EXPLANATORY MEMORANDUM TO

THE ELECTORAL REGISTRATION PILOT SCHEME (ENGLAND) ORDER 2016

2016 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 Following the introduction of individual electoral registration (IER) this Order establishes a pilot scheme under sections 7 and 9 of the Electoral Registration and Administration Act 2013 ("the 2013 Act") (c. 6) for changes to the annual canvass. The pilot scheme gives electoral registration officers (EROs) in specified areas of England wider discretion over the manner in which they conduct the annual canvass under section 9D of the Representation of the People Act 1983 ("the 1983 Act") (c. 2) for a specified period.

2.2 The Order modifies certain provisions in the 1983 Act and the Representation of the People (England and Wales) Regulations 2001 ("the "2001 Regulations") in relation to the areas specified in the Order for the duration of the pilot scheme.

2.3 Article 3 sets out the specified period of the pilot scheme.

2.4 Article 4 modifies, for the specified period, the requirements in section 9D(3) of the 1983 Act and regulations 32ZA(1), (4), (5) and (6) and 32ZB of the 2001 Regulations as they apply in relation to the annual canvass to electoral registration officers for the areas specified in the Order.

2.5 Article 5 requires EROs in the specified areas to attempt to make contact with a person at each residential address in the area for which they act at least once between the date the Order comes into force and 2nd February 2017. However, the manner in which they do so and whether they take further steps where no information is received in respect of a particular address will be at the ERO's discretion.

2.6 Article 6 specifies the date by which the Electoral Commission is required to give a copy of their report on the pilot scheme under section 9(7)(b) of the 2013 Act to the Chancellor of the Duchy of Lancaster and the electoral registration officers. The date is 30th June 2017.

2.7 Article 1 provides that the Order ceases to have effect on 7th July 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 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 EROs to test alternative approaches to canvassing. 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), and the Representation of the People (England and Wales) (Amendment) (No.2) Regulations 2015 (S.I. 2015/1971).

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

4.3 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.

4.4 This statutory instrument, if approved, will be made under powers in sections 7 and 9 of the 2013 Act. Section 7 is a power to amend the annual canvass and section 9 a power to do so for a specified period as a pilot scheme.

4.5 Section 25(1) of the 2013 Act provides that "the Minister" means the Secretary of State or the Lord President of the Council. The Chancellor of the Duchy of Lancaster Order 2015 (S.I. 2015/1376) provided that where a function of the Secretary of State is exercisable concurrently with the Lord President of the Council, the function is transferred so that it is instead exercisable concurrently with the Chancellor of the Duchy of Lancaster at the Cabinet Office (and as delegated by him to the Minister for Constitutional Reform).

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

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 Constitutional Reform has made the following statement regarding Human Rights:

"In my view the provisions of the Electoral Registration Pilot Scheme (England) Order 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The annual canvass serves as an information gathering exercise for EROs on population churn. It is designed to provide them with information on potential additions and deletions to the electoral register which they can investigate further and then update the register accordingly. In its current form under IER, it is proving to be an unsustainable cost burden for local authorities to administer. Anecdotal evidence is also suggesting that the two stage process of registering to vote (where those identified as missing from the register in a returned canvass form need to successfully complete an individual application before they can be registered) during the canvass is causing confusion to electors and is not an efficient or effective method in securing registrations that the process sets out to achieve. The instrument enables the testing of alternative methods for conducting an annual canvass which have the potential to be more cost effective while still securing the same or higher levels of information on population churn (potential additions, changes to registration details, and deletions to the register) compared with the current annual canvass process.

7.2 The Order, if approved, will be made under powers in sections 7 and 9 of the 2013 Act, to enable EROs in specified areas in England to test alternative approaches to canvassing.

7.3 Section 9D(3) of the 2013 Act requires the annual canvass to be conducted in the manner set out in the 2001 Regulations. The draft Order disapplies that requirement for EROs in the specified areas for the pilot period and disapplies the specific steps set out in the 2001 Regulations governing the actions an ERO in those areas must take to conduct a canvass during the pilot period. It disapplies the regulations under 32ZA and 32ZB which prescribe certain steps such as the requirement that each ERO must send a canvass form in the form designed by the EC to each residential address in the area for which the officer acts; that the canvass form must be accompanied by a pre-addressed reply envelope, the postage of which has been prepaid; that the ERO must send two written reminders and carry out door step visits to non-respondents.

