EXPLANATORY MEMORANDUM TO

THE GOVERNMENT OF WALES ACT 2006 (AMENDMENT) ORDER 2019

2019 No. [XXXX]

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order amends Schedule 7B to the Government of Wales Act 2006 (GoWA) so as to disapply the restrictions contained in paragraphs 8 and 10 of that Schedule in relation to Electoral Registration Officers (EROs). The Order also provides for how these amendments affect the operation of article 45 (transfer of functions in relation to electoral legislation) of the Welsh Ministers (Transfer of Functions) Order 2018 ("the 2018 Order").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England and Wales only.

3.3 In the view of the Department, for the purposes of House of Commons Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, 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. Extent and Territorial Application

4.1 The extent of this instrument is UK wide.

4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 Secretary of State for Wales, Alun Cairns MP has made the following statement regarding Human Rights:

"In my view the provisions of the Government of Wales Act 2006 (Amendment) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 Paragraph 8(1)(a) to (c) of Schedule 7B to GoWA places restrictions on the ability of the National Assembly for Wales ("the Assembly") to confer or impose functions on a reserved authority; modify the constitution of a reserved authority; or confer, impose, modify or remove functions that are exercisable in relation to a reserved authority, without the consent of the appropriate UK Government Minister. Paragraph 10(1) of that Schedule places a similar restriction on the ability of the Assembly to remove or modify the functions of a reserved authority.

6.2 Paragraph 8(3) of Schedule 7B provides that a reserved authority means a Minister of the Crown or government department or any other public authority apart from a devolved Welsh authority. Section 157A of GoWA defines a devolved Welsh authority as a public authority whose functions are exercisable only in relation to Wales and are wholly or mainly functions that do not relate to reserved matters.

6.3 EROs are appointed under section 8 of the Representation of the People Act 1983 and exercise functions in relation to all UK polls. These include local government and Assembly elections in Wales (which are devolved matters in Wales) and UK Parliament, European, and Police and Crime Commissioner elections (which are reserved). Given this mix of devolved and reserved functions EROs do not meet the criteria of a devolved Welsh authority and are a reserved authority. Assembly legislation that seeks to amend the functions of EROs would therefore engage the restrictions at paragraphs 8 and/or 10 of Schedule 7B of GoWA and would require the consent of a Minister of the Crown.

6.4 Paragraph 9 of Schedule 7B to GoWA includes a number of carve outs to the consent requirements in paragraph 8 in respect of specified reserved authorities that similarly exercise a mix of devolved and reserved functions in relation to Wales. Paragraph 9(6) sets out a list of reserved authorities that are excepted from the consent requirements in paragraph 8(1). Paragraph 10(2) provides an equivalent list of bodies that are excepted from the consent requirements at paragraph 10(1) of Schedule 7B. This Order adds EROs to these lists of excepted bodies so that the Assembly can modify their functions within devolved competence without needing the consent of a UK Government Minister.

6.5 Separately, article 45 of the Welsh Ministers (Transfer of Functions) Order 2018 ("the 2018 Order") transfers existing Ministerial functions under certain pieces of electoral legislation to the Welsh Ministers. The functions that are transferred are those that are within "devolved competence" as defined by article 45 of that Order (that is, within the legislative competence of the Assembly). Paragraph 12 of Schedule 7B to GoWA, however, provides that in any enactment not contained within GoWA a reference to "the legislative competence of the Assembly" does not include a provision that, were it to be made in an Assembly Act, would require the consent of a Minister of the Crown. The current consent requirements in paragraphs 8 and 10 of Schedule 7B to GoWA referred to above mean that Ministerial functions relating to EROs are outside the scope of "devolved competence" (within the meaning of article 45 of the 2018 Order, read with paragraph 12 of Schedule 7B to GoWA). Accordingly, those Ministerial functions relating to EROs did not transfer to the Welsh Ministers under the terms of the 2018 Order.

7. Policy background

What is being done and why?

7.1 The UK Government, Welsh Government and Scottish Government have committed to putting in place GB wide canvass reforms next year which require modifications to ERO's functions.

7.2 This Order does two things. It adds EROs to the lists of reserved authorities in Schedule 7B to GoWA which are excepted from the consent requirements in paragraphs 8 and 10 of that Schedule. This will allow the Assembly to make provision regarding EROs without the consent of a UK Government Minister (in line with other reserved authorities that have a mix of devolved and reserved functions).

7.3 The Order also clarifies the interaction between the effect of the amendments to paragraphs 9 and 10 of Schedule 7B to GoWA and the operation of article 45 of the 2018 Order. It provides for article 45 of the 2018 Order to have effect from the date of this Order as if the amendments made by this Order had been in force at the time the 2018 Order came into force. This means that the effect of the amendments made by this Order on the consent requirements in paragraphs 8 and 10 of Schedule 7B to GoWA will alter the scope of "devolved competence" under article 45 of the 2018 Order to include Ministerial functions in relation to EROs, so that those Ministerial functions are treated as transferring to the Welsh Ministers under article 45 of the 2018 Order, but only with effect from the date that this Order comes into force.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This Order amends Schedule 7B to GoWA; consolidation is therefore unnecessary.

10. Consultation outcome

10.1 No formal consultation has been undertaken on this Order. We have engaged closely with the Welsh Government in its preparation. In line with the requirements in section 109 of GoWA this Order must also be approved by a resolution of the National Assembly for Wales.

11. Guidance

11.1 No formal guidance has been, or will be, issued in relation to this Order.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

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

13. Regulating small business

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

14. Monitoring & review

14.1 There will be no monitoring of the effect of this Order.

15. Contact

15.1 David Harries at the Office of the Secretary of State for Wales Telephone: 07840 009179 or email: David.Harries@ukgovwales.gov.uk can be contacted with any queries regarding the instrument.

15.2 Geth Williams, Deputy Director for Constitution and Corporate Services, at the Office of the Secretary of State for Wales can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kevin Foster MP, Parliamentary Under Secretary of State for Wales at the Office of the Secretary of State for Wales can confirm that this Explanatory Memorandum meets the required standard.