EXPLANATORY MEMORANDUM TO

THE COMBINED AUTHORITIES (MAYORAL ELECTIONS) (AMENDMENT) ORDER 2017

2017 No. [XXXX]

AND

THE LOCAL AUTHORITIES (MAYORAL ELECTIONS) (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2017

2017 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Cabinet Office and has been laid before Parliament at the command of Her Majesty.

2. Purpose of the instruments

2.1 The Combined Authorities (Mayoral Elections) (Amendment) Order 2017 ("the Order") and The Local Authorities (Mayoral Elections) (England and Wales) (Amendment) Regulations 2017 ("the Regulations"), respectively, make changes to the rules governing the conduct of Combined Authority Mayoral and Local Mayoral elections. In particular, the instruments modify sections 10 and 11 of the Representation of the People Act 2000 ("the RPA 2000") in order that the scope for running electoral pilot schemes is extended to include Combined Authority Mayoral and Local Mayoral elections.

2.2 The Order also amends the definitions of "elector" and "local government elector" for the purposes of the subscription of candidates' nomination papers at a Combined Authority Mayoral election to address an issue that has arisen with these provisions, and includes new versions of the form of the nomination paper for use by candidates at a Combined Authority Mayoral election as a consequence of these changes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These instruments are being brought into force on the day after they are made. The instruments modify provisions in the RPA 2000 to enable pilot schemes to be held at Combined Authority elections and Local Mayoral elections, but do not in themselves create the pilot schemes. They do not, therefore, impose any new obligations on any individual in connection with these elections. The Government has announced that a number of local authorities have volunteered to hold pilot schemes in May 2018, including two that are scheduled to hold Local Mayoral elections, and so it is important that these instruments come into force as soon as possible.

Other matters of interest to the House of Commons

3.2 The entire Order applies only to England. The entire Regulations apply only to England and Wales.

3.3 In the view of the Cabinet Office, for the purposes of the House of Commons Standing Order 83P the subject matter of these instruments would be within the devolved legislative competence of the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

3.4 The Cabinet Office has reached this view because it considers that the primary purpose of the provisions in these instruments relate to conduct of local government elections, which is within the devolved legislative competence of the Scottish Parliament. The primary purpose of the subject matter of these instruments is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act).

4. Legislative Context

4.1 The Order amends the Combined Authorities (Mayoral Elections) Order 2017 (S.I. 2017/67) ("the 2017 Order") which prescribes the rules for the conduct of Combined Authority Mayoral elections. The Regulations amend the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 (S.I. 2007/1024) ("the 2007 Regulations") which prescribe the rules for the conduct of Local Mayoral elections.

4.2 Section 10 of the RPA 2000 enables the Secretary of State to, by order, make provision for running pilot schemes in relation to the conduct of local government elections in England and Wales, including making changes to when, where and how voting at elections is to take place. At the time, local mayoral and combined authority mayoral elections did not exist. The concept of local mayoral elections were established under the Local Government Act 2000 ("LGA 2000") and introduced in 2007. The 2007 Regulations provide the conduct rules for local mayoral elections, and regulation 3 applies the provisions of the RPA 2000 for the purpose of conducting mayoral elections and modifies references to 'local government elections' so that they are taken to include 'mayoral elections'. However, the conduct rules are made under powers in the LGA 2000, and the 2007 Regulations did not make textual amendments to references to the 'Representation of the People Acts' to be read instead as references to the "Local Government Act 2000" in section 10 and 11 of the RPA 2000. As such, the effect of section 10(2) of the RPA 2000 is that it is not possible for the 2007 Regulations to be modified for the purpose of conducting a pilot scheme for local mayoral polls. The Regulations make these modifications so as to enable pilot scheme orders under section 10 of the RPA 2000 to make changes to the mayoral conduct rules.

4.3 Similar modifications are made in respect of the 2017 Order for the conduct rules for combined authority mayoral elections. The concept of combined authority mayoral elections were established under the Local Democracy Economic Development and Construction Act 2009 ("the 2009 Act") and introduced in 2017. Under article 3 of the 2017 Order, the rules apply the provisions of the RPA 2000 for the purpose of conducting combined authority mayoral elections and modify references to 'local government elections' so that they are taken to include 'combined authority mayoral elections'. However, the 2017 Order did not make textual amendments to references to the 'Representation of the People Acts' to be read instead as references to the "Local Democracy, Economic Development and Construction Act 2009" which the combined authority mayoral conduct rules are made under. Therefore, the Order makes these modifications.