7.4 EROs in the specified areas will still be under a duty to conduct an annual canvass under section 9D(1) of the 2013 Act but for the specified period EROs will have the freedom to determine how they wish to do so, although there will be a minimum requirement that they attempt to make contact with a person at each residential address in the area for which they act at least once during the pilot period.

7.5 The Electoral Commission is required to give a copy of their evaluation report on the pilot scheme under section 9(7)(b) of the 2013 Act to the Chancellor of the Duchy of Lancaster and the EROs by 30th June 2017. The Order ceases to have effect on 7th July 2017.

Consolidation

7.6 Consolidation does not apply to this Order.

8. Consultation outcome

8.1 The Electoral Commission (EC) has been consulted on this instrument. The EC suggested that there seemed to be a conflict between the modification made by article 5 of the draft Order and Section 9A of the 1983 Act, in that Section 9A(2)(a) appears to require EROs to send the canvass form under section 9D and under regulations

referred to there in the 2001 Regulations. Whereas under the draft Order, regulation 32ZA(4) of the 2001 Regulations – requiring the canvass form to be sent – is not to apply; and other provisions of the draft Order are designed to allow discretion over the means of conducting the canvass, not limited to a form.

8.2 The Cabinet Office responded that section 9A(2)(a) requires the ERO to take all steps that are necessary for the purpose of complying with the duty to maintain the registers under Section 9 and provides a non-exhaustive list of the steps. One of those steps is "to send more than once to any address the form to be used for the canvass under Section 9D below". The ERO is not required to carry out all those steps, s/he is required to carry out "all the steps that are necessary". Section 9D(3) and regulation 32ZA make it necessary for EROs to send a canvass form and to send follow ups where no response is received. Article 5 of the draft Order modifies section 9D(3) and regulation 32ZA so that it is not necessary for EROs in the specified areas to send a canvass form. The effect of that is that the duty to take all steps that are necessary in section 9A does not include a duty to send a canvass form in the pilot areas for the duration of the pilot since that is not a necessary step.

8.3 The EC also asked for information about the UK Government's plans regarding legislation that would enable any changes to future canvasses to be rolled out. The Cabinet Office responded that the intention was to make permanent changes to the annual canvass based on the evidential outcomes of piloting. However, the decision on when to implement permanent change would be largely dependent on the outcome of the pilots and it may be the case that further piloting is necessary in 2017. For Great Britain wide change to be brought into effect, co-ordinating legislation would need to be made in the UK Parliament, Scottish Parliament, and (dependent on timing) the Welsh Assembly - this would be another contributory factor to the timing of any change, and Cabinet Office would work closely with the devolved administrations in this regard.

8.4 The Information Commissioner's Office (ICO) considered that the pilots did not raise any new or significant data protection or privacy issues. They were pleased that due attention had been given to data security and privacy matters, including the provision of guidance to EROs and would expect that approach to be maintained during the period of the pilot, to ensure that a consistent approach was taken so that personal data was handled appropriately. The Cabinet Office replied that EROs were governed by the provisions of the Data Protection Act 1998 and were required to be registered with the ICO separately from their local authority. EROs are personally liable for the use and handling of data, including during the canvass pilot period.

8.5 The Association of Electoral Administrators asked whether there should be a reference included in the Order requiring the EROs taking part in the pilot to collect statistical data and submit it to the EC for their report on the pilot scheme. The Cabinet Office responded that there was no need to include this in the Order because the duty in section 9(10) of the 2013 Act requires EROs to comply with any request made by the EC for information it reasonably requires in connection with the preparation of their report.

8.6 The Scottish Government were content with the Order. The Scottish Assessors' Association were keen to see similar provisions put in place by the Scottish Government so that Scottish EROs could pilot means of improving the efficiency of the canvass. The Cabinet Office said that they would work closely with the Scottish Government after the May 2016 elections seeking agreement to legislate in parallel to

introduce changes to the canvass for electors in Scotland where pilots in England have proven changes are effective. The Scotland Office highlighted the importance of keeping close touch with Scottish interests and that the Cabinet Office should be mindful that there was no detrimental impact on Scotland from not having a formal pilot run in Scotland, for example on the boundary review. The Cabinet Office replied that the canvass pilots would have no impact as the boundary review uses the Office for National Statistics Electoral Statistics for the UK, released on 24 February 2016, predating any canvass pilot activity.

