EXPLANATORY MEMORANDUM TO

THE MAYORAL AND POLICE AND CRIME COMMISSIONER ELECTIONS (CORONAVIRUS, NOMINATION OF CANDIDATES) (AMENDMENT) ORDER 2021

2021 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by Cabinet Office 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 time-limited instrument makes amendments to the rules governing the conduct of police and crime commissioner ("PCC"), combined authority and single authority mayoral elections (other than the London mayoral election). This will reduce the total number of subscribing electors that are required on a candidate nomination form. This is to reduce the amount of movement and person to person contact that may be needed as part of the nominations process, to reduce the risk of exposure to and transmission of the Coronavirus. Provisions relating to the Greater London Authority and councillor elections will be made in a separate order.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 **Commencement**: It is envisaged that the instrument will come into force as soon as possible so that the changes come into effect before notices of election are issued. Article 1(2) therefore provides that the instrument comes into force on the day after the day on which it is made.

3.2 The Cabinet Office considers that the commencement provision in article 1(2) is justified in the present case, for the reason set out in paragraph 3.1. Additionally, the instrument reduces the burden on candidates, and candidates who will be affected by it will have had an opportunity to take note of its effect during its passage through Parliament.

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)

3.3 This entire instrument applies to England and Wales only because it applies to mayoral elections in England and PCC elections in England and Wales.

3.4 The instrument does not have any minor or consequential effects outside England and Wales.

3.5 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument 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.

3.6 The Department has reached this view because the instrument concerns matters relating to policing, which is within the devolved legislative competence of both the Scottish Parliament and the Northern Ireland Assembly, and matters relating to the conduct of local government elections, which is within the devolved legislative competence of the Scottish Parliament and Senedd but not the Northern Ireland Assembly.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

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 Chloe Smith MP, Minister of State for the Constitution and Devolution, Cabinet Office has made the following statement regarding Human Rights:

"In my view the provisions of the Mayoral and Police and Crime Commissioner Elections (Coronavirus, Nomination of Candidates) (Amendment) Order 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 Part 6 of the Local Democracy, Economic Development and Construction Act 2009 (the "2009 Act") sets the framework for the establishment of combined authorities in England. A combined authority for an area of two or more local authorities is established by an order under Part 6 and has such functions (including functions relating to economic development and regeneration and transport) as are conferred by the order.

6.2 Schedule 5B to the 2009 Act makes provision for the election of mayors for combined authorities. Paragraph 12 gives the Secretary of State or Minister for the Cabinet Office power to make further provision as to the conduct of elections for mayors and the questioning of such elections. This Order is made using that power and amends the rules set out in Combined Authorities (Mayoral Elections) Order 2017 (S.I. 2017/67). Those rules currently provide that there must be at least 100 electors subscribing to a nomination form as proposing, seconding or assenting to a candidate's nomination, and this Order amends that number to twice the number of local authorities within the combined mayoral electoral area, and within that number two electors are required from each local authority area.

6.3 Section 21 of, and Schedule 2 to, the Localism Act 2011 inserted a new Part 1A (Arrangements with respect to local authority governance in England) into the Local Government Act 2000 ("the 2000 Act"), to apply to England only. Section 9HE(1) of the 2000 Act gives the Secretary of State or the Minister for the Cabinet Office power to make provision as to the conduct of elections of single authority mayors. Section 105(2) provides that any order made under the Act may contain savings provision. This Order is made using those powers and amends the rules set out in the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 (S.I.

2007/1024). Those rules currently provide that there must be thirty electors subscribing to a nomination form as proposing, seconding or assenting to a candidate's nomination, and this Order amends that to two electors proposing and seconding a candidate's nomination.

6.4 Part 1 of the Police Reform and Social Responsibility Act 2011 ("the 2011 Act") sets the framework for the creation of PCCs. Section 58(1) of the 2011 Act gives the Secretary of State or Minister for the Cabinet Office power to make provision as to the conduct of elections for PCCs, and section 154(5) gives the power to make savings provisions. This Order is made using those powers and amends the rules set out in the Police and Crime Commissioner Elections Order 2012 (S.I. 2012/1917). Those rules currently provide that there must be 100 electors subscribing to a nomination form as proposing, seconding or assenting to a candidate's nomination, and this Order amends that number to twice the number of local authorities within the police area.

7. Policy background

What is being done and why?

7.1 The Government confirmed on Friday 5 February 2021 that the range of polls scheduled for 6 May 2021, including local and mayoral elections in England and PCC elections in England and Wales, will go ahead as planned in a similar way to previous polls, but there will be differences as a result of the coronavirus pandemic.

7.2 The Government has published a delivery plan for the May 2021 polls which describes how these polls will proceed, from announcement to results, and then covers the four major areas that the Government is addressing: public health and social distancing; nominations and campaigning; voting; and the delivery of elections. The Government set out in the plan with regard to potential candidates standing for elected office, that it is introducing measures to reduce the travel and contact involved in completing their nomination form.

7.3 This change is being made to support effective nominations being completed and submitted during the coronavirus pandemic, and taking account of the need to make changes to support the protection of public health. The aim is to ensure that candidates can still show a level of support in accordance with the existing provisions but limit the need for travel and contact in obtaining the evidence of that support, which is provided by registered electors signing the nomination forms. Hence, reducing the number of signatures required for each type of nomination – to a basis of two per local authority area, whether for a poll within a single local authority or for electoral areas which contain a number of local authorities – will ensure the necessary support as currently required by legislation but significantly reduce the need for movement and contact between prospective candidates and electors.

7.4 The Government is not removing the signature requirements completely, as it is important there remains a democratic check and balance for candidates to demonstrate a degree of local support from local electors to nominate.

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 / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

10.1 The Electoral Commission has been consulted in accordance with section 7(2)(hc) of the Political Parties, Elections and Referendums Act 2000 ("PPERA"), section 9HE(4) of the 2000 Act, and paragraph 12(4) of Schedule 5B to the 2009 Act. The Electoral Commission was supportive of the changes being made. We have also had support for the changes from the Association of Electoral Administrators and in discussions with political party representatives via the Parliamentary Parties Panel.

11. Guidance

11.1 The Electoral Commission and the Government will provide guidance to electoral administrators and candidates about the changes set out in the instrument.

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 because there is no impact on business.

13. Regulating small business

13.1 This instrument does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Electoral Commission has a duty under section 6 of PPERA to keep under review general matters that relate to elections, and are required to submit reports to the Secretary of State from time to time on matters specified in section 6. The Government will consider any recommendations made.

14.2 This instrument does not include a statutory review clause. The amendments expire at the end of 28th February 2022, except in respect of elections for which a notice of election has already been given, so that existing rules return to force for the May 2022 elections.

15. Contact

15.1 Paul Docker at the Cabinet Office Telephone: 0774 662 1898 or email: paul.docker@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Becca Crosier, Deputy Director for the Elections Division, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chloe Smith MP, Minister of State for the Constitution and Devolution at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.