EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (ENGLAND AND WALES) (AMENDMENT) (NO. 2) 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 The Regulations remove the mandatory requirement to provide details of any previous name by which the applicant has been known within 12 months before the date of the application when applying to register to vote under individual electoral registration (IER). Under the draft Regulations provision of previous name information will be voluntary, but individuals will be informed on the application form that providing this information may assist the registration officer in verifying the applicant's identity and that where previous name details are not provided, additional personal information may be required in order to verify an application to register for the purpose of determining the application. The Regulations also update the online application process and forms relating to voter registration in order to bring them into line with forthcoming changes to the jury summoning age in England and Wales and ensure that information relevant for this purpose is collected on the electoral register.

2.2 The Regulations make changes to the correspondence required to be sent by Electoral Registration Officers (EROs) to applicants for registration and the manner of sending that correspondence, with the aim of reducing both the potential for confusion for members of the public and the overall cost of electoral registration.

2.3 The Regulations will also authorise EROs in England and Wales to inspect marriage records in order to improve the accuracy and completeness of the electoral register; and they make a minor consequential amendment to an existing regulation concerning disclosure of postal vote identifiers.

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

3.1 None.

4. Legislative Context

4.1 The new system of individual electoral registration is contained in amendments to the Representation of the People Act 1983 ("the 1983 Act") made by the Electoral Registration and Administration Act 2013 and in amendments to the Representation

of the People (England and Wales) Regulations 2001 (S.I. 2001/341) ("the 2001 Regulations") made by the Representation of the People (Description of Electoral Registers and Amendment) Regulations 2013 (S.I. 2013/3198) ("the 2013 regulations"). The IER provisions of the 2001 Regulations have been further amended by the Representation of the People (England and Wales) (Amendment) Regulations 2014 (S.I. 2014/1234), the Representation of the People (Supply of Information) Regulations 2014 (S.I. 2014/2764), the Representation of the People (England and Wales) (Amendment No. 2) Regulations 2014 (S.I. 2014/3161), and the Representation of the People (England and Wales) (Amendment) Regulations 2015 (S.I. 2015/467).

4.2 Under section 201(2) of the 1983 Act the making of this instrument is subject to the affirmative resolution procedure.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

5.2 A separate instrument making corresponding changes for Scotland is to be laid before Parliament by the Secretary of State for Scotland. The Scottish instrument does not, however, make the corresponding provision in relation to the jury age provisions because these are not required in Scotland due to the different judicial arrangements in Scotland, and the provisions relating to access to marriage records, as EROs in Scotland are already authorised to inspect marriage records in order to improve the accuracy and completeness of the electoral register.

6. European Convention on Human Rights

6.1 The Minister for Constitutional Reform considers that the Regulations are compatible with Convention rights.

7. Policy background

Provision of previous name when applying to register to vote (Regulations 4(a), 4(c) and 5)

7.1 Legislation currently requires that individuals applying to register to vote under individual electoral registration must provide their most recent previous name, if that change of name occurred during the 12 months preceding their application. The reason for requesting this information is that it may assist in verifying the applicant's identity, so that the ERO may make a determination as to whether or not the applicant meets the requirements for registration and consequently whether he or she may be placed on the electoral register. In order to vote it is necessary to be on the electoral register.

7.2 Data from the IER Digital Service shows that verification rates tend to increase where electors provide their most recent previous name regardless of whether the previous name was in use less than or more than 12 months prior to the date of application. Removal of the 12-month stipulation may therefore be expected to result in increased verification rates, and it was originally intended to include the necessary provision for that in the Representation of the People (England and Wales) (Amendment) Regulations 2015 (S.I. 2015/467) and in the corresponding instrument in respect of Scotland. Representations were subsequently received from organisations representing the interests of transgendered individuals, however, expressing concern that the effect of the new legislation would be to make provision of previous name information mandatory irrespective of how long ago the change of name may have taken place. The draft regulations were consequently withdrawn and re-laid with the previous name provision removed.