8.7 The Ministry of Justice raised a concern about the possible impact of the pilots on jury summoning information. To address this a reference is made in this Explanatory Memorandum to reflect that the electoral register is the basis on which people are called for jury service in England and Wales, and EROs have a statutory duty to supply this information under section 3(1) of the Juries Act 1974. This duty is not affected by this Order.

8.8 The Government Equalities Office (GEO) sought reassurance that groups with protected characteristics would not be negatively affected by the pilots, in particular the effect of household visits on transgender electors. Cabinet Office explained that household visits were part of the existing IER process, but that the pilots should reduce the need for these. The GEO also raised concerns about use of Department for Work and Pensions (DWP) data for transgender electors; it was explained that the DWP data matching process used to verify identity was part of the application process under IER, not a new process for the pilots. The GEO asked that the evaluation of the pilot schemes look at the impact of the approaches used in the pilots on minority groups to assist in meeting the Public Sector Equality Duty and to ensure that any adverse impact could be addressed in the future. Cabinet Office responded that the annual canvass is an information gathering exercise to assist EROs in identifying changes in their local electorate. The objectives of the canvass alternatives being tested are to gather the same or greater volume and quality of information as the current canvass but in a more cost efficient way and Cabinet Office will seek to measure how these change through piloting. The pilots do not seek to test whether certain approaches are able to maximise registration levels among certain under-registered groups. They will also not enable the collection of data which would allow the analysis of outcomes for minority groups; this information is not collected for electoral registration purposes.

8.9 While an attempt could be made to assess the impact on minority groups by comparing outcomes for small areas with particular demographics, this would not result in any concrete conclusions. However Local Authorities (LAs) submitting pilot proposals were asked to consider the impact on these groups and provide a rationale as to why they believed there will be no negative impacts. Furthermore, the piloting itself, by using random assignment to the existing or new canvass process, will not systematically subject any group of people to either approach.

8.10 The pilots will give evidence towards a decision whether or not a permanent change should be made to legislate to remove the strict requirements around the canvass. If this were the outcome, it would mean local and national resources would be released, presenting an opportunity to tackle the problems of under-registration longer term.

8.11 The Cabinet Office consulted the LAs that submitted business cases for the pilots. One LA queried the lack of a provision in the Order relating to data matching. The Cabinet Office responded that this was not specifically referenced in the Order as it is

a process that EROs in the pilot areas may choose to do as part of their canvass activities. Another LA asked whether there was any provision for the extension of any pilot process and how EROs would know whether or not they would have to go back to current canvass provisions in 2017. Cabinet Office responded that EROs would need to return to the current canvass provisions following the conclusion of the pilot scheme. The LA also asked about an issue relating to the 2001 Regulations and whether the intention was to retain Regulations 32ZA(2) and (3). Cabinet Office replied that retaining Regulations 32ZA(2) and (3) meant that the EC would still be required to design a canvass form. Cabinet Office also confirmed to the LA that there is no requirement in the Order to delete any records relating to the pilot as the scheme only allowed EROs to obtain information they would otherwise be able to obtain for the purposes of the canvass, and normal data protection rules would apply.

8.12 Finally the LA said that the evaluation requirements may impose significant additional burdens on EROs and that if reports had to be completed by 31 March 2017, the implications for EROs should be made clear, and additional support provided where necessary. Cabinet Office responded that the ERO was under no obligation to produce any evaluation report however they would be asked to supply data to support EC and Cabinet Office evaluations. The timing of supplying data for evaluation purposes will be shaped by when EROs expect all canvass activity to be completed and by EC evaluation deadlines. Most of the quantitative data on canvass outcomes will be generated by the EROs' Electoral Management System software. Other data will also need to be provided and the process will vary across ERO areas according to financial records and approach piloted. Cabinet Office would consider the costs of additional requirements for delivering the pilots on a case by case basis.

8.13 Organisations which were consulted but which had no substantive comments were the Association of Electoral Administrators (Scotland & Northern Ireland), the Electoral Management Board for Scotland, Society of Local Authority Chief Executives (SOLACE) Elections & Democracy Board, SOLACE (Scotland), Wales Office, the Foreign & Commonwealth Office, the Cabinet Office Expert Panel of electoral administrators and the Department for Communities & Local Government.

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 Equality Impact Assessment and a Privacy Impact Assessment are submitted with this memorandum and are 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 30th June 2017.

13. Contact

13.1 Carol Gokce at the Cabinet Office telephone: 020 7271 2679 or email: carol.gokce@cabinetoffice.gov.uk can answer any queries regarding the instrument.