EXPLANATORY MEMORANDUM TO

THE RECALL OF MPS ACT 2015 (RECALL PETITION) REGULATIONS 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.

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

2. Purpose of the instrument

2.1 This instrument sets out the detailed procedure to be followed when a recall petition is triggered under the Recall of MPs Act 2015 ("the Act"). The Act provides for a recall petition to be held in an MP's constituency if that MP has been found to have committed serious wrongdoing by Parliament or the Courts, thereby starting the process by which that MP may be unseated and a by-election held. These regulations prescribe how the petition should be conducted, the arrangements for signing the petition, the mechanism for challenging the outcome of a petition and the creation of offences in relation to the petition. Without this instrument the Act cannot be commenced.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is being brought into force on the day after it is made. The Recall of MPs Act 2015 received Royal Assent on 26th March 2015 and, other than a few provisions, remains uncommenced as it requires these Regulations to be in place before it can fully come into force. This instrument prescribes the process to be followed when one of the recall conditions, set out in section 1 of the Act, is met. This process will impose new duties on Returning Officers (who will assume the role of Petition Officer) in the United Kingdom and their authorities with regard to delivering a recall petition, however, most of those duties will only arise when a condition is met and the process is triggered. Furthermore, the petition process is modelled on existing elections law, with the relevant modifications required for the differences in the petition process, and therefore is very similar to the process for parliamentary and local government elections for which Returning Officers are responsible for.

3.2 There has been consultation with the Electoral Commission, Society of Local Authority Chief Executives, Association of Electoral Administrators, Chief Electoral Officer for Northern Ireland and the Electoral Management Board for Scotland and therefore we consider that Petition Officers and their authorities will be sufficiently prepared to conduct a recall petition should one of the conditions be met shortly after this instrument comes into force. The Electoral Commission will also provide guidance and support to Petition Officers on running a recall petition. It is important that the Regulations come into force as soon as possible so that any MP who is guilty of wrong-doing and whose behaviour meets one of the conditions of the Act is subject

to the petition process. To delay this instrument coming into force risks denying the public their right to recall their MP in such circumstances.

Other matters of interest to the House of Commons

3.3 Disregarding minor or consequential changes, the territorial application of this instrument varies between provisions.

4. Legislative Context

4.1 This instrument implements the Recall of MPs Act 2015. The Act remains largely uncommenced in anticipation of the regulatory framework set out within this instrument relating to the procedures and offences pertaining to the conduct of a recall petition.

4.2 The process for recall petitions as set out in this instrument is based upon existing electoral law with the relevant modifications made to provide for the differences in the recall process. The relevant legislation is as follows:

The Representation of the People (England and Wales) Regulations 2001

The Representation of the People (Scotland) Regulations 2001

The Representation of the People (Northern Ireland) Regulations 2008

The Representation of the People Act 1983

The Representation of the People Act 1985 (sections 6 to 9)

The Representation of the People Act 2000 (Schedule 4)

4.3 Regulations are also due to be made regarding the recovery of a petition officer's expenses for services rendered or expenses incurred in respect of a petition. These Regulations will be made under paragraphs 3(1) and (9) of Schedule 1 to the Recall of MPs Act 2015 for which no Parliamentary procedure is required.

5. Extent and Territorial Application

5.1 This instrument extends to all of the United Kingdom.

5.2 This instrument applies to all of the United Kingdom with the exceptions set out in regulation 2.

6. European Convention on Human Rights

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

6.2 "In my view the provisions of The Recall of MPs Act 2015 (Recall Petition) Regulations 2016 are compatible with Convention rights."