7.3 Following further policy development work carried out in co-operation with some of the transgender organisations it emerged that a more acceptable solution would be for electoral registration applications to require the applicant's most recent name on a voluntary basis only. The instrument now before Parliament would, if made, effect such a change.

Provision of jury age information when applying to register to vote (Regulation 4(b) and 9)

7.4 The electoral register is the basis on which people are called for jury service in England and Wales, and EROs have a statutory duty to supply this information. The upper age limit to serve as a juror will change from 70 to 75 in early 2016. The regulations concerning age qualification for jury service and the electoral register as the basis of jury selection in the Juries Act 1974 were amended by Section 68 of the Criminal Justice and Courts Act 2015.

7.5 Under current regulations, applicants to register to vote in England and Wales who are unable to give their date of birth must specify whether they are under 18, or over 70. Current regulations also require that EROs should, where practicable, issue annual canvass forms prepopulated with the details of already registered electors, and include on the form whether or not the electors registered have previously indicated that they are over 70.

7.6 Regulation 4(b) will replace the requirement for an IER applicant who is unable to provide their date of birth to specify if they are over 70 with a requirement for such an applicant to specify if they are 76 or over.

7.7 Regulation 9 will replace the requirement for a prepopulated annual canvass form to, where practicable, specify whether an elector is over 70 with the requirement for the form to specify whether an elector is 76 or over.

Changes to correspondence under individual electoral registration (Regulations 6 to 8 and 11)

7.8 Following feedback from electoral administrators, the Regulations also make changes to the correspondence required to be sent between EROs and electors or applicants for registration. These changes are designed to help reduce the administrative burden on EROs, the potential for confusion for members of the public, and the overall cost of electoral registration. The Regulations will amend the way in which EROs are required to send confirmation to applicants when their applications have been successful; require the ERO to send an individual notice in writing of the outcome of a review determining registration, and provide information about the appeal process; and they will amend the categories of cases in which the ERO does not need to send a notice of alteration.

Access to marriage registers (Regulation 10)

7.9 EROs in England and Wales are authorised to inspect the records of the registrar of births and deaths as part of their registration duties, and they are authorised to inspect civil partnership records, as these are held by the local authority.

7.10 Access to marriage records would alert EROs to electors who may wish to change their name on the electoral register. This would allow EROs to consider sending a notice of alteration form to an elector, thus improving the accuracy of the register. Marriage records can also be used to verify the identity of an applicant whose identity cannot be verified using Department for Work and Pensions (DWP) data matching, as from 2nd March 2015 Schedule 4 of the Immigration Act 2014 came into force which means that proof of name, surname and date of birth is required in order to marry in the UK. Using marriage records in this way would reduce the number of applicants who have to provide documentary evidence to establish their identity, thus making the registration process easier for applicants as well as reducing costs.

7.11 Regulation 10 will give authorisation for EROs in England and Wales to inspect the records of a registrar of marriages or a superintendent registrar of births, deaths and marriages for the purpose of their registration duties. EROs are already permitted to inspect the records of registrars of births and deaths.

Consequential amendment relating to disclosure of postal vote personal identifiers (Regulation 12)

7.12 The Government has taken the opportunity provided by this instrument to make a consequential amendment to a reference in regulation 61B(3)(a) of the 2001 regulations so that it refers to regulation 85A and not to regulation 85, which has been revoked by regulation 33 of, and Schedule 2 to, the 2013 regulations.

8. Consultation outcome

8.1 Consultation was firstly conducted on an instrument containing the Regulations relating to previous name and IER correspondence and secondly on a separate instrument containing the Regulations relating to jury age and marriage records. Both these sets of Regulations have now been combined in this instrument, although the substance of the provisions has not been amended.

