EXPLANATORY MEMORANDUM TO

The European Parliamentary Elections (Amendment) Regulations 2015

2015 No. [XXXX]

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 These Regulations amend the rules for the administration and conduct of European Parliamentary elections to make two consequential changes arising out of provisions in the Electoral Registration and Administration Act 2013 (c.6) (the "ERA Act") and also to provide for the sending of further notifications to persons whose postal voting statements were rejected at the European Parliamentary election in May 2014 (in addition to the notifications already sent immediately after that election).

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

3.1 None.

4. Legislative Context

4.1 These Regulations amend the European Parliamentary Elections Regulations 2004 (S.I. 2004/293) (the "2004 Regulations") which set out the rules for the administration and conduct of European Parliamentary elections. The European Parliamentary Elections (Amendment) Regulations 2013 (S.I. 2013/2876) (the "2013 Regulations") amended the 2004 Regulations to update the rules for European Parliamentary elections in line with changes made for UK Parliamentary elections by the ERA Act and associated secondary legislation. The Regulations make two consequential changes to the 2004 Regulations arising out of provisions in the ERA Act, in order to amend provisions which relate to the date relevant to assessing certain grounds for exclusion from voting, which includes removing references to '15th October' as a relevant date for registration purposes at European Parliamentary elections, and to require proxies at these elections in Great Britain to be entitled to vote at that election. The changes made by the 2013 Regulations included providing for Electoral Registration Officers (EROs) to notify postal voters after a European Parliamentary election whose postal vote was rejected at the election. The instrument also makes changes to these provisions to provide for the further notification of postal voters following the European Parliamentary election in May 2014.

5. Territorial Extent and Application

5.1 The amendments extend to England, Wales and Scotland. The consequential amendments relating to the ERA Act also extend to Gibraltar.

6. European Convention on Human Rights

6.1 Sam Gyimah, Minister for the Constitution, Cabinet Office, has made the following statement regarding Human Rights:

In my view the provisions of the European Parliamentary Elections (Amendment) Regulations 2015 are compatible with the Convention rights.

7. Policy background

7.1 The draft Regulations make two consequential changes to the 2004 Regulations arising out of provisions in the ERA Act concerning the transition to Individual Electoral Registration (IER). Regulation 3 amends regulation 17 of the 2004 Regulations (effect of registers) to amend provisions which relate to the date relevant to assessing certain grounds for exclusion from voting, which includes removing references to '15th October' as a relevant date for registration purposes at European Parliamentary elections. Regulation 4 amends paragraph 6 of Schedule 2 to the 2004 Regulations to require proxies at a European Parliamentary election in Great Britain to be entitled to vote at that election. These provisions are established policy and will ensure that the changes that arise from the transition to IER and which have been made in respect of registering to vote and voting at UK Parliamentary elections will also apply in relation to European Parliamentary elections. IER was introduced in England and Wales on 10th June 2014, and in Scotland on 19th September 2014.

7.2 The instrument also provides for the further notification of postal voters following the European Parliamentary election in May 2014. Under provisions in the Electoral Administration Act 2006, postal voters are required to provide "personal identifiers" (date of birth and signature) when applying for a postal vote, and to provide these personal identifiers when voting by post at subsequent elections. Returning Officers carry out checks on the personal identifiers provided at elections by postal voters to ensure they match with those originally provided by the postal voter and if they do not match the postal vote is deemed invalid.

7.3 The 2013 Regulations provide for EROs to send postal vote rejection notifications following an election to postal voters whose postal vote was rejected. This is to help ensure those electors are aware that their postal voting statements were rejected, so that they can (where appropriate) take corrective action to ensure that they participate effectively in future elections and not have their ballot papers rejected at successive polls. The rejection can be because of things such as a signature degradation or because the postal voter has made inadvertent errors. EROs are not obliged to inform individuals where fraud is suspected.

7.4 Under the 2004 Regulations (as amended by the 2013 Regulations), after each European election, within three months of the poll, EROs are required to notify postal voters whose postal vote was rejected at the election due to:

i. one or both of the personal identifiers on the postal voting statement completed by the postal voter being rejected due to a failure to match with the identifiers held on record by the ERO; or

ii. due to a failure by the voter to provide one or both personal identifiers on the postal voting statement.

7.5 These "rejected postal vote" provisions took effect at the European Parliamentary election on 22nd May 2014. The proposed changes in the instrument are designed to build upon these provisions and to reinforce the information that postal voters will have received in the initial notification immediately following the European election in May 2014. To achieve this, it is proposed that EROs must within a period of 10 days beginning on 19th March 2015 issue a further notification to postal voters who were notified following the May 2014 European election and who still have a postal vote at the time that the further notification is issued. The notice will explain to the postal voter that the ERO communicated with them after the previous European Parliamentary election in respect of the postal ballot papers returned by the voter at the poll, and will set out general information to the voter on the completion of the postal voting statement.

7.6 This further notice will add value to the earlier information that the person will have received following the European election in May 2014 and will be helpful to postal voters who may have forgotten that they received the earlier communication or did not take action at the time they received it to update their personal identifiers. The further notice will supplement the guidance that postal voters will receive at future polls, for example, information on the postal voting statement, and will help to ensure that postal voters, who have previously made errors, are clear as to the requirements when completing the postal voting statement and therefore avoid postal voting statements being incorrectly completed. The policy objective of the second notification is to enhance understanding among postal voters of the postal voting process and this will be timely ahead of the General Election and other scheduled polls in May 2015.

8. Consultation outcome

8.1 The Electoral Commission has been consulted on this instrument as required by sections 7(1) and (2)(a) of the Political Parties, Elections and Referendums Act 2000 (c.41). In addition, we have consulted with representatives of the Association of Electoral Administrators (AEA), the Society of Local Authority Chief Executives and the Government of Gibraltar.

8.2 There is broad agreement with the policy objective of informing postal voters how to complete their postal ballot papers correctly, in order to avoid inadvertent errors by postal voters at future polls. However, the Electoral Commission and AEA have raised concerns that there is potential for an elector to get confused if they have already made changes to their postal vote provisions following the initial notification, or if they have successfully voted

by post in an intervening poll. There is also concern that the proposal will add to administrative pressures at a time when administrators are preparing for the General Election in May 2015.

8.3 Cabinet Office officials have discussed these concerns with the Electoral Commission, AEA and electoral administrators and will work with them over the implementation of the proposal. The Government considers that the proposal which is to set out how to correctly complete a postal vote will enhance understanding among postal voters of the requirements for completion of the postal voting statement and will help to support their effective participation at future polls.

9. Guidance

9.1 The Electoral Commission issues guidance to electoral administrators relating to the administration and conduct of European Parliamentary elections and will update the guidance as necessary to cover the changes set out in this instrument.

10. Impact

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

10.2 An impact assessment has been produced in relation to the impact of the instrument on EROs and local authority electoral administrators and will be published on legislation.gov.uk alongside the instrument and Explanatory Memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Cabinet Office keeps all electoral legislation under review to ensure it continues to support electors' participation in elections and effective electoral administration. Further, the Law Commission is undertaking a review of electoral legislation. It issued a scoping report on 11th December 2012 and published a consultation paper on reforming the law on 9th December 2014.

13. Contact

Peter Richardson at the Cabinet Office, tel 020 7271 6433: email: peter.richardson@cabinetoffice.gov.uk can answer any queries regarding the instrument.