EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (ELECTION EXPENSES EXCLUSION) (AMENDMENT) ORDER 2019

2019 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 The Representation of the People (Election Expenses Exclusion) (Amendment) Order 2019 ("the statutory instrument") will exclude disability-related expenses, to the extent they are reasonably incurred, from the statutory definition of "election expenses". The statutory instrument will create this exclusion by adding disability-related expenses to the list of matters in Part 2 of Schedule 4A to the Representation of the People Act 1983.

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 statutory instrument will come into force by 26th March 2019, the start of the regulated period for local government elections in England. This will ensure that any disability-related expenses, including funding from grants provided by the EnAble Fund for Electoral Office (see paragraph 7.4) are exempted from electoral spending limits. Article 1(1) therefore provides that the statutory instrument will come into force on the day after the day on which it is made.

3.2 The Cabinet Office notes the Joint Committee on Statutory Instruments' views expressed in the First Report of Session 2014-15 and the 26th report of the current session, namely that there should be a period of at least 21 days between the making of an instrument and its commencement. The Cabinet Office considers that the commencement provision in Article 1(1) is justified in the present case, for the following three reasons. First, the statutory instrument does not impose any new duties on candidates. It exempts a category of expenditure from the requirements imposed on "election expenses" under the Representation of the People Act 1983. Further, stakeholders who will be affected by the statutory instrument will have had an opportunity to take note of its effect during its passage through Parliament. Finally, there are compelling factors in favour of commencing the statutory instrument as soon as possible so that it is in force before the start of the regulated period for local elections in England. This would mean that grants from the EnAble Fund for Electoral Office for disabled candidates running in those elections are excluded from the statutory definition of "election expenses".

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 The territorial application of this instrument is England, Wales, Northern Ireland and Scotland.

3.4 The powers under which this instrument is made cover the United Kingdom through the provisions contained within Paragraph 15(1) of Schedule 4A to the Representation of the People Act 1983. The powers under which this instrument is made cover Northern Ireland through the Northern Ireland Assembly (Elections) Order 2001. This applies the Representation of the People Act 1983 with modifications to Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is UK-wide.

4.2 The territorial application of this instrument is UK-wide. The instrument will apply to candidates standing for Parliamentary elections across the UK; including by-elections. In England it will apply to local government elections; Mayor of London elections and London Assembly elections; mayoral elections; combined authority mayoral elections. In Northern Ireland it will apply to Northern Ireland Assembly elections.

4.3 Electoral spending limits for local government elections and National Assembly elections in Wales are devolved matters. Electoral spending limits for local government elections in Northern Ireland is covered under separate legislation and therefore would need to be amended separately with the approval of the Secretary of State for Northern Ireland.

4.4 An exclusion for disability-related expenses for disabled candidates from candidate spending limits currently exists in Scotland for local council elections (including by-elections), made under the Scottish Local Government Elections Amendment (No. 2) Order 2016 (S.I. 2016/354) and Scottish Parliament elections, made under the Scottish Parliament (Elections etc.) Order 2015 (S.I. 2015/425)

5. European Convention on Human Rights

5.1 The Minister for the Constitution, Chloe Smith, has made the following statement regarding Human Rights:

"In my view the provisions of the Representation of the People (Election Expenses Exclusion) (Amendment) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 Under the current legislative framework, disability-related expenses are not excluded from the definition of "election expenses" in section 90ZA of the Representation of the People Act 1983 and the related regulatory requirements. As a result, they count towards a disabled candidate's spending limit. The matters which are excluded from the definition of "election expenses" are listed in Part 2 of Schedule 4A of the Representation of the People Act 1983. Pursuant to paragraph 15(1) of Schedule 4A, the Secretary of State may amend Parts 1 and 2 of that Schedule by Order. The functions of the Secretary of State are exercisable concurrently with the Minister for the Cabinet Office by virtue of the Transfer of Functions (Elections, Referendums, Third Sector and Information) Order 2016 (see section 3 and Schedule 1 of that Order).

6.2 The statutory instrument will substitute the current paragraph 7A of Schedule 4A of the Representation of the People Act 1983 with a new paragraph 7A. Under the current version of paragraph 7A, a limited class of disability-related expenses were previously excluded from the definition of "election expenses". This captured expenses incurred in accordance with grants made by a previous fund administered by the Government Equalities Office aiming to improve access to elected office for disabled candidates. The current version of paragraph 7A was added by the Representation of the People (Expenses Exclusion) Order 2013 (S.I. 2013/688). By virtue of the 'sunset' provision in paragraph 7A(4), paragraph 7A ceased to have effect on 30 June 2014. It is therefore otiose.

6.3 Pursuant to Schedule 8A of the Political Parties, Elections and Referendum Act 2000, the expenses of non-party campaigners (as opposed to candidates) that are reasonably attributable to an individual's disability are excluded from electoral spending limits.

6.4 As outlined at paragraph 4.4, disability-related expenses are exempt from election spending limits in both Scottish Parliament elections and Scottish local council elections, including subsequent by-elections.

7. Policy background

What is being done and why?

7.1 The Representation of the People Act 1983 consolidates Acts pertaining to electoral law and governs key matters of electoral law, including what constitutes an "election expense" and the regulatory requirements applicable to election expenses.