7. Policy background

What is being done and why

7.1 The Recall of MPs Act 2015 gives constituents the power to remove their sitting MP between elections, if the MP is found to have committed serious wrongdoing by either Parliament or the Courts. The objective of the Act is to increase the accountability of MPs, and ensure that the highest standards are maintained by Parliamentarians between elections. This is the first legislative framework to allow constituents to remove an elected official other than at a subsequent election, or by challenging an

election in Court. As such, the introduction of recall is a significant constitutional change to the level of accountability an MP is subject to. The Act remains uncommenced in anticipation of this instrument, which makes provision for the conduct of a recall petition, should any of the following conditions be met:

- the MP is given a custodial sentence, including a suspended sentence, of up to 12 months (sentences of over 12 months already result in an MP being removed);
- following a report from the Committee on Standards in relation to the MP, the House of Commons orders the suspension of the MP for 10 working days or more;
- the MP is convicted of an offence under section 10 of the Parliamentary Standards Act 2009 (offence of providing false or misleading information for allowances claims).

7.2 If any one of these events occurs, a recall petition is automatically triggered in the MP's constituency. The petition may be signed by eligible electors in the MP's constituency during the petition signing period, which is set at 6 weeks. If at the end of the petition signing period the petition has attracted signatures from less than 10% of eligible electors then no further action is taken. If 10% or more sign the petition the MP ceases to be an MP and a by-election is triggered. The unseated MP is free to stand at the subsequent by-election.

7.3 This instrument creates the detailed procedures to be followed before, during and after a recall petition, mirroring wherever possible those prescribed for a parliamentary election. For example, whilst the Act defines who is eligible to sign the petition, the instrument contains detailed provisions about the publication of "the register" of those eligible to sign including the publication of the number registered and the number of persons who would need to sign the petition for it to be successful. The Act provides for the petition to be open for six weeks and for those eligible to sign to be able to do so at a signing location to which they are allocated; the number of signing locations to be designated is a matter for the petition officer who understands the needs of his constituents and may designated between 1 and 10 locations. The instrument gives details of the way in which the petition must be signed and the prescribed individual signing sheet, the questions that must be put to those signing in person and how signing sheets must be verified and stored. The Act also provides for those eligible to sign to be able to do so by post or by proxy, while the instrument details how that will work, including arrangements for those already entitled to sign by post or proxy at an election and the issue and receipt of postal signing sheets.

7.4 The provisions adopt or adapt the processes followed at elections, wherever possible, because they are designed to ensure that the process is well-organised, fair and not open to abuse. Whilst this makes the process prescriptive, it is a process that is well known to administrators who will have to conduct the petition. The process will also be familiar, in parts, to those participating, and is designed to provide clarity and confidence in the process and the outcome of the petition. At the same time, there are elements of differences to a petition which mean that not all the provisions that would apply at an election have been applied here or have been significantly adapted.

7.5 For example, in relation to issues of secrecy - at an election, a voter is selecting any one of a number of candidates whilst at a petition, those signing are only signing for one purpose, to unseat the MP. For this reason only the Electoral Commission (EC)

will be able to observe proceedings at signing places and be present at the issue and receipt of postal signing sheets, however, at the count, this will be extended to include all accredited observers that are registered under the EC's accreditation scheme.

7.6 Regulation 27 (England and Wales and Scotland) and regulation 28 (Northern Ireland) provides for the petition officer to place a mark on the register against the name of a person to whom they issue a signing sheet, this is to protect against double signing and help detect corrupt or illegal practices. This follows a similar process to that at an election. Schedule 3 provides for access to that marked register, but unlike at an election where any person can inspect it upon making a successful application, the petition officer only has to make the register available for inspection if they are satisfied that the applicant suspects fraud in the petition process. Additionally, to safeguard the information contained in the marked register, copies may only be supplied to the EC, police and security services. This restriction is much tighter than at elections where a variety of organisations may obtain a copy for research or campaigning purposes.

7.7 There are also provisions in the instrument that are entirely new because the circumstances would not occur at an election. For example, Section 33 provides for the daily verification and storage of signing sheets. This is required because as the petition takes place over a six week period it is important that discrepancies, whilst highly unlikely, are identified early. Importantly, the results of daily verification will not be made public so as to allow for a tally to be made on the number of persons that have signed the petition.

7.8 Part 6 details the offences that are attached to the recall petition process. These apply, with modification, many of the offences that apply at an election. It was viewed important to the integrity of the process to apply these offences as although a petition might be viewed as a more informal process than an election, the outcome i.e. the unseating or otherwise of the MP, is of the same nature as an election.

7.9 Section 18(1)(b) of the Recall of MPs Act, provides a power to make provision about the questioning of a recall petition and the consequences of irregularities. Regulation 140 and Schedule 4 of the instrument establishes a mechanism for the MP or a constituent of the MP, to complain about the outcome of the petition. Schedule 4 applies Part 3 of the Representation of the People Act 1983, with modification, thereby establishing a court similar to an election court which may uphold or void the petition result. A result may only be voided, and an MP re-seated, if a complaint is brought to a petition court within 21 days of the result being announced. This provides the unseated MP with a certain timeframe during which to bring an appeal, and Parliament with a defined period of time during which it would be inadvisable to move a writ to trigger a by-election to fill the vacant seat.

8. Consultation outcome

8.1 The Electoral Commission has been consulted on this instrument as required by the Political Parties Elections and Referendums Act 2000 (as amended by Schedule 6 Paragraph 3(6) of the Recall of MPs Act).

8.2 Few substantive changes were suggested and alterations were made to the SI where appropriate. Only two recommendations put forward by the EC were rejected. The first related to accredited observers being allowed to observe all stages of the petition process, rather than just at the count as set out in this SI. This recommendation was

rejected because of the risk of identification and intimidation of petition signers being far greater than voters at an election.

8.3 The second related to user-testing of the Petition Notice Letters. The original format of these was equivalent to a poll card and was user-tested with members of the public over 2 phases in 10 locations across the UK. However, due to concerns that these could inadvertently prompt electors into signing the petition, just like a poll card prompts electors to attend a polling station, a letter format was devised instead. The EC has recommended that these be tested but as the wording in the letters is the same as that used in the original testing, analysis of which indicates that it clear and concise, this is not necessary.

8.4 In addition to the above, informal consultation has been undertaken with key stakeholders throughout the development of the regulations. These have included members of the Association of Electoral Administrators, Returning Officers, Electoral Registration Officers, the Chief Electoral Officer for Northern Ireland, the Electoral Management Board for Scotland and Electoral Management Software suppliers. The Territorial Offices and officials in the Scottish Government have also been consulted on relevant parts of the Regulations.

9. Guidance

9.1 The Electoral Commission currently issues guidance to Returning Officers on how a poll should be conducted under Section 10(3) of the Political Parties, Elections and Referendums Act 2000. This can be found here: http://www.electoralcommission.org.uk/our-work/publications/guidance

9.2 The Electoral Commission is expected to produce similar guidance for Petition Officers on how recall petitions should be conducted.

10. Impact

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

10.2 The impact on the public sector will be minor. It is anticipated that recall petitions will occur extremely infrequently, and when they do their approximate cost will be £100,000.

10.3 A full Regulatory Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sectors is foreseen. This was demonstrated within the original Impact Assessment created for the Recall of MPs Bill, which was not submitted to the Regulatory Policy Committee, given the aforementioned lack of impact. This IA can be found here: http://www.parliament.uk/documents/impact-assessments/IA14-17.pdf.

11. Regulating small business

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

12. Monitoring & review

12.1 This instrument puts in place the necessary legal framework in order to run a recall petition, and thus allow for the Recall of MPs Act 2015 to be commenced. No immediate internal review is envisaged until a recall petition has taken place.

12.2 The Law Commission keeps all areas of legislation under review and is currently conducting a review into the desirability and feasibility of consolidating electoral law.

13. Contact

13.1 Louise Parry at the Cabinet Office Telephone: 0207 271 1314 or email: louise.parry@cabinetoffice.gov.uk or Clyde Murray at the Cabinet Office Telephone: 0207 271 6425 or email: clyde.murray@cabinetoffice.gov.uk can answer any queries regarding the instrument.