4.4 The Order further amends the 2017 Order in respect of the definitions of 'elector' and 'local government elector' for the purpose of the nomination of candidates at Combined Authority Mayoral elections. This is to ensure that only persons that are entitled to vote and are on the register on the last day for the publication of notice of election are able to subscribe to a candidate's nomination. The Order also includes amended nomination forms as a consequence of the changes made to the definitions of elector.

4.5 Further, section 11(1) of the RPA 2000 enables the Secretary of State to make an order that enables measures adopted in a pilot scheme to apply generally, and permanently, taking into account any report on the scheme provided by the Electoral Commission under section 10 of the RPA 2000. Section 11(6) allows the Secretary of State to make such provision in conduct rules made under the Representation of the People Acts for the purposes of applying the provisions more generally at polls. Again, as the conduct rules for Combined Authority Mayoral and Local Mayoral elections are made under the 2009 Act and the LGA 2000, respectively, these polls do not currently fall within the scope of section 11(6) of the RPA 2000, and therefore the Secretary of State cannot at present make such provision in respect of these elections.

5. Extent and Territorial Application

5.1 The extent of the Order is England and Wales; the extent of the Regulations is England and Wales.

5.2 The territorial application of these instruments is set out in section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 Chris Skidmore MP, Minister for the Constitution, Cabinet Office has made the following statement regarding Human Rights:

"In my view the provisions of the Combined Authorities (Mayoral Elections) (Amendment) Order 2017 and the Local Authorities (Mayoral Elections) (England and Wales) (Amendment) Regulations 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The report by Sir Eric Pickles MP (in his role as Anti-Corruption Champion) in his review of electoral fraud - 'Securing the ballot' - was published in August 2016. Sir Eric Pickles' report made a number of recommendations designed to strengthen the integrity and security of voting, including that the Government should consider the options for electors having to produce personal identification before being able to vote at polling stations.

7.2 In December 2016, the Government published its response to Sir Eric Pickles' report on electoral fraud. The response welcomed the report and explained that it was keen for a variety of identification options to be piloted and set out possible options as to how such electoral integrity pilots may be trialled at local authority polls in May 2018. Subsequently, the governing Party's manifesto at the General Election in June 2017 set out that, if elected, the government would legislate to ensure that a form of

identification must be presented before voting. This requirement will be tested through pilot schemes at the May 2018 local elections. Pilot schemes will help to identify how best this requirement should be introduced more widely.

7.3 The Government has announced that in the May 2018 local elections four local authorities - Woking, Gosport, Bromley and Watford - have volunteered to take part in a trial, which will require voters to produce identification before being issued with a ballot paper. In addition, Tower Hamlets council has expressed interest in running a separate postal voting pilot, looking at the security of postal votes and providing additional guidance in postal vote packs. The Government is currently considering the detail of the pilots planned for May 2018. Two of these authorities - Watford and Tower Hamlets - are scheduled to hold Local Mayoral elections in May 2018. As outlined above, provisions set out in section 10 of the RPA 2000 that make provision for the holding of pilot schemes at local elections in England and Wales, as currently drafted, do not enable changes to be made to the conduct rules for Combined Authority Mayoral and Local Mayoral elections. Also, provisions in section 11 that enables measures tested in a pilot scheme to apply generally and on a permanent basis, do not encompass conduct rules for Combined Authority Mayoral and Local Mayoral elections.

7.4 The instruments make the necessary amendments to ensure that it will be possible to hold electoral pilot schemes at Combined Authority Mayoral and Local Mayoral polls. The 2007 Regulations will facilitate the planned pilot schemes for local mayoral elections to be held in May 2018 to test the requirement for voters to show identification, and any further pilot schemes held in the future. The 2017 Order will facilitate any pilot schemes for combined authority mayoral elections to be held in the future

Combined Authority Mayoral Elections

Pilot schemes

7.5 The Order modifies sections 10 and 11 of the RPA 2000 as they apply to pilot schemes for the conduct of Combined Authority Mayoral elections. The Order substitutes references in section 10(2) and (7) to "Representation of the People Acts" with "Local Democracy, Economic Development and Construction Act 2009". This will enable the pilot schemes to make different provision from those made under the 2017 Order at Combined Authority Mayoral elections. The Order will also amend section 11(6) so that the conduct rules for Combined Authority Mayoral elections made under the 2009 Act are brought within the scope of this provision which concerns the revision of procedures in the light of pilot schemes.