Consultation on previous name and IER correspondence

8.2 The Electoral Commission (EC) and the Information Commissioner's Office (ICO) have been consulted on the Regulations relating to previous name and IER correspondence, as has the Department for Work and Pensions, HM Revenue and Customs, the Department for Social Development (Northern Ireland), the Government Equalities Office, the Ministry of Justice, the Wales Office, the Association of Electoral Administrators (AEA), the Society of Local Authority Chief Executives (SOLACE), the Cabinet Office Expert Panel of Electoral Administrators and a range of organisations representing the interests of transgendered and non-binary people who had previously given advice during policy development on the change of name issue, including UK Trans Info, Press for Change, Gendered Intelligence and the Gender Identity Research and Education Society. Of those consultees who responded, most were content with the proposed changes contained in the draft Regulations. UK Trans Info said that it was very pleased with the changes made by regulations 4 and 5, which it believed would significantly reduce the problems faced by transgender and non-binary people when registering to vote shortly after changing their name.

8.3 The EC, while content overall with the changes, raised three points with the Cabinet Office. The Commission said that while it supported the policy intention behind the previous name provision, there was some uncertainty as to the likely impact on electors and the electoral administration process and the Cabinet Office should therefore consider how best to assess the impact of the change. The Cabinet Office has responded that it will, together with the EC, continue to monitor the completeness and accuracy of the electoral register throughout and after the transition

to IER. The EC also said that it assumed that the online registration website would be further amended to ensure consistency with any amendments made to the paper application form, and it would welcome confirmation as to what the equivalent process would be for telephone or in-person applications. The Cabinet Office has responded that when this legislation comes into effect it will amend the website accordingly (and the forms will be amended by the EC). When individuals apply to register by telephone or in person, the ERO must record the required information in writing and will submit the completed form for verification in the same way as if the applicant had submitted a paper form. The EC also requested confirmation that the Government was now planning a December 2015 commencement date for this instrument. The Cabinet Office has responded that implementation in December 2015 is the present intention but that it would continue to consult with the EC to ensure that form design and other post-legislative processes were aligned as closely as possible to the legislation coming into force.

8.4 The ICO was also generally content with the Regulations relating to previous name and IER correspondence. It pointed out however that data protection legislation required that organisations were transparent, clear and open with individuals as to how their information would be used. While the ICO welcomed the intended explanation to applicants that provision of previous name information was not mandatory, therefore, it suggested including the further clarification that where previous name information was not supplied, additional personal information might be required in order to verify an application to register. The ICO's suggestion has been adopted and is included in the version of the draft Regulations laid before Parliament.

8.5 The Association of Electoral Administrators (AEA) however commented that to make provision of most recent previous name voluntary in place of mandatory would probably have a negative impact, since people may not provide the information if they are advised that they do not have to do so. The AEA therefore considered that the requirement should be for <u>all</u> previous names, and that the provision that the requirement is not mandatory should not be included. The provision should also make clear that the application can be accepted with or without previous names. The Government has given careful consideration to these suggestions but has decided not to adopt the AEA's suggestion in respect of previous names. However, the Cabinet Office has explained to the AEA that the addition of the extra clarification suggested by the ICO (see previous paragraph) will give a stronger message about the consequences of non-provision of previous name information.

8.6 So far as the correspondence provisions of the Regulations were concerned the AEA commented that it would be helpful if confirmations could be sent with the option of email or posting (subject to proper provision to prevent fraud), rather than

posting all written confirmations: this could be expected to reduce costs and considerably streamline the process. Cabinet Office has assured the AEA that the effect of the regulations is that where confirmation is given in relation to an application for registration made in response to an invitation to register that the registration officer may give that confirmation by electronic means. However where confirmation is given in relation to an application for registration made other than in response to an invitation to register, a physical link needs to be established between the applicant and the address in respect of which the person is applying to be registered. For that reason, in those circumstances the registration officer must give confirmation by hard copy in writing to the address in respect of which the applicant has applied to be registered.

8.7 On the previous name provisions of the Regulations SOLACE's Elections and Democracy Board commented similarly to the AEA: the more information EROs had, the easier it was to match people. If provision of previous name information became optional it would lead to more time spent on resolving queries. SOLACE has been advised that the Government has reconsidered this but has decided to make no change to the previously agreed policy.

