EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (ENGLAND AND WALES) (AMENDMENT) 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.

2. Purpose of the instrument

2.1 These Regulations amend the Representation of the People (England and Wales) Regulations 2001.

2.2 The effect of the Regulations will be to amend the Individual Electoral Registration (IER) application forms to allow applicants to identify that they are the only person resident at the address aged 16 or over and to provide more discretion to Electoral Registration Officers (EROs) as to when canvass forms must be given where such information has been given; and they will also enable EROs to send Invitations to Register (ITRs) and ITR reminders by electronic means.

2.3 The instrument will allow an attestor to an applicant's identity to be registered in any local authority area in England and Wales to allow more eligible applicants to become registered to vote.

2.4 The Regulations correct an error in an existing regulation concerning the requirement to provide fresh signatures following rejection of a postal voting statement.

2.5 The Regulations make a technical amendment concerning the rejected postal vote provisions at Greater London Authority (GLA) elections.

2.6 The instrument allows the full electoral register to be provided to the Local Government Boundary Commission for England (LGBCE) correcting an oversight following the transfer of functions in section 60 of the Local Democracy, Economic Development and Construction Act 2009.

2.7 Finally, the instrument also makes a consequential amendment substituting Local Government Boundary Commission for Wales, for Local Democracy and Boundary Commission for Wales as a consequence of the Local Government (Democracy)(Wales) Act 2013.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England and Wales.

3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P 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 in relation to the relevant territory were included in an Act of the relevant devolved legislature.

4. Legislative Context

4.1 These Regulations are being made to improve the operation of IER. The system of IER 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 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 (England and Wales) (Amendment No. 2) Regulations 2014 (S.I. 2014/3161), the Representation of the People (England and Wales) (Amendment) Regulations 2015 (S.I. 2015/467), and the Representation of the People (England and Wales) (Amendment) (No.2) Regulations 2015 (S.I. 2015/1971). The Electoral Registration and Administration Act 2013 (Transitional Provisions) Order 2015 (S.I. 2015/1520) completed the transition to IER. Under section 201(2) of the 1983 Act the making of this instrument is subject to the affirmative resolution procedure.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

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

In my view the provisions of the Representation of the People (England and Wales) (Amendment) Regulations 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The Regulations enable the person applying to register to vote, on a voluntary basis, to provide information as to whether they are the only person aged 16 or over resident at the address in respect of which the application is made. This provision does not apply to applications for a service declaration, overseas elector's declaration or declaration of local connection. Where an Electoral Registration Officer (ERO) has received this information during the period between 1st July and the date in that year when they publish a revised register, and determined within that period that the applicant is entitled to be registered at that address, then the ERO is not required to send a canvass form to the address as part of that annual canvass or to conduct prescribed follow up steps. If the information is received outside this period and the ERO has subsequently determined that the applicant is entitled to be registered at that address, then the ERO is not required to send a canvass form or to conduct prescribed follow up steps as part

of the next annual canvass. The Regulations also enable invitations to register (ITRs), including reminders, to be sent by electronic means. These provisions aim to reduce the potential for confusion for members of the public by reducing unnecessary ERO correspondence, and enable the overall cost of registration and the administrative burden on EROs to be reduced.

7.2 In addition the Regulations will enable electors who are registered in a different ERO area in England and Wales from the applicant for registration to attest the identity of the applicant, in order to make it easier for eligible applicants to register. The provision removes the requirement for the attestor to be registered in the same local authority area in England and Wales as the applicant.

7.3 The Regulations also make four minor amendments; firstly they correct an error in an existing regulation concerning the requirement to provide fresh signatures following rejection of a postal voting statement; secondly they make a technical amendment concerning rejected postal vote provisions at Greater London Authority (GLA) elections. They clarify to which ERO Returning Officers must send the list of rejected postal ballot papers following an election. The relevant ERO will write to electors on the list to advise them that their postal vote was rejected at the election and the reason for this; thirdly they add the Local Government Boundary Commission for England (LGBCE) to the list of organisations entitled to receive a free copy of the full electoral register. This provision is required because the Electoral Commission (EC) was previously responsible for local boundary reviews and was entitled to be supplied with the electoral register for this purpose. When this function transferred to the LGBCE in 2010, the regulations should have been updated to allow the LGBCE to be supplied with the electoral register. The provision corrects an oversight in existing regulations; and finally the Regulations make a consequential amendment amending the name of the Local Government Boundary Commission for Wales, which is entitled to a copy of the register from Welsh EROs, to the Local Democracy and Boundary Commission for Wales.