7.6 In addition, the Order includes a modification of the definition of “relevant local authority” at section 10(11) of the RPA 2000 so that it includes a combined authority as established under the 2009 Act. This is necessary as section 10(2) of the RPA 2000 currently refers to a scheme in a "relevant local authority" which is defined under section 10(11) and, for the purposes of a pilot at a Combined Authority Mayoral poll, this would need to refer to a "combined authority".

7.7 The Order also makes amendments to section 11(2) and (5) of the RPA 2000. Section 11 enables the Secretary of State to make an order that enables measures tested in a pilot scheme to apply generally, and on a permanent basis. However, that order may exclude certain specified local government areas from a generally applied

scheme. For the purposes of Combined Authority Mayoral elections, it is necessary that this provision refers to a "combined authority area" and the Order therefore changes references in section 11(2) and (5) from "local government area" to "combined authority area".

Subscription of Nomination Papers

7.8 The Order also addresses an issue that has arisen in the original 2017 Order by amending the definitions of "elector" and "local government elector" for the purposes of the subscription of candidates' nomination papers at a Combined Authority Mayoral election. The current definitions of these terms in the 2017 Order provide that a person registered to vote at the poll is entitled to subscribe a nomination paper though do not specify at what point the person needs to appear on the register. The effect of the changes is to clarify that the persons who may subscribe a nomination paper are those who are on the local government register on the last day of the publication of the notice of election, which must be published no later than 25 working days before polling day. The Order also makes clear that such a person must be of voting age on the day of the poll. This is the same approach which is taken for the nomination of candidates at Local Mayoral elections (see paragraph 8 of Schedule 1 to the 2007 Regulations) and is in line with the approach taken at other elections more generally. The Order includes amended versions of the form of nomination paper set out at Schedules 1 and 3 to the 2017 Order that candidates must complete and submit at a Combined Authority Mayoral election, as a consequence of the changes made to the definitions of elector.

Local Mayoral Elections

Pilot Schemes

7.9 In line with the above changes for Combined Authority Mayoral elections, the Regulations modify sections 10 and 11 of the RPA 2000 as they apply to pilot schemes for the conduct of Local Mayoral elections. The Regulations substitute in section 10(2) and (7) references to "Representation of the People Acts" with "Local Government Act 2000" and amend section 11(6) so that the conduct rules for Local Mayoral elections made under the LGA 2000 are brought within the scope of this provision. These changes would enable pilot schemes to make different provision from those made under the 2007 Regulations at Local Mayoral elections.

7.10 As the two instruments correct technical oversights in previous statutory instruments they are being treated as correcting statutory instruments and will be made available free of charge to those who have already purchased the original instruments.

Consolidation

7.11 The Law Commission is currently conducting a review into the desirability and feasibility of consolidating electoral law.

8. Consultation outcome

8.1 The Electoral Commission has been consulted on these instruments in accordance with paragraph 12(4) of Schedule 5B to the 2009 Act and sections 9HE(4) and 44(3A) of the LGA 2000. In addition, we have shared the draft instruments with key stakeholders including the Association of Electoral Administrators and the Society of Local Authority Chief Executives. Both the Electoral Commission and other

stakeholders are content with the provisions contained within both the Order and the Regulations. The Electoral Commission indicated that it supports the main intention of the instruments to extend the scope for electoral pilot schemes to Combined Authority Mayoral and Local Mayoral polls.

9. Guidance

9.1 The Electoral Commission issues guidance to electoral administrators relating to the administration and conduct of elections, and will update the guidance as necessary to cover the changes set out in these instruments.

10. Impact

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

10.2 There is no impact on the public sector. If it is decided to hold a pilot in a Combined Authority Mayoral election or a Local Mayoral election, the Government will fully fund the additional costs incurred by the local authority.

10.3 An Impact Assessment has not been prepared for this instrument as no impact on business is foreseen.

11. Regulating small business

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

12. Monitoring & review

12.1 In the event that a pilot scheme is held at a Combined Authority Mayoral election or a Local Mayoral election, the Electoral Commission would be required under section 10 of the RPA 2000 to prepare a report on the scheme, which will include an assessment of the impact of the scheme. With regard to the proposed change concerning the subscription of candidates' nomination papers at a Combined Authority Mayoral election, the Electoral Commission will produce reports on the administration and conduct of Combined Authority Mayoral polls, and the Cabinet Office will consider any findings or recommendations made by the Commission about this change that will apply at those polls. The Cabinet Office will continue to keep all electoral legislation under review to ensure it continues to support electors' participation in elections and effective electoral administration.

13. Contact

13.1 Peter Richardson at the Cabinet Office, Telephone: 020 7271 6433 or email: peter.richardson@cabinetoffice.gov.uk can answer any queries regarding these instruments.