented successfully.

8.2 Sir Bob Kerslake's review was supported by an expert advisory panel comprising senior local government members and chief executives. The panel conducted interviews, held evidence gathering sessions and met with Sir Bob Kerslake on a regular basis. The review recommendations were agreed with and supported by the advisory panel and by Sir Albert Bore the Leader of the City Council.

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8.3 Fundamental to the process was the frank and open sharing of insight and personal experience by those who know the city and want it to do well. This was provided on a confidential basis. Sir Bob Kerslake held a series of weekly visits to Birmingham; he and the panel spent 50 days in the city meeting residents, business leaders, community and faith leaders, the voluntary and community sector, local politicians, council officers, frontline staff and representatives of the other public services. The review heard the views of more than 350 people. They spoke to each of the hon. Members representing the City and received around 80 submissions of written evidence.

8.4 Sir Bob Kerslake's review also took account of the findings of the recent reviews into aspects of the City Council's activities by Ian Kershaw, Peter Clark, Julian Le Grand and Lord Warner and took into account the experiences and successes of other councils using the expertise of panel members.

8.5 Moving to whole council elections in general is in line with the policy announced in the Government response[1] to the Heseltine report[2] (which recommended that all local authorities should hold whole council elections) which stated that, "whilst leaving this for local choice, the Government welcomes the adoption anywhere of four-yearly whole council elections". Given the findings in Sir Bob Kerslake's report recommending all-out elections in Birmingham it is right that in this particular case the Secretary of State makes the necessary Order to amend the cycle of elections in Birmingham.

8.6 In their response to the review the council said "We want to state at the outset that we recognise and accept the broad thrust of all the recommendations in the report. We will welcome the proposed Boundary Commission review, should the Secretary of State agree to instigate it, and we

[1] Government's response to the Heseltine review (Cm 8587) March 2013. ISBN: 9780101858724
[2] No stone unturned: in pursuit of growth. October 2012.

look forward to a lively consultation on how changes to the electoral size of wards and the numbers of members per ward will deliver enhanced member engagement within these wards." The consultation to which City Council refers will be taken forward by the Boundary Commission during the course of their electoral review. This Order lays the foundation for that review.

9. Guidance

9.1 The Department does not intend to issue any guidance alongside this instrument. However, the Department will continue its close dialogue and liaison with the Council.

10. Impact

10.1 This instrument has no impact on the public sector, business, charities or voluntary bodies.

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department will continue to maintain a close dialogue and liaison with the Council.

13. Contact

Maggie Crosby at the Department for Communities and Local Government Tel: 0303 444 2573 or email: maggie.crosby @communities.gsi.gov.uk can answer any queries regarding the instrument.