8.8 On the correspondence provisions of the Regulations, SOLACE commented that anything that reduced the volume of correspondence would be beneficial and also asked whether "notice in writing" included email. Cabinet Office has assured SOLACE that the effect of the regulations is that where confirmation is given in relation to an application for registration made in response to an invitation to register that the registration officer may give that confirmation by electronic means. However where confirmation is given in relation to an application for registration made other than in response to an invitation to register then the registration officer must give confirmation in writing by hard copy to the address in respect of which the applicant has applied to be registered.

Consultation on jury age and marriage records

8.9 The Electoral Commission has been consulted on the Regulations relating to jury age and marriage records as required by section 7(1) and (2)(e) of the Political Parties, Elections and Referendums Act 2000. The EC were content that the proposed timetable for making the instrument would enable the relevant forms to be updated and approved in good time for the 2016 canvass. The Commission pointed out that if the referendum on the United Kingdom's membership of the European Union were held in autumn 2016, it could have an impact on the timing of the publication of the revised register after the 2016 canvass and the consequent availability of information about jurors. Consideration would then need to be given to the timetable for implementing the new provisions. We have responded that in the event of the timing

of such a referendum impacting on the 2016 annual canvass then this measure, and its consequences, would be considered alongside any other pertinent issues relevant to the conduct of the 2016 canvass.

8.10 The Commission also commented that in relation to the broadening of Regulation 35 to 'any registrar of births and deaths' for 'any superintendent registrar, registrar of births and death or registrar of marriages', it would be important that these persons are made aware that EROs may make inspection requests. The Commission would therefore make reference to this in its guidance for EROs.

8.11 Other organisations consulted on the Regulations relating to jury age and marriage records were the Government Equalities Office, the Ministry of Justice, the General Register Office, the Department for Communities and Local Government, the Wales Office, the Jury Central Summoning Bureau, the Association of Electoral Administrators, the Society of Local Authority Chief Executives (SOLACE), and the Cabinet Office Expert Panel of electoral administrators. These organisations were either content or had no comments on the draft Regulations, with the exception of the following issues set out below.

8.12 SOLACE commented that they generally had no difficulty with the proposed changes. They did raise some minor points, firstly in regard to the change in the upper age limit to serve as a juror from 70 to 75 in early 2016. The electoral register will be next published on 1st December 2015 and will show over 70 year olds. Information about over 75 year olds would not be available until after the full canvass in 2016. We responded that this is why the measure will not come into force until after the 1st December 2015.

8.13 Secondly, as a point of clarification to the language used: regulation 26(1)(e) of the 2001 Regulations should be amended to read "76 years old or over". We responded that the drafting aligns with that used in the Criminal Justice and Courts Act 2015 which amends section 3(1) of the Juries Act 1974 to read "aged seventy six or over".

8.14 The Government Equalities Office raised some concerns regarding EROs inspecting marriage registers and how this might potentially affect transgender people. We informed the Government Equalities Office that guidance on the use of this information would be a matter for the Electoral Commission and subsequently facilitated a discussion between Government Equalities Office and the Electoral Commission on the production of guidance.

8.15 The Information Commissioner (ICO) was also consulted on the Regulations relating to jury age and marriage records. The ICO did not consider that they raised any new or significant data protection or privacy issues.

9. Guidance

9.1 The Electoral Commission will continue to issue guidance to EROs about electoral registration, including all aspects of the operation of IER.

9.2 Ministerial guidance on the satisfactory evidence for the determination of applications for electoral registration has been issued to EROs.

10. Impact

10.1 An overall Privacy Impact Assessment for individual electoral registration is at https://www.gov.uk/government/publications/individual-electoral-registration-impact-assessment.

10.2 A full regulatory impact assessment has not been prepared for this instrument because no impact on the private or voluntary sectors is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Electoral Commission and the Cabinet Office will continue to monitor the completeness and accuracy of the electoral register throughout and after the transition to individual electoral registration.

13. Contact

Carol Gokce at the Cabinet Office, tel 020 7271 2679, email Carol.Gokce@cabinetoffice.gov.uk can answer any queries regarding the instrument.