Consolidation

7.4 There are no plans to consolidate the 2001 Regulations.

8. Consultation outcome

8.1 The EC has been consulted on this instrument as required by section 7 of the Political Parties, Elections and Referendums Act 2000. The Cabinet Office agreed with the EC the importance that the new IER forms, to include the single occupant message, are available shortly after the Regulations are made and would work with the Commission on this. The EC raised a concern relating to the proposed removal of the requirement to send a canvass form where an ERO had for example determined a registration application just following publication of the revised register (i.e. 1 December 2016), where the applicant indicates that they are the only person resident at the address, observing that the ERO would then have no requirement to send a canvass form to that property at the next canvass, meaning that the property may not receive a canvass form until July 2018. To address this risk the EC suggested that the ERO should not have to send an annual canvass form to persons with single occupant status in cases where other records indicate that the property continues to only be occupied by a single person.

8.2 Cabinet Office has responded that EROs have the duty to maintain the completeness and accuracy of the register and have discretion to conduct the canvass or check other records, where circumstances suggest it, and the EC may wish to issue guidance to EROs in this matter to support EROs in these deliberations. The ERO has the discretion and flexibility to disregard single occupancy status and resume canvass at a property at any time they feel it is appropriate to do so. The ERO will be able to best decide what is appropriate according to the demographic and the type of property.

8.3 Provisions have been added to the instrument which will provide further clarity for the ERO; the only person resident at the address information must be received and the ERO determined that the applicant is entitled to be registered at that address during the period beginning with 1st July in each year and ending with the date in that year on which the registration officer publishes a revised version of the register, in order for the ERO to have no requirement to send a canvass form to the address as part of that annual canvass, or to conduct prescribed follow up steps. If the information is received outside this period and the ERO has determined that the applicant is entitled to be registered at that address, then the ERO is not required to send a canvass form or to conduct prescribed follow up steps as part of the next annual canvass. This means that generally the maximum period for a property not receiving a canvass form would be 18 months. EROs also have discretion to contact properties outside the canvass period, for example many EROs contact properties before an election.

8.4 The Information Commissioner's Office (ICO) was consulted and in connection with the single occupancy question requested clarity on the nature of the information to be provided by the applicant about other individuals at that address. Cabinet Office has assured the ICO that the IER application form will not require the applicant to provide any personal details about any other person resident in the property. ICO also noted that the single occupancy information is not mandatory and would expect this statement to be clear and prominent in order that applicants are fully aware. The ICO's advice has been passed to the EC to address during form design.

8.5 The Cabinet Office Expert Panel of electoral administrators were supportive of the policy set out at 7.1. One Panel member suggested that it be mandatory for one hard copy ITR to be sent to mitigate against emails going into spam folders. Cabinet Office has responded that individual EROs who wish to do so will still have that ability.

8.6 The Association of Electoral Administrators (AEA) had no comments on the instrument; neither did Society of Local Authority Chief Executives (SOLACE) Wales; Welsh Government; Northern Ireland Office; Government Equalities Office and Department for Communities and Local Government. Also consulted were Wales Office, Scottish Government, Scotland Office, AEA (Scotland and Northern Ireland), Electoral Management Board for Scotland, Scottish Assessors Association, SOLACE Elections & Democracy Board, SOLACE Scotland, Greater London Assembly and LGBCE.

8.7 The Scottish Government raised a concern that the removal of the requirement to send the next canvass form where the single occupancy application was determined outside the canvass period did not set a time limit, other than the reference to the next annual canvass, within which the application to register must have been made and considered that this could mean that it could be as long as 24 months before a change in occupation of a property became known to the ERO. The Cabinet Office has responded similarly to the response to the EC and that in addition the IER application requires the applicant to give any address at which the applicant has ceased to reside

within 12 months before the date of the application. The Scottish Government also considered that the attestation provision should be extended to allow an ERO in England and Wales to also seek these assurances from EROs in Scotland and Northern Ireland. Cabinet Office considered that cross-border attestations were a matter to develop joint policy on with the relevant Governments in due course. The Welsh Government drew attention to the change of name of the Local Government Boundary Commission for Wales and this minor amendment was added to the instrument.

8.8 The Scottish Assessors Association requested confirmation that the original policy intention was not to differentiate between England and Wales and Scotland in terms of registration location of attestors and that Cabinet Office held back on the equivalent Scotland Regulations due to the impending further powers in the Scotland Bill and therefore seeking to avoid the possibility of twin track registration pathways in Scotland. Cabinet Office confirmed that this was the case.

9. Guidance

9.1 The Electoral Commission will update electoral registration guidance for EROs to reflect the new provisions.

10. Impact

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

10.2 The impact on the public sector is that the provisions enable the overall cost of electoral registration and the administrative burden on EROs to be reduced.

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

10.4 An Impact Assessment has not been prepared for this instrument. An overall Impact Assessment for individual electoral registration is at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85899/individual-electoral-reform-impact-assessment.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 The Electoral Commission and the Cabinet Office will continue to monitor the completeness and accuracy of the electoral register.

13. Contact

13.1 Carol Gokce at the Cabinet Office telephone: 020 7271 2679 or email: carol.gokce@cabinetoffice.gov.uk can answer any queries regarding the instrument.