7.2 The Order will ensure that disability-related expenses which are reasonably incurred do not count towards election spending limits for disabled candidates. Disability-related expenses include, but are not limited to, the cost of providing transport support for mobility impaired candidates, British Sign Language (BSL) interpretation for hearing impaired candidates during election campaigns and the transcription of campaign material into braille for visually impaired candidates.

7.3 Matters of expenditure that would be common to both disabled and non-disabled candidates, such as the normal printing of campaign leaflets for distribution to the public, would not fall within the scope of this exemption. However where a disabled candidate requires specially adapted measures to participate in campaigning on a level basis with a non-disabled candidate, then such an additional expense is likely to fall within the scope of the Order, providing it satisfies the conditions set out in paragraph 2.1

7.4 The exclusion created by the Order will also capture disability-related expenses funded from grants provided by the EnAble Fund for Electoral Office for disabled candidates. This interim fund of £250,000, will provide grants to support disabled candidates and will primarily cover English local government elections in May 2019. A written statement made by the Minister for Women and Equalities on 17 May 2018 concerning the interim fund can be accessed via this link: https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-05-17/HCWS695/

7.5 The Government Equalities Office, together with the Office for Disability Issues and the Cabinet Office, is undertaking a programme of work with disability stakeholders to help both major and smaller political parties best support disabled candidates.

7.6 Around one in five of the UK population has a disability, but disabled people remain insufficiently represented in our Parliaments, Assemblies and councils. The Order, the EnAble Fund for Electoral Office and the programme of work will help 'close the gap' between disabled candidates and non-disabled candidates, enhancing the equality of opportunity. The Government wants to ensure that the diversity of the United Kingdom is sufficiently represented in public offices. This includes the disabled population of the United Kingdom.

7.7 We anticipate there will be public support of this policy, especially from charities and voluntary sector.

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.

9. Consolidation

9.1 This Order does not consolidate any current legislation.

10. Consultation outcome

10.1 The Cabinet Office consulted the Electoral Commission, the Welsh Government and the Scottish Government, the Northern Ireland Office and the Government Equalities Office over a 10 week period. The consultation was issued through two stages; first a consultation on the policy proposals and second, a consultation on the draft statutory instrument. The consultation was done through a series of meetings. Written feedback was also provided by all the consulted parties.

10.2 The Electoral Commission welcomed the draft statutory instrument and supported the creation of an exclusion for expenses that relate to the needs of disabled candidates, thereby making elections more accessible for disabled candidates. The Commission considered that disabled candidates should not be required to disclose details of expenses relating to their disability in a spending return.

10.3 The Commission suggested that further exemptions for disability-related expenses should be created for Police and Crime Commissioner Elections and local government elections in Northern Ireland. Both proposals require separate legislation made under different powers.

10.4 The Welsh and Scottish Governments supported the proposals to exempt disability-related expenses for candidates standing in UK Parliamentary elections across the UK. Overall, they were content with the draft statutory instrument. The Welsh Government suggested that wording should be added to the statutory instrument to highlight that the statutory instrument does not apply to local government elections in Wales. The Scottish government suggested that the definition of disability, from the Equality Act 2010, could be written out within the statutory instrument. Instead, the Cabinet Office has defined '*disability*' by reference to the relevant statutory definitions in the Equality Act 2010 and the Disability Discrimination Act 1995. This approach will ensure that the definition of disability tracks any amendments to the relevant primary legislation and reflects the definitions which apply in different parts of the United Kingdom. The statutory instrument defines 'disability' by reference to the primary legislation which

applies to different parts of the United Kingdom. The Equality Act 2010 applies in Great Britain, and the Disability Discrimination Act 1995 applies in Northern Ireland.

11. Guidance

11.1 The Electoral Commission provides regular guidance on what constitutes an electoral expense for candidates.

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 statutory instrument because no, or no significant, impact on the business, charities, voluntary bodies or public sectors is foreseen.

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 are no plans to monitor or review the statutory instrument. Under the statutory instrument, disabled candidates are not required to report disability-related expenses within their spending returns. As a result, monitoring or reviewing of the statutory instrument is difficult to implement and unnecessary.

14.2 This approach upholds the privacy of disabled candidates, and does not put them in a position in which they feel obliged to disclose their disability. This approach was upheld by the Electoral Commission, as stated under paragraph 10.2. This is also in line with the legislation for non-party campaigners, contained under Schedule 8 of the Political Parties, Elections and Referendums Act 2000, which doesn't require non-party campaigners to disclose disability-related expenses.

14.3 The EnAble Fund for Elected Office has robust checks and balances in place to ensure that grants are allocated to eligible applicants. This consists of an initial triage process and a meeting with the applicant, in person where possible. During these checks, applicants will be asked to confirm that they have a disability or a health condition, that necessitates reasonable adjustments to enable them to stand for election. In addition, applicants' intention to stand for election will undergo a verification process to ensure their intention to stand is genuine.

15. Contact

15.1 Danielle Cudby at the Cabinet Office Telephone: 0207 2713 118 or email: Danielle.Cudby@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Simon James at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chloe Smith, Minister for the Constitution, Cabinet Office, can confirm that this Explanatory Memorandum meets the required standard.