EXPLANATORY MEMORANDUM TO

THE ELECTORAL REGISTRATION PILOT SCHEME (ENGLAND) (AMENDMENT) ORDER 2017

[2017] No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 This Order amends the Electoral Registration Pilot Scheme (England) Order 2016 (S.I. 2016/739) ("2016 Order"), to extend the time period of the pilot for a further year.

2.2 The 2016 Order gives greater discretion to Electoral Registration Officers in the specified areas as to how they conduct their annual canvass under section 9D of the Representation of the People Act 1983, by extending the period of the pilot. This Order will enable them to trial these methods for a second year running.

2.3 The Electoral Commission will now be required to give a copy of their report on the pilot scheme to the Minister by 29th June 2018, rather than 30th June 2017.

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 This entire instrument applies only to England.

3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this instrument would not be within the devolved legislative competence of any of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the National Assembly for Wales if equivalent provision in relation to the relevant territory were included in an Act of the relevant devolved legislature.

4. Legislative Context

4.1 This Order is being made to enable the specified areas which are testing alternative approaches to canvassing as enabled by the 2016 Order, to extend testing for another annual canvass. This Order, therefore, extends the pilot enabled by the Electoral Registration Pilot Scheme (England) Order 2016 (S.I. 2016/739), to enable the participating authorities to continue piloting activity in 2017.

4.2 The Electoral Registration Pilot Scheme (England and Wales) Order 2017, making corresponding provisions for piloting in additional areas in England, as well as areas in Wales, will be laid before Parliament alongside this instrument.

4.3 The Electoral Registration Pilot Scheme (Scotland) Order 2017, making provisions for piloting in Scotland will be laid before Parliament alongside this instrument.

4.4 The system of IER is contained in amendments to the Representation of the People Act 1983 ("the 1983 Act") made by the Electoral Registration and Administration Act 2013 and in amendments to the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341) ("the 2001 Regulations"). The canvass provisions of the 2001 Regulations have been further amended by the Representation of the People (Description of Electoral Registers and Amendment) Regulations 2013 (S.I. 2013/3198) the Representation of the People (England and Wales) (Amendment) Regulations 2015 (S.I. 2015/467), the Representation of the People (England and Wales) (Amendment) (No.2) Regulations 2015 (S.I. 2015/1971) and the Representation of the People (England and Wales) Regulations 2016 (S.I. 2016/694).

4.5 Under section 11(2) of the 2013 Act the making of this instrument is subject to the affirmative resolution procedure.

4.6 Section 9A of the 1983 Act requires EROs to take necessary steps to maintain their register and secure that, so far as reasonably practicable, persons who are entitled to be registered in a register (and no others) are registered in it. In order to comply with that duty, section 9D of the 1983 Act (inserted by the 2013 Act) imposes a duty on EROs to conduct an annual canvass in Great Britain.

4.7 Section 25(1) of the 2013 Act, as amended by The Chancellor of the Duchy of Lancaster Order 2015 (S.I. 2015/1376) and subsequently by The Transfer of Functions (Elections, Referendums, Third Sector and Information) Order 2016 (S.I. 2016/997), provides for "the Minister" to mean the Secretary of State or the Minister for the Cabinet Office.

5. Extent and Territorial Application

5.1 The extent of this instrument is England.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Minister for the Constitution has made the following statement regarding Human Rights:

"In my view the provisions of the Electoral Registration Pilot Scheme (England) (Amendment) Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Regulations enable the period of the pilot to be extended for a further year.

7.2 This Order extends the pilot scheme which took place during the 2016 annual electoral registration canvass in the specified three areas (Birmingham, Ryedale and South Lakeland) for one year, to allow the pilot to take place once again during the annual canvass in 2017. Another Order, the Electoral Registration Pilot Scheme (England & Wales) Order 2017, will allow for an additional 17 Local Authorities in England and two in Wales, to participate in the 2017 annual canvass pilots in addition

to these three areas. Local Authorities applied to participate in one of four pilot scheme models that allow the participating EROs to conduct their 2017 annual canvass in a less prescriptive manner. The purposes of these pilots are to gather evidence to establish whether alternative methods can be used to conduct the canvass that are just as efficient and more cost effective. This evidence will be evaluated and used to assess whether the pilots support a case for making a permanent change for EROs to be given wider discretion over the conduct of the annual canvass. The pilots are being extended to 2017 to cover more areas in order to gather further evidence across a spread of geographical areas and type of Local Authority. The 2017 canvass pilots will therefore include Scottish and Welsh authorities, which were not included in 2016 due to timing constraints. A third, separate Order will allow two Scottish areas to participate - the Electoral Registration Pilot Scheme (Scotland) Order 2017. The total number of Local Authorities participating in the 2017 annual canvass pilots is 24.

Consolidation

7.3 Consolidation does not apply to this Order.

8. Consultation outcome

8.1 The Electoral Commission (EC) has been consulted on this instrument.

8.2 The EC commented that Paragraph 2(4) of the Electoral Registration Pilot Scheme (England) (Amendment) Order 2017 makes reference to 2nd February 2018 with regards to the publication of a revised register (which is allowed for in exceptional circumstances by Section 13 of the Representation of the People Act 1983), when partner orders - the Electoral Registration Pilot Scheme (Scotland) Order 2017 and Electoral Registration Pilot Scheme (England and Wales) Order 2017 - state 1st February.

8.3 The Cabinet Office noted this error in the Electoral Registration Pilot Scheme (England) (Amendment) Order 2017 and following the advice from the EC, amended all of the pilot Orders to the 2nd February 2018 instead of the 1st February 2018, which will allow time for the publication of the revised register, if necessary, on 2nd February 2018 in the case of any technical issues

8.4 The EC also sought clarity regarding Paragraph 7 of the draft Order, which states that the EC must provide a report of the pilots on 29th June 2018 which is the end date of the pilots. They suggested that this should also be reconsidered as the EC wouldn't be in a position to consider the results until the pilots have concluded

8.5 The Cabinet Office clarified that as mentioned, the pilot period ends with the submission by the EC of a report to the Minister, and does not end with the conclusion of the canvass. As such, the EC can begin to evaluate pilot authorities on the publication of their registers, in order to publish a report by 29th June 2018. If any of the piloting authorities need to publish a revised register, the EC would have adequate time to evaluate the other authorities in the interim.

8.6 The Information Commissioner's Office (ICO) has been consulted and has previously provided advice to the Cabinet Office in relation to the provisions of the Data Protection Act 1998, in terms of ensuring that the arrangements for delivering Individual Electoral Registration (IER) take account of the data protection and privacy issues. The ICO noted that they were previously consulted on the Electoral

Registration Pilot Scheme (England) Order 2016 and were content that the Electoral Registration Pilot Scheme (England) (Amendment) Order 2017 does not raise any new or significant data protection or privacy issues. The Cabinet Office note the ICO's advice that compliance with the Principles of the Data Protection Act 1998 should continue throughout the pilot period in 2017, and that a consistent approach to data protection should be taken by participating EROs to ensure personal data is handled appropriately.

9. Guidance

9.1 Guidance will continue to be issued to electoral registration officers as and when required on all aspects of individual registration.

10. Impact

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

10.2 The impact on the public sector is that the provisions enable the testing of alternative methods for conducting an annual canvass which have the potential to reduce the costs of electoral registration and the administrative burden on EROs while still securing the same or higher levels of information on population churn compared with the current annual canvass process.

10.3 An Impact Assessment is submitted with this memorandum and is 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 & review

12.1 The Electoral Commission and the Cabinet Office will continue to monitor the completeness and accuracy of the electoral register. The Electoral Commission will evaluate the pilot scheme and publish their report by 29th June 2018.

13. Contact

13.1 Annes Llwyd at the Cabinet Office Telephone: 07736 485 431 or email: Annes.Llwyd@cabinetoffice.gov.uk can answer any queries regarding the